



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

MAGISTRATE DR MARSE-ANN FARRUGIA LL.D.

Sitting held to-day Monday, 1st November, 2021

**The Police
(Inspector Jonathan Cassar)**

vs

**Ronan Clyde Hamill and
Paula Fernandez Romero**

The Court,

Having seen charges brought against:

- 1. Ronan Clyde Hamill**, son of Thomas & Mary nee' Leenfield, born in France on the 23rd May 1997 without a fixed address and holder of Irish Passport bearing number PV0708801

and

Paula Fernandez Romero daughter of Jose' Manuel & Maria Luz nee' Romero born in Mostoles, Madrid, Spain on the 3rd April, 1998 residing 39, Floor 10, Door 4, Pintor

Velazquez Street, Mostoles, Madrid, Spain and holder of Spanish Identity Card bearing number 47551367V

Charged with having on the 2nd May 2021 between half past six in the morning (06:30am) and seven o'clock in the morning (7am) in St. Julian's, Malta: -

1. Without the intent to kill or to put the life of **Ivan Gauci I.D. No: - 97349M** in manifest jeopardy, caused harm to his body or health, which bodily harm is considered grievous; *Articles 214, 215, 216 (1)(b), 218 (1)(a) (b) and 222A (1) of Chapter 9 of the Laws of Malta.*
2. Wilfully committed any spoil, damage or injury to or upon any movable or immovable property, that is vehicle bearing registration number GVN700 of make Peugeot to the detriment of the Civil Protection Department of Malta which amount of the damage does not exceed two thousand and five hundred euro but exceeds two hunder [sic] and fifty euro (€250) and this in violation of Article 325 (1) (1) of Chapter 9 of the Laws of Malta;
3. Uttered insults or threats to **Ivan Gauci I.D.No:- 97349M** not otherwise provided for in this code, or being provoked, carried their insults beyond the limit warranted by the provocation;
Article 339 1 (e) of Chapter 9 of the Laws of Malta
4. Wilfully disturbed the public good order or the public peace;
Article 338 (dd) of Chapter 9 of the Laws of Malta.
5. In a public place or a place open to the public were found drunk and incapable of taking care of themselves.
Article 338 (ff) of Chapter 9 of the Laws of Malta

This Court was requested to issue a Protection Order against the accused in order to provide the security to **Ivan Gauci I.D. No:- 97349M** or for keeping public peace or for protecting the injured person or other individuals from harrassment or other conduct which will cause a fear of violence in accordance to Article 412C of Chapter 9 of the Laws of Malta

2. Having seen the note of referral for judgement of the Attorney General of the 12th August, 2021, wherein he sent the records of this case for the persons charged to be tried by this Court, having found from the preliminary investigation, that there might result an offence (or offences) under the provisions of:
 - (a) Articles 214, 215, 216, 222A (1) of the Criminal Code, Chapter 9 of the Laws of Malta;
 - (b) Articles 325 (1) and the third proviso of Article 325(1) of the Criminal Code, Chapter 9 of the Laws
 - (c) Article 339(1) (e) of the Criminal Code, Chapter 9 of the Laws of Malta;
 - (d) Article 338(dd) of the Criminal Code, Chapter 9 of the Laws of Malta;
 - (e) Article 338(ff) of the Criminal Code, Chapter 9 of the Laws of Malta;
 - (f) Articles 382A, 383, 384, 385, 386 and 412C and 412D of the Criminal Code, Chapter 9 of the Laws of Malta; and
 - (g) Articles 15A, 17, 31, 532A, 532B and 533 of the Criminal Code, Chapter 9 of the Laws of Malta
3. Having heard the persons charged declare in the sitting of the 18th August 2021, that they have no objection that their case be tried summarily by this Court.
4. Having heard the evidence and having seen all the records of the case and the documents exhibited.
5. Having heard the final oral submissions of the Prosecution;
6. Having seen the final note of submissions of the persons charged.

THE FACTS

7. There is a very marked difference between the version of the persons charged and that of the Prosecution and the injured party as regards the facts which gave rise to these procedures, and the determination of the case depends on the credibility of the evidence brought forward by each party and forms part of the merits of the judgement. In a nutshell, the versions of both parties are the following:

- (i) The injured party, Ivan Gauci, is a seventy-two (72) year old man. According to him, whilst he was walking down Main Street, St. Julians, he saw the defendants, and defendant Hamill was kicking a car belonging to the Civil Protection Department. He took out his mobile and went near them to take picture of them. Defendant Hamill took his mobile, and the injured party tried to get it back, and managed to do so. At that point defendant Romero walked aggressively towards him, and he pushed her so that he could leave. Defendant Hamill hit him on the head and when he turned round he hit him again on the face, and then threw him on the ground and both defendants started kicking him on his face, and he covered his face with his hand. He said at one point he saw the boot of defendant Romero going straight into his stomach. He managed to get loose and started walking as fast as he could away from them, but defendant Hamill followed him, got hold of him again, threw him on the floor hitting and kicking him again. The injured party stated that he started screaming with pain and he could hardly breathe. Defendant Hamill got up and left him there on the ground.
- (ii) Defendant Hamill stated that he and defendant Romero were kicking the car, and the injured party started taking pictures or a video of them with his mobile. He is not sure whether he tried to take his mobile away or tried to pull his hand away not to have the camera in his direction. The injured party pushed him, and both of them fell on the ground. The injured party started being aggressive to defendant Romero, and he went near them. The injured party punched him and threw him on the ground. Defendant Romero tried to separate them. The injured party picked his glasses and walked away. Since he knew that the injured party was going to the police station, he decided to go to the Police station too, so the Police will have the version of both parties. As defendant Hamill ran down the road, the injured party turned around, and thinking that defendant Hamill wants to fight him, the injured party grabbed him by the shoulder, and they both fell on the ground. He fell on top of the injured party. Defendant Hamill got up to leave, but the injured party remained on the ground, and defendant Hamill thought he was acting. Both he and defendant

Romero left the scene, because he knew the Police were coming and they would not believe their story.

- (iii) Defendant Romero stated that she and defendant Hamill were kicking the Civil Protection car. The injured party started running after them aggressively and taking a video of them with his mobile. Defendant Hamill took the mobile from the injured person. The injured person grabbed defendant Hamill and threw him on the ground, and whilst doing so, the injured party himself fell on the ground. Defendant Hamill returned the mobile to the injured party, and then the injured party punched her twice on her forehead. Defendant Hamill came to defend her, but the injured party threw him on the ground again, and punched defendant Hamill on his face. She tried to separate them. At one point the glasses of the injured party dropped on the ground, he picked them up, put them on and walked away. But the injured party turned round and told them he was going to the police station. She turned around to fix her contact lenses on her eyes, whilst defendant Hamill walked towards the injured party. When she turned round she saw defendant Hamill on top of the injured party, holding him and trying to calm him down, because the injured party, who was on the ground, was trying to hit defendant Hamill. She went towards them to separate them. When she managed to do so, they started walking away. But defendant Hamill went back to see how the injured party was, because he was still on the ground. When he came back, defendant Hamill told her that he was acting. So she picked up her bag, which had fallen on the floor, and they left the scene.
- (iv) As a result of this incident, the injured party suffered an abrasion of the nasal bridge, an abrasion of the right flank, fractures of the paravertebral segments of the right 6th till the 9th rib and anterior parts of the right 4th, 5th and 8th ribs, with subpleural right lung contusion at the level of the posterior fractures.¹
- (v) Defendant Hamill suffered a small abrasion on the palm thenar eminence and a small abrasion between the left second and third knuckle.²
- (vi) Defendant Romero suffered a small laceration of 0.5cm on her right small finger.³

¹ See fol. 58 of the proceedings.

² See fol. 46 of the proceedings.

³ See fol. 44 of the proceedings.

CONSIDERATIONS OF THE COURT AS TO THE GUILT OF THE DEFENDANTS

8. Before deliberating on the merits of the case, the Court would like to point out that according to the established case-law of these Courts, when in proceedings like this case, there are co-defendants, the evidence and every other declaration made by one co-defendant is not admissible evidence in regard to the other co-defendant, both if that evidence is in favour as well as if that evidence is against the other co-defendant. This principle as reiterated by the Criminal Court⁴ on 22 December 1998 in the case **Ir-Repubblika ta' Malta vs omissis Ian Farrugia**, wherein it was stated as follows: “*Il-gurisprudenza hija cara fuq dan il-punt: persuna li tkun akkuzata, kemm bhala komplici kif ukoll bhala ko-awtur, bl-istess reat migjub kontra akkuzat iehor ma tistax tingieb bhala xhud favur jew kontra dak l-akkuzat l-iehor sakemm il-kaz taghha ma jkunx gie definittivament deciz. Dan il-principju japplika sia jekk dik il-persuna tkun giet akkuzata fl-istess kawza tal-akkuzat l-iehor – b'mod li jkun hemm “ko-akkuzati” fil-veru sens tal-kelma – u sia jekk tkun akkuzata fi proceduri separati. Il-bazi ta' dan il-principju hu argument a contrario sensu li jitnissel mill-paragrafu (b) tal-Artikolu 636 tal-Kodici Kriminali.*” In its decree, the Criminal Court cited several judgements on the same principle.⁵
9. Consequently, in its considerations on the guilt or otherwise of both defendants, this Court cannot take cognizance either of the statement and the declarations to Police officers of the co-defendants vis-a-vis each other, or of what the co-defendants stated about each other under oath in these proceedings.

The Court will now proceed to consider each charge preferred against the defendants.

⁴ Per Judge Vincent De Gaetano.

⁵ See also in the same sense, the decree of the Criminal Court (*per* Judge Joseph Galea Debono) delivered on the 4th February 2004 in the names **Ir-Repubblika ta' Malta vs Brian Vella**.

The First Charge – Wilful grievous bodily harm to Ivan Gauci

10. Before considering the merits of this charge, the Court is going to deal with the statement made by defendant Hamill in his note of submissions, that he is being charged with grievous bodily harm “*in terms of Articles 214, 215, 216(1)(b), 218(1)(a) and (b) and Article 222A(1) of the Criminal Code*”.⁶ However this is not factually and legally correct. In the first charge of the charge sheet, the defendants were charged with causing bodily harm of a grievous nature to Ivan Gauci, without any qualifications or references to any provisions of the Criminal Code. In his note of referral for judgement, the Attorney General lists *inter alia* the offences contemplated in “*Articles 214, 215, 216, 222A(1) of the Criminal Code*”. Hence in the note of referral for judgement – which has the same function as a bill of indictment - Article 216 is indicated in its entirety, without reference to any particular subarticles, and Article 218 of the Criminal Code is not indicated at all.

11. In the judgement **II-Pulizija vs Michael Carter** decided on the 7th December 2001, the Court of Criminal Appeal (in its inferior jurisdiction)⁷ held as follows:

“Meta, invece, ir-rinviju għall-gudizzju jsir skond is-subartikolu (3) tal-Artikolu 370 (u allura wiehed qed jitkellem fuq għall-anqas reat wiehed, fost dawk imputati, li huwa ta’ kompetenza tal-Qorti Kriminali), in-nota ta’ rinviju għall-gudizzju tassumi rwol simili għal dak ta’ l-att ta’ akkuza quddiem il-Qorti Kriminali. Fin-nota ta’ rinviju għall-gudizzju skond l-Artikolu 370(3) ma jistghux jizdiedu reati li dwarhom ma tkunx saret il-kumpilazzjoni; l-Avukat Generali, naturalment, jista’ jnaqqas reat jew reati u anke jzid skuzanti. Bhal fil-kaz tal-att ta’ akkuza, jekk fin-nota ta’ rinviju għall-gudizzju taht l-imsemmi Artikolu 370(3) l-Avukat Generali jakkuzza lil xi hadd bhala awtur ta’ reat, il-Qorti tal-Magistrati, wara li tkun akkwistat il-kompetenza bil-kunsens ta’ l-akkuzat (Art. 370(3)(c)), tista’ ssibu hati ta’ tentattiv ta’ dak ir-reat, jew ta’ reat iehor anqas gravi izda kompriz u involut f’dak ir-reat, jew bhala komplici f’dak ir-reat. Issa, fil-kaz in dizamina, l-Avukat Generali rrinviija mhux skond l-Artikolu 433(5) izda

⁶ See fol. 428 of the Criminal Code.

⁷ Per Judge Vincent De Gaetano.

skond l-Artikolu 370(3); ghalhekk ma jistax jippretendi li l-Qorti Inferjuri setghet issib lill-appellat hati ta' xi reat iehor, salv, naturalment, dak li ghadu kif inghad dwar it-tentattiv, ir-reat anqas gravi izda kompriz u involut, u l-komplicita`.”

12. In the charge sheet, the defendants were charged *inter alia* that “*without the intent to kill or to put the life of Ivan Gauci I.D. No. 97347M in manifest jeopardy, caused harm to his body or health, which bodily harm is considered grievous.*” This is a direct reference to Article 216 of the Criminal Code in its entirety, because the charge sheet did not refer to any one or more of the specific types of grievous bodily harm contemplated in Article 216.
13. It is true that in the charge sheet, underneath this charge, there is typed in italics a number of provisions of the Criminal Code, including *inter alia* Article 216(1)(b), but nowhere in this charge is it stated that the charge of grievous bodily harm is being made “*in terms of*” these provisions of the law,⁸ as defendant Hamill erroneously writes in his reproduction of the charge sheet in paragraph number one (1) of his note of submissions,⁹ and in paragraph number five (5) of his same note.¹⁰
14. Moreover, no provision of the Criminal Code obliges the Prosecution to indicate under which provision of law a charge is being made. By analogy, Article 360(2) of the Criminal Code prescribes that “*The summons shall contain a clear designation of the person summoned and a brief statement of the facts of the charge together with such particulars as to time and place as it may be necessary or practicable to give.*” Although Article 360 deals with summoning of persons charged who are not under arrest, in the opinion of the Court these requisites of what the summons should contain are equally applicable to the charge sheet, when the persons charged are brought to court under arrest, as in the present case. Actually, there is no provision of the law which specifies what the charge sheet should contain when the person charged is brought to Court under arrest. But in practice, the Prosecution draft the charge sheet in accordance with the requisites prescribed in Article 360(2), and in the opinion of this Court this is a good practice.

⁸ See page 34 of the proceedings.

⁹ See page 425 of the proceedings.

¹⁰ See page 428 of the proceedings.

- 15.** Hence, the Attorney General was legally correct when, in his note of referral for judgement, he indicated the whole provision of Article 216 of the Criminal Code, as one of the articles under which there might result an offence, since the committal proceedings were instituted and conducted on all the offences which constitute grievous bodily harm in terms of Article 216, since the first charge in the charge sheet included them all. Consequently, the defendants can be found guilty under any one or more of the grievous bodily harms contemplated in Article 216.
- 16.** As regards to the merits of this charge, as already stated, the versions given by the injured party and by both the defendants are fundamentally opposed to each other. However, apart from the evidence of these three persons, the Court took into consideration the evidence of the eyewitness Catherine Fiorini and the CCTV footage given to the police by the witness Joanne Cassar who lives in the area where the incident took place. For this purpose, the Court used the CCTV footage as converted into AVI format by its IT expert Donald Tabone, since this format can be read by most computers, and the CD containing the converted format was exhibited by expert Donald Tabone together with his report, and marked DT2.¹¹
- 17.** From the CCTV footage it is clear that defendant Hamill kicked the Civil Protection vehicle on the right hand side (the side of the driver), then defendant Romero kicked it on the same side, and defendant Hamill kicked it again on the same side. This fact is not contested by either defendant.
- 18.** Although the CCTV footage does not capture all the whole incident, in the opinion of the Court, it provides crucial independent evidence of what actually took place. From the CCTV footage, the incident can be divided into three parts – the first part is the altercation which took place when the injured party was taking photos of the defendants and defendant Hamill took his mobile. The second part is the altercation which took place after the injured party took back his mobile, and the third part is the altercation which took place after the injured party walked away from the defendants, after the second altercation.

¹¹ See fol. 88 *et seq.* of the proceedings.

19. The first altercation took place when defendant Hamill took the mobile forcefully away from the hands of the injured party. The injured party grabbed defendant Hamill from the back of his jacket to retrieve his phone and from the footage both the injured party as well as defendant Hamill can be seen falling down. Whether defendant Hamill actually fell on the ground, or whether he fell on the doorstep of a residence, as the injured party has stated, is not captured in this video. The foot of defendant Hamill can be seen on the ground – the only thing which can be seen in the video of this altercation – is compatible with both versions. However, the Court is certain that during this altercation, defendant Hamill was in no danger because, defendant Romero remained calm and can be seen walking slowly towards them. Defendant Romero would certainly not have remained so calm, if she feared that the injured party was going to hurt defendant Hamill.
20. Defendant Romero claims that after the injured party managed to get his mobile back from defendant Hamill, he punched her on her temple. This alleged punch by the injured party is not captured in the video, but she claims that this is proved because at one point in the CCTV footage one can see her long hair flying backwards. Defendant Romero was examined medically by Dr Kenneth Falzon on the day of the incident. In his evidence, Dr Falzon stated that after he examined her he found a small laceration on her right finger around half a centimetre in size, and it was superficial in nature. He continued stating as follows: *“Now, she returned an hour later, claiming to have additional injuries that were admittedly inquired about in the first visit but nothing came up and then she said that she also had an injury on her right temple, which I personally found no physical evidence of, but she said she was in pain, so I wrote that down. ... At the first time she came in I did a full examination and there was no report of any pain, no report of anything, and then she came in an hour later and said she was hit and she has pain on her right temple”* because an old gentleman hit her. He also stated that the first time he examined her she told him that she was not injured, it was he who discovered the injury on the finger after conducting a full examination, because she did not realise she had this slight injury.¹²

¹² See fol. 312-313 of the proceedings.

- 21.** This evidence is confirmed by the statement of defendant Romero herself, where after being asked how did she injure her right small finger, she replied *“I don’t know but I have something on the right side of my forehead which I did not tell the doctor about. It’s from when he punched me.”*¹³ The Court has no doubt that if the injured party truly punched her, the punch on her forehead would not have started hurting during the interrogation by the police, but she would have told the doctor about the pain caused by the punch during the first medical examination. In any case, the doctor did not find any physical evidence of the punch on the second examination. In her evidence, defendant Romero states that despite the fact that she had a bump on her head, the doctor did not examine her the second time.¹⁴ As already stated, the Court is of the opinion that the allegation of defendant Romero that the defendant punched her is not credible, because if she was really punched so hard that she had a bump on her forehead, she would have told the doctor on her first visit, and the Court finds no valid reason why she should not believe the doctor when he said he examined her again the second time, and did not find physical evidence of the punch. A punch from the injured person is not the only plausible reason why her hair is seen flowing backwards in the CCTV footage, considering the circumstances in which this took place.
- 22.** From the CCTV footage, one can see a second altercation took place after the injured party managed to get his mobile phone and was trying to walk away from the defendants. From the footage, defendant Romero can be seen walking aggressively towards the injured party, and whilst doing so taking her backpack and throw it in the middle of the road. In her evidence defendant Romero admitted that she approached him again, because she wanted him to explain why he had hit her.¹⁵ From the CCTV footage one can see defendant Hamill walking towards them, and another altercation ensues involving the three of them. In this altercation, the defendants can be seen holding the injured party from his arms and defendant Hamill punching him in the face, head and upper body. In the beginning the injured party was defending himself, and when defendant Hamill ran after him, he pushed defendant Hamill on the ground, but eventually he was overcome by both defendants. The injured party can be seen bending from the waist down to avoid the blows, and at one point, the three of them stand still

¹³ See fol. 14 of the proceedings.

¹⁴ See fol 405-406 of the proceedings.

¹⁵ See fo. 404 of the proceedings.

for a few seconds, with both defendants gripping him from one arm, and the injured party with his face down. This is compatible with the evidence given by the injured party where he stated that he was pleading with them to let him go and he would not go to the Police.¹⁶ Finally the defendants let go of him, he picked up his glasses and walked very quickly away from them.

- 23.** From the CCTV footage, it is clear that whilst the injured party was walking quickly away from the defendants, defendant Romero kept walking after him arguing. Suddenly defendant Hamill started running after him, and a third altercation took place between the two of them. However, this altercation is not captured in the CCTV footage, because apart from the fact that they are far away from the CCTV camera, there is a car blocking the view. Defendant Romero at first did something near a parked car, then walked first slowly, then faster towards them, and disappears from the view behind the car. After nearly a minute from the beginning of the altercation, both defendants are seen coming running up the road. At one point, defendant Hamill runs back to where the altercation took place, and then returns back. Both defendants pick up their personal belongings and run quickly up the road, whilst one can see Police Officers in the distance coming up the road from the other direction.
- 24.** The injured party states that when he left after the second altercation, defendant Hamill followed him, got hold of him again, threw him on the ground and started kicking and hitting him. At that time, he could not bear the pain and he started screaming and could hardly breathe. Then defendant Hamill got up and left him on the ground.
- 25.** On the other hand, defendant Hamill states that after the injured party left, he decided that once the injured party was going to the Police station, he should go as well to state his version of events. According to defendant Hamill, when the injured party saw him coming, he thought he wanted to fight with him, and the injured party grabbed him by the shoulders and they fell on the ground together. Defendant Hamill says he tried to calm the injured party, then got up and left. But he says he turned back to see why the injured party was not standing up on his feet and when he saw him still on the ground he knew he was acting. So he and defendant Romero left the scene.

¹⁶ See evidence of the injured party at fol. 225 till 231 of the proceedings.

- 26.** Defendant Romero states that after the injured party left, she adjusted her contact lenses back in place, because according to her, they moved when the injured party hit her. Then she ran towards defendant Hamill and the injured party to separate them, and they walked away together.
- 27.** The Court does not find the version of the defendants credible. If defendant Hamill wanted to go to the Police station as well, he would certainly not have started running alone behind the injured party, leaving defendant Romero alone in the street and without even speaking to her to tell her what his intention was. He would have told defendant Romero to go with him, and there was certainly no need to actually run after the injured party to reach the Police station. It is also relevant that during the interrogation, defendant Hamill never mentioned that he wanted to go to the Police station, but in his statement he said that after he asked the injured party to stop filming him, the injured party assaulted him and he acted in self-defence without even once hitting him, and in the act of self-defence he injured his hands.¹⁷
- 28.** The witness Catherine Fiorini corroborates the evidence of the injured party and stated that when the injured person was going down the road, defendant Hamill got hold of him, threw him on the ground and started kicking him.¹⁸ It is true that the evidence of Catherine Fiorini does not tally completely with the independent evidence contained in the CCTV footage – as will be stated later down in this judgement - but this witness has been consistent in the three times she gave evidence, that she saw defendant Hamill throwing the injured party on the ground and beating him.
- 29.** This Court has no doubt that when defendant Hamill ran after the injured party again, he had the intention to beat him again and cause him injury.
- 30.** Dr Mario Scerri, the medico-legal expert appointed by the Court confirmed that the injured party sustained fractures of the sixth (6th) to the ninth (9th) rib on the left hand side and also fractures of the fourth (4th), fifth (5th) and eight (8th) rib. He also had a contusion of the left lung. These injuries are compatible with blunt trauma. Dr Scerri also said that the injured person suffered from chronic obstructive pulmonary disease,

¹⁷ See fol. 12 of the proceedings.

¹⁸ See fol. 60 of the proceedings.

and so for him it was very difficult to breathe and very painful. He was kept in hospital for four days. He also stated that these lesions, the fractures and the contusion are lesions of a grievous *per durata* nature. Till the 1st July 2021, the date of the medical examination, the injured party was still complaining of pain in his chest on deep aspiration. When the expert was asked by the Court whether the ribs will heal, he replied as follows: *“No, by time he will be fine. But he is still in pain because this process, older age and people who suffer from this condition, the bones take longer to heal and the muscles takes longer to calm down”* As regards injuries on the face, Dr Scerri stated that he found no lesions.¹⁹ Dr Scerri also stated that probably the injuries were compatible with a fall *“(b)ecause the ribs were broken in two places. That would be compatible with a fall. If the alleged victim received a blow, probably the fracture would be a single blow. But he sustained two fractures in two ribs, jġifieri every rib sustained two fractures, anterior and posterior, probably it is due to the fall.”*²⁰

- 31.** It is obvious that the ribs of the injured party were broken during this third altercation, because till then, the injured party can be seen in the CCTV footage walking independently. The injured party also stated that it was during this altercation that the pain became unbearable, he could hardly breathe and he was screaming with pain.²¹ As Dr Mario Scerri stated these fractures and contusion are considered grievous *per durata* in terms of Article 216(1)(d) of the Criminal Code, since the bodily harm sustained caused a *“physical infirmity lasting for a period of thirty days or more”*. In fact, although the incident took place on the 2nd May 2021, the injured party was still in pain on the 1st July 2021, when he was examined by Dr Mario Scerri.
- 32.** As regards the abrasion on the nasal bridge which the injured party suffered, it does not result that it was visible during the medico-legal examination by Dr Mario Scerri. No evidence was submitted that this abrasion caused a *“deformity or disfigurement in the face”*, which was visible within normal talking distance. Hence, it has not been proven beyond reasonable doubt that this abrasion was of a grievous nature in terms of Article 216(1)(b) of the Criminal Code and of the case-law of the Maltese Courts.

¹⁹ See fol. 292 – 293 of the proceedings.

²⁰ See fol. 378 of the proceedings.

²¹ See fol. 390 of the proceedings.

Consequently, the Court will consider this abrasion to be of a bodily harm of a slight nature.

33. By way of a subsidiary argument, defendant Hamill submitted in his note of submission that the prosecution failed to provide the necessary evidence to prove that the injuries sustained by the injured party were inflicted by him, and this due to the fact that the court expert Dr Mario Scerri stated that in his opinion the injuries sustained by the injured party are compatible with a fall rather than with a punch.
34. In the judgement **Il-Pulizija vs Emanuel Zammit** decided on the 30th March 1998, the Court of Criminal Appeal (in its inferior jurisdiction)²² stated as follows:

"Fil-liġi tagħna, għall-fini tar-reat ta' offiċa volontarja fuq il-persuna, hi meħtieġa l-intenzjoni ġenerika li wieħed jagħmel ħsara. Jekk l-intenzjoni ta' l-agent tkun li jagħmel ħsara, żgħira kemm hi żgħira dik il-ħsara li jkollu f'mohhu li jagħmel, hu jrid iwieġeb għall-konsegwenzi kollha li effettivament jirrizultaw bħala konsegwenza diretta ta' l-għemil tiegħu. Dawk il-konsegwenzi jistgħu jkunu gravi (artikolu 216), gravissimi (artikolu 218) jew addirittura l-mewt (artikolu 220). Bi ħsara wieħed jifhem anke s-sempliċi sensazzjoni ta' uġiġħ li tiġi minn daqqa mingħajr il-ħtieġa ta' leżjoni fit-tessuti. L-artikolu 214 tal-Kap.9, meta jitkellem dwar "...ħsara fil-ġisem jew fis-saħħa ta' persuna jew diżordni f'moħħa" isegwi kelma b'kelma d-disposizzjoni ta' l-artikolu 372 tal-Codice Zanardelli:

"Chiunque, senza fine di uccidere, cagiona ad alcuno un danno nel corpo o nella salute o una perturbazione di mente, e' punito . . .";

Luigo Majno jikkummenta hekk din id-disposizzjoni:

"Il codice italiano fa consistere il reato in esame in qualunque pregiudizio possa essere recato al corpo, alla salute o alle mente di un uomo, che perciò rimane offeso nella sua intergrita' personale. Con cioe', seguendo il piu' moderno indirizzo della dottrina e della legislazione, si e' allegata la nozione di questo reato dalle soluzioni di continuita' nel corpo umano con effusione di sangue, e dalle violenze che senza

²² Per Judge Vincent De Gaetano.

effusione di sangue cagionano un dolore fisico, fino a comprendere anche le perturbazioni recate alla mente di un uomo d'altrui opera malvagia o colposa. E il codice italiano - come spiega la relazione ministeriale sul progetto del 1887- adotto' pertanto (in conformita' al codice toscano) il titolo di lesione personale che si riferisce all'effetto dell'azione, anziche' quello usato dal codice sardo, di ferite e percosse, con le quali espressioni e' anche imperfettamente designato il fatto criminoso, che puo' dipendere da altre e ben diverse cause di nocumento corporale. Specificando poi i vari effetti nei quali la lesione puo' consistere - e cioe' danno nel corpo o nella salute o perturbazione di mente - il codice italiano volle essere piu' esatto e completo del codice toscano, che non menzionava la salute e parlava invece, oltre che di danno al corpo, anche di dolore, che e' pur esso, fisiologicamente, un danno" (Majno, L. Commento al Codice Penale Italiano, UTET (1924), Vol. 3, pp. 292-293, para.1930);

U Giulio Crivellari jkompli jipprečiza: "Il criterio essenziale del delitto di lesione sta in una atto materiale, che produce una minorazione ad un uomo del godimento della sua personalita' senza distruggerla, un dolore fisico, un detrimento nel corpo o un disturbo al suo intelletto" (Crivellari, G., Il Codice Penale per il Regno d'Italia, Unione Tipografico (Torino), 1986, Vol VII, p.860, para. 60);

Fi kliem iehor, anke s-sempliçi uġiġh ikkaġunat minn daqqa jew percossa tammonta għal ħsara (fil-ġisem jew fis-saħħa) fis-sens ta' l-artikolu 214 tal-liġi taġġna"

35. In his book **Notes on Criminal Law**, **Prof. Anthony Mamo** states as follows:

"To constitute the crime of wilful bodily harm, the injury must have been caused intentionally. But the intention required is merely the 'animus nocendi', the general intent to cause harm, without requiring necessarily an actual intention to do the particular kind of bodily harm that has actually been inflicted. (T)he word 'intention' in law covers all consequences whatever which the doer of the act foresees as likely to result from it, whether he does the act with an actual desire of producing them, or only in recklessness as to whether they ensue or not"

Therefore, in the case of bodily harm, if the intent of the doer is to injure, he will answer for the harm actually caused, in the application of the principle 'dolus indeterminatus determinator ab existu'.

It is, it is moreover, commonly held that it is not necessary that the injury shall have been directly caused at the hand of the offender. Thus a man will be guilty of the offence of bodily harm if he assaults another person with a weapon and the latter gets hurt in trying to snatch the weapon from the aggressor's hand to ward off the assault and defend himself. The same applies to a man who pursues another with a weapon, if the latter in running away, grasps at something which injures him."²³ (underlining of the author)

36. In view of the above considerations, the Prosecution only needed to prove that defendant Hamill had merely the "*animus nocendi*", the generic intent to cause harm, without requiring necessarily an actual intention to do the particular kind of bodily harm which, in fact, ensues. In other words, it is not essential that the intention defendant Hamill was to produce the full degree of harm that has actually been inflicted. Once the Prosecution has proven that his intent was to injure, he has to answer for the harm actually caused. The Court has no doubt that from the evidence produced before it, that the Prosecution has succeeded to prove beyond reasonable doubt that defendant Hamill did not merely have a generic intent to cause harm to the injured party – which, as already stated, would in any case have rendered him responsible for all the injuries suffered by the injured party - but he actually had the intention of causing grievous bodily harm. The Court has reached this conclusion because from the evidence it is clear that defendant Hamill, a healthy twenty-three year old man, was not happy in giving (unjustly) one good beating to a seventy-two year old man, but he followed him to give him a second (unjust) beating, just to make sure he will cause him as much injury as possible. The Court has no doubt that defendant Hamill foresaw the real risk that by pushing violently a seventy-two year old man on the ground, he could cause him serious bodily injury, but he was indifferent or reckless as to the consequences of his action.

²³ **Notes on Criminal Law** Vol II page 226 – 227.

37. In her submissions, defendant Romero insists that she did not in any way assault or inflict blows of any nature to the injured party. She relies on the evidence given by eyewitness Catherine Fiorini, who in her evidence repeatedly states that at no time did she see defendant Romero being violent towards the injured party. However, from the CCTV footage, it is clear that Catherine Fiorini appears at her window as soon as the second altercation was over (CCTV footage time 5:55:22).²⁴ So obviously Catherine Fiorini did not see defendant Romero gripping the injured party to enable defendant Hamill to punch him. However, during her evidence she does refer to the second altercation, but she is clearly stating what she got to know after the incident, because, apart from the fact that from the CCTV footage it is clear that she did not see the second altercation, when asked by the Court whether she saw all the fight, she replied “*Not all. Half of it. In the end. But the police told me what was happening.*”²⁵

38. In fact, Fiorini stated in her evidence that she was prompted to look out of the window on that day because she heard crying and shouting – obviously when the second altercation took place - and the first thing she saw was defendant Hamill grabbing the injured party from behind from the neck with one hand, and punching him with the other hand.²⁶ Here the witness is obviously referring to the third altercation, because in the second altercation, defendant Hamill is not seen in the CCTV footage grabbing the injured party from the neck, and in the second altercation, he was punching him with the assistance of defendant Romero and not alone.

39. Fiorini also stated that throughout the whole incident, defendant Romero was standing outside her window doing nothing.²⁷ This is clearly an incorrect statement, as although it is true that during the third altercation defendant Romero spent a good number of seconds alone opposite the window of Fiorini, but then she can be seen walking towards where defendant Hamill was hitting the injured party, although from the CCTV the beating is not visible. In her evidence, defendant Romero also states that she ran towards them to separate them.²⁸ Since this part of the incident is not visible on the

²⁴ In real time: 6:55:22.

²⁵ See fol. 58 of the proceedings.

²⁶ See fol. 370 till 371, and fol. 60 of the proceedings.

²⁷ See fol. 363 of the proceedings.

²⁸ See fol. 397 of the proceedings.

CCTV footage, one cannot see what defendant Romero did when she reached defendant Hamill and the injured party.

40. This Court is convinced beyond reasonable doubt that although in this third altercation, it has not been proven beyond reasonable doubt that defendant Romero was violent to the injured party or physically assisted defendant Hamill in beating up the injured party, she was certainly an accomplice in this third altercation, because through her behaviour she incited and strengthened the determination of Hamill to give another beating to the injured party, in terms of Article 42(e) of the Criminal Code.

41. In the judgement **The Police vs Agatha Barbara et** decided on the 27th June 1958, the Court of Criminal Appeal (inferior jurisdiction)²⁹ held as follows:

“... .. (H)u ammess fil-gurisprudenza segwita mill-Qrati ta’ Malta, illi anki s-sempliċi prezenza, meta m’hijiex dik ta’ “indifferente spettatore”, tista’ tammonta ghal komplicita meta tkun b’xi mod iffacilitat ir-reat jew intimidiet is-suggett passiv, jew b’xi mod iehor kienet effikaci (ara Riv. Pen. Loc. cit. para. 469). Xejn ma jimporta li l-prezenza tieghu kienet ‘att negattiv”, ghax ghalkemm ma hijiex ammessa l-komplicita negattiva, hi pero ammessa mill-Qrati l- ‘complicita per atti negattivi’ (ara Maino, Vol. I para 347; Pincherle, Manuale di Diritto Penale, pag. 62, Crivellari, Vol. IV, art. 64, para 141);

*Il-Qorti tapprezza li l-inazzjoni wahedha ma hix per se komplicita; imma tapprezza wkoll illi, meta dik l-inazzjoni titqies fuq l-isfond tac-cirkostanzi kollha tal-kaz, tista’ tkun indizju qawwi ta’ ‘participation in a common purpose’. (see also in the same sense the judgement **Il-Pulizija vs ommisis Carmelo Aguis** decided on the 24th May 2002 by the Court of Criminal Appeal (in its inferior jurisdiction)³⁰*

42. In this case, this third altercation took place in the context of two previous altercations within a few minutes. From the CCTV footage one can see defendant Romero continuing walking aggressively after the injured party, when after the second altercation, he was moving away from them. The Court has no doubt that when defendant Hamill ran after the injured party she knew perfectly well that he was going

²⁹ *Per* Judge William Harding.

³⁰ *Per* Judge Vincent De Gaetano.

to beat him up, and she initially remained calm were she was, despite the fact that she inevitably heard the screams of pain of the injured party being beaten, as much as witness Fiorini did. Moreover, the way the road is configured, the fact that she remained in front of the window of Fiorini, meant that defendant Hamill had his mind at rest that if any person was going to come in the direction of where he was beating the injured party, she would alert him. In her evidence she said that she went to separate the two, since the injured party was hitting defendant Hamill. The Court has no doubt that at that point in time the ribs of the injured party had already been fractured, and he could not defend himself because of the pain and problem in breathing. Although it is true that from the CCTV footage she can be seen walking towards them, as already stated what was happening during this third altercation is not visible in the CCTV footage. Her version of events is in no way corroborated by the evidence of the injured party, who nowhere in his evidence mentioned that defendant Romero pulled defendant Hamill away from him.

- 43.** In view of the above considerations, the Court finds defendant Hamill guilty as principal to the first charge and defendant Romero guilty as accomplice to the first charge.

The Second Charge – Wilful Voluntary Damage

- 44.** The second charge is of wilful voluntary damage to a vehicle belonging to the Civil Protection Department in terms of Article 325(1)(b) of the Criminal Code. Defendant Hamill admitted to kicking the vehicle two times on the right-hand side, whilst defendant Romero admitted to kicking the vehicle once on the right-hand side as well. This is also confirmed by the CCTV footage.

- 45.** However, the report of Natalino Agius engaged by the Civil Protection Department, and confirmed by him under oath,³¹ the Department is claiming the amount of €1331.51 as damages for repairs to the roof panel, rear bumper paint, rear right wing, roof panel

³¹ See fol. 52 *et seq.* of the proceedings.

inside lining, beacon light, communication arial antenna and radio antenna, and for the replacement cost of the right side rear wing stickers, rear bumper stickers, rear right gate sticker and left tail-light in wing. The defendants are correct in stating that most of these damages could not have been caused by the actions of the defendants. In fact in his evidence, the injured party only took a photo of a dent on the mudguard above the rear right wheel of the vehicle to show the damage which he presumes was caused to the vehicle, by the fact that the defendants kicked it.³²

46. Since the CCTV shows that the defendants giving forceful kicks to the right-hand side of the vehicle, the only damage which they caused was the dent on the mudguard. Hence the defendants cannot be found guilty of the crime contemplated in Article 325(1)(b) of the Criminal Code, but are guilty of the crime contemplated in Article 325(1)(c), that is for having caused wilful damage which does not exceed the sum of €250. The Court considered that the expenses to repair the dent in the mudguard is about two hundred Euro (€200).

47. In the light of this conclusion, the Court does not deem it necessary to consider the submissions of the defendant Romero on the competence of Natalino Agius to make a valuation of damages caused to the vehicle, and on the admissibility of his report.

The Third Charge – Uttered insults or threats to Ivan Gauci

48. The third charge is the contravention of having uttered insults or threats to Ivan Gauci. This third charge does not result from the evidence produced before this Court. The injured party stated that he did not hear them say any words to him.³³ Hence the defendants cannot be found guilty of this contravention.

³² See fol. 228 of the proceedings.

³³ See page 231 of the proceedings.

The Fourth Charge – Wilfully disturbed the public good order

49. The fourth charge is that the defendants wilfully disturbed the public good order or the public peace. This fourth charge amply results from the evidence produced before this Court, and hence the defendants will be found guilty of this charge.

The Fifth Charge – Being drunk in a public place

50. The fifth charge is that the defendants were found drunk and incapable of taking care of themselves in a public place.

51. In his statement defendant Hamill stated that he and defendant Romero “*were of course drunk*”.³⁴ Apart from the fact that since he is a co-defendant, whatever he stated in regard to defendant Romero is not admissible in these proceedings, although the Court cannot exclude that defendant Hamill had one drink too many, from the evidence brought forward, it certainly does not result that he was drunk and incapable of taking care of himself.

52. As regards defendant Romero, Dr Kenneth Falzon stated that although he was of the opinion that she was drunk, no medical tests were done which could prove that she was in fact drunk.³⁵ Neither was it proven that she was incapable of taking care of herself.

53. Hence, the defendants cannot be found guilty of this offence.

CONSIDERATIONS OF THE COURT AS TO PUNISHMENT

54. As regards punishment, the Court considered that although the Prosecution exhibited the criminal record of the defendants, this cannot be of any assistance to the Court, since from the evidence it results that the defendants came to Malta as tourists only for a few days.

³⁴ See fol. 11 of the proceedings.

³⁵ See fol. 310 of the proceedings.

55. According to Article 216 of the Criminal Code, the punishment for the offence of grievous bodily harm is that of imprisonment from one (1) year to seven (7) years. In this case, the defendants have been found guilty, one as principal and the other as an accomplice of grievous bodily harm to a person over sixty years of age. Hence in terms of Article 222A(1) of the Criminal Code, the punishment “*shall be increased by one or two degrees.*” Hence, the Court is obliged by law to increase this punishment by at least one degree, and it is left in its discretion whether to increase the punishment by two degrees. Consequently, in this case the minimum punishment for the first charge of grievous bodily harm is thirteen months (13) imprisonment and the maximum punishment is twelve (12) years imprisonment.
56. According to Article 43 of the Criminal Code, 43, unless otherwise provided by law, an accomplice in a crime shall be liable to the punishment established for the principal.
57. In the judgment **Il-Pulizija vs Joseph Azzopardi** decided on the 30th July 2004, the Court of Criminal Appeal (in its inferior jurisdiction)³⁶ held that:
“Din il-Qorti, kemm kif illum presjeduta u kemm kif diversament presjeduta, kellha l-okkazjoni diversi drabi li tfisser li, bhala regola, meta si tratta ta’ vjolenza fuq il-persuna il-piena ghandha tkun dik ta’ prigunerija b’effett immedjat. Il-Qrati ta’ Gustizzja Kriminali ghandhom ikunu minn ta’ quddiem biex b’mod deciziv jirripristinaw l-ordni pubbliku meta dan jigi sventrat mill-arroganza jew il-prepotenza li timmanifesta ruhha f’xi forma ta’ vjolenza fizika. Mill-banda l-ohra, meta l-ligi taghti latitudini wiesgha fil-piena, il-Qorti ghandha wkoll tibbilancja l-esigenzi tas-socjeta` mac-cirkostanzi partikolari tal-kaz.” (sottolinear ta’ dik il-Qorti).
58. The Court took into consideration the fact that this incident started due to the fact that the defendants broke the law by wilfully damaging a Civil Protection car. The injured person, an elderly person, did something not many people would be willing to do, he tried to help the Police catch the perpetrators by taking photos of the defendants using his mobile phone. The defendant Hamill had no right to take the mobile phone of this elderly person, and the altercations which ensued were totally unjustified. The defendants showed no pity towards the injured party, a seventy-two year old man,

³⁶ *Per* Chief Justice Vincent De Gaetano.

although he tried several times to move away from them. He was beaten not only once but twice and ended up *inter alia* with seven broken ribs, for doing his duty as a citizen.

59. The defendants are also guilty of wilful damage to property in terms of Article 325(1)(c) of the Criminal Code. This crime is subject to the punishment of imprisonment not exceeding six (6) months. But in terms of the proviso to Article 325(1), since the crime was committed on public property, “*punishment shall be increased by one or two degrees, and the offender shall be ordered to pay by way of fine (multa) the amount of the damage caused.*” Hence this crime is subject to a maximum punishment of one (1) year imprisonment, apart from the fine. However, the punishment for this crime must be reduced in terms of Article 17 of the Criminal Code, which regulates the concurrence of crimes and punishments.
60. The punishment for the fourth charge – a contravention – will be absorbed in the punishments for the other two crimes of which they were found guilty, in terms of Article 17 of the Criminal Code.

CONCLUSION

61. In the light of the above considerations, the Court after seeing the note of referral for judgement of the Attorney General of the 12th August 2021:
1. Finds both defendants not guilty of the contraventions contemplated in Articles 339(1)(e) and 338(ff) of the Criminal Code, Chapter 9 of the Laws of Malta, and consequently discharges both the defendants from having committed these offences;
 2. After seeing Article 214, 215, 216(1)(d), 222A(1), 325(1)(c), the third proviso to Article 325(1) and, 338(dd) of the Criminal Code, Chapter 9 of the Laws of Malta, finds the defendant Ronan Clyde Hamill guilty of the criminal offences contemplated in these provisions of law, and, after taking into account all the circumstances of the case condemns him to four (4) years imprisonment and to a fine of one hundred Euro (€100), which must be paid forthwith. If the defendant fails to

pay this amount, or any balance thereof, the fine will be converted into imprisonment according to the rate established by law.

3. After seeing Article 214, 215, 216(1)(d), 222A(1), 42(e), 325(1)(c), the third proviso to Article 325(1) and 338(dd) of the Criminal Code, Chapter 9 of the Laws of Malta, finds the defendant Paula Fernandez Romero guilty of the criminal offences contemplated in these provisions of law and, after taking into account all the circumstances of the case condemns her to four (4) years imprisonment and to a fine of one hundred Euro (€100), which must be paid forthwith. If the defendant fails to pay this amount, or any balance thereof, the fine will be converted into imprisonment according to the rate established by law.
4. In terms of Article 15A of Chapter 9 of the Laws of Malta, and in terms of Article 24 of Chapter 466 of the Laws of Malta, made applicable to these proceedings by Article 532A of Chapter 9 of the Laws of Malta, the Court condemns the persons convicted to pay *in solidum* between them the amount of six thousand Euro (€6000) to Ivan Gauci, as compensation for the damages suffered as a result of the criminal offences committed by the convicted persons.

This order shall constitute an executive title for all intents and purposes of the Code of Organisation and Civil Procedure.

5. Moreover, the Court orders the persons convicted to pay *in solidum* between them to the Registrar all the costs incurred in connection with the employment in the proceedings of all the experts, in terms of Article 533 of Chapter 9 of the Laws of Malta. These costs are to be paid within a period of one (1) week from when the Registrar of the Criminal Courts communicates to them the amount due by them. If the persons convicted fail to pay this amount or part of it within the time herein prescribed, the amount, or any balance of it, will become immediately due and payable, and in default of payment thereof, the outstanding amount still due shall be converted into imprisonment at the rate established by law.

Magistrate

**Doreen Pickard
Deputy Registrar**