



**Courts of Magistrates Gozo
As A Court of Criminal Judicature**

**Magistrate Dr. Brigitte Sultana LL.D. LL.M (Cardiff) Adv. Trib.
Eccl.Melit**

**The Police
(Inspector Bernard Charles Spiteri)**

-vs-

Aleksandar Trajkovski

Case number: 32/2020

Sitting of Wednesday, 24th November 2021

The Court;

Having seen the charges brought against Aleksandar Trajkovski, holder of Maltese residence permit number 185988A aged 31 years, son of Petre and Gorica nee' Petreska, born in Skopje, Macedonia on the 6th April 1989.

And charge them with having on the 2nd August 2020, at about 2.00a.m., whilst being at Shore street, Zebbug Gozo and/or in the vicinities:-

1. Without the intent to kill or put the life in manifest jeopardy, caused grievous injuries on the person of Nicholas Scerri as certified by Dr. Gabriel Degiorgio M.D. Reg. No. 6089 and this in breach of article 214, 216 and 218 of Chapter 9 of the Laws of Malta.

2. And also with having on the same date, time, place and circumstances attempted to use force against the person of Julian Scerri with intent to insult, annoy or hurt such person and this in breach of article 339(1)(d) of Chapter 9 of the Laws of Malta.
3. And also with having on the same date, time, place and circumstances at night time, disturbed the repose of the inhabitants, by rowdiness or bawling or in any other manner and this in breach of article 338 (m) of Chapter 9 of the Laws of Malta

The Court is being kindly requested, where it deems expedient, in order to provide for the safety of Nicholas Scerri or for the keeping of the public peace, in addition to, or in lieu of the punishment applicable to the offence, require the offender to enter into his own recognizance in a sum of money to be fixed by Court.

The Court is also being kindly requested, for the purpose of providing for the safety of the injured party, to issue a Protection Order under 412C of the Chapter 9.

Thus whilst exhibiting a copy of the residence permit and conviction sheets, humbly request that this case would be investigated according to the law.

Having seen the documents exhibited and all the acts of the proceedings.

Having seen the Articles of Law sent by the Attorney General on the 25th May 2021 (a fol. 163):

(a) Articles 214, 215, 216 and 218 of the Criminal Code, Chapter 9 of the Laws of Malta;

(b) Articles 339(1)(d) of the Criminal Code, Chapter 9 of the Laws of Malta;

(c) Article 338(m) of the Criminal Code, Chapter 9 of the Laws of Malta;

(d) Articles 382A, 383, 384, 386 and 412C and 412D of the Criminal Code, Chapter 9 of the Laws of Malta and

(e) Articles 17, 532A, 532B and 533 of the Criminal Code, Chapter 9 of the Laws of Malta;

Having seen that, during the sitting of the 28th May 2021 (a fol. 164), the Articles of Law sent by the Attorney General on the 25th May 2021 (a fol. 163) were read out, during which sitting the accused declared that he does not object for his case to be tried and decided summarily by this Court.

Having heard all the evidence brought forward by the Prosecution.

Having heard the Prosecution Officer declaring that all evidence has been produced and that he has no further evidence to produce in this case.

Having seen that during the sitting of the 25th June 2021, the defence declared his evidence in this case as closed and has no other evidence to produce.

Having seen that during the sitting of the 25th June 2021, the Court granted the faculty to both the Prosecution and the defence to file a note of final submissions.

Having read the note of submissions filed by the accused on the 3rd August, 2021.

Considers:

The Evidence.

The Court shall be referring to those depositions and the evidence produced which in the opinion of this court are important in order for it to be able to properly analyse the accusations levied at the accused in the light of the evidence produced.

Witness Depositions.

On the 7th August, 2020 **Nicholas Scerri**¹, the person who was allegedly assaulted by the accused, gave evidence. Mr. Scerri recounted the events as they unfolded during the night of the alleged assault. He stated that he as was walking at Marsalforn accompanied by his son Julian, he was insulted and assaulted. According to him the incident took place at half an hour after midnight on Sunday. He further stated that he had been out socialising with his son since 22.30. He added that they (he and his son) had been to two restaurants – Electra and Pennellu – drinking beer. Upon being questioned how much beer he had drunk, this witness stated that he could not recall however he could remember who he was with when he was drinking and how many people had assaulted him. Asked whether he could remember that he had actually stared kicking the tables and chairs which were on the pavement near the restaurant l-“Arragosta”, he stated that he had no recollection but then he rememberd that Kenneth Cutajar, who is the owner of “Arragosta” was swearing at him.

During his testimony Nicholas Scerri identified Jordan Agius as being one of his assailants. He insisted that Jordan Agius punched him first and threw him on the ground. He recalled that there were six other persons involved in the brawl. He identified another person who goes by the name Kenneth and the rest as being foreigners. Whilst he failed to remember the details of the affray he could identify the areas on his body where he was hit². According to him he could not mount any defence as he had back problems. He managed to walk back home at Marsalforn with the help of his son.

According to Nicholas Scerri he then went to hospital in the morning accompanied by his brother in law. According to him as a result of the brawl he suffered to two broken small toes and bruising to his head.

On counter examination Nicholas Scerri confimed that he had been drinking since 22.30 and that he had downed three to four pints of beer and was a bit tipsy. Once again he stated that though he did not recall

¹ A fol 17 to fol 35 records of the proceedings

² A fol 21 records of the proceedings

what triggered the brawl he did remember that in the past he had had an argument with Kenneth Cutajar and the latter had thrown bad words at him.

Julian Scerri³ , the victim's son told the court that the brawl which involved him and his father occurred around midnight. He stated that his father and himself were on their way to a bar "Trenta Nove". According to this witness they were walking on the pavement when all of a sudden he saw his father lying on the ground and there were five people hitting him. He tried to stop them but ended up being attacked as well. This witness identified Jordan Agius as the person who dealt the first blow to his father with the others joining in. He further added that Kenneth Cutajar joined in as well. After the fight he accompanied his father home, which is also at Marsalforn. He also stated that when he went with his father to the police station to identify the accused, he could not positively identify him as he was unsure whether he had seen him on the day of the incident or some other day.

During **counter examination** Julian Scerri stated that they started socialising around 16:00. The first restaurant they stopped at was "Electra". There they consumed alcohol. He further added that by the time it was midnight they had consumed around seven to eight pints of beer. He confirmed that both him and his father were quite tipsy.

Alan Tabone⁴ gave evidence and stated that he had watched the footage of the fight on Instagram. He stated that he called the police and informed them about the fight. According to this witness this footage is available to all and sundry to watch on facebook and Instagram.

During **counter examination** Mr. Tabone said that the victim is his brother in law. According to him Nicholas Scerri could not drive after the fight due to the injuries he had suffered as a result of that fight. He added that he accompanied Mr. Scerri to hospital on Sunday afternoon at 13:30

³ A fol 36 to fol 51 records of the proceedings

⁴ A fol 52 to fol 56 records of the proceedings

and stayed with him till 19:30. After the hospital visit they proceeded to the police station where Nicholas Scerri filed a formal report.

According to this witness Nicholas Scerri could not recall what happened but he could remember that there were five people involved in the brawl. He added that he did not ask Nicholas Scerri what led to the fight. He recounted that Scerri told him that one of those who hit him hailed from Serbia.

Police Inspector Bernard Charles Spiteri⁵ stated that on the 2nd August 2020 he was informed that around 2:00am Nicholas Scerri had been assaulted by a group of men and that he had suffered grievous injuries. He added that at first the police had no idea who the aggressors were but then PS 698 Shaun Tabone managed to gather some information that one of the aggressors was Aleksander Trajkovski. Up until that time the information the police had was that one of the aggressors was a man from Macedonia.

Then on the 5th August, 2020 at around 9:30 to 10:00am PS 698 Shaun Tabone told him that he had managed to identify the aggressor and that he was being detained at Rabat Police Station. Nicholas Scerri was requested to proceed to the police station in order to identify his aggressor. Inspector Spiteri stated that Nicholas Scerri was accompanied by his son Julian, however he could not positively identify the person held as being one of his aggressors. He added that Julian Scerri had informed him that his father was attacked by two men.

Inspector Spiteri exhibited three medical certificates which had been drawn up by Dr. Gabriel Degiorgio describing the injuries suffered by Nicholas Scerri, with one of the said certificates identifying the injuries as grievous.

This witness stated that Nicholas Scerri gave the footage showing the fight, to the police. The police made use of the footage to identify one of the assailants as being Aleksander Trajkovski. He added that Nicholas

⁵ A fol 64 to fol 69 records of the proceedings

Scerri was first hit by Jordan Agius. He further added that Peter Paul Agius was also involved in the fight. The Inspector also stated that from the footage it also resulted that Jordan Agius was seen fleeing the scene.

Inspector Spiteri states that both Jordan Agius and Aleksander Trajkovski were interrogated by the police. The accused however chose not to answer some of the questions put to him.

On counter examination Inspector Spiteri stated that the police were also going to charge Nicholas Scerri for being drunk in a public place. He added that the police who were at the scene after the fight, had reported back that Nicholas Scerri was not collaborating with the police as he was drunk. The Inspector also stated that Nicholas Scerri had identified Kenneth Cutajar as being one of his aggressors but the police investigation yielded no results.

Joseph Attard⁶, who works as a chef at the restaurant *Arragosta* told the court that the *weekend* when the fight broke out had been a very busy one. He recounted that when they were closing down the restaurant, around 2:00am he heard noises and could see several men fighting. He noticed that they were foreigners but could not recognise anyone of them. He said that a foreigner next to him told him that one of the men was his father, then the police arrived. He could see that the man who was on the ground could stand up unaided but that he was also unsteady on his feet and that he was swaying. This witness also stated that there were overturned chairs and tables.

Peter Paul Agius⁷, stated that he was drinking at the restaurant "Pennellu" when Nicholas Scerri went near him. He stated that Scerri was limping and further stated that Scerri told him that he had an appointment at hospital tomorrow due to back problems.

After this conversation he walked out and went to another bar "Trenta Nove". Whilst there drinking, he saw people leaving their chairs and standing up. He went over to see what was causing the commotion and

⁶ A fol 78 to fol 84 records of the proceedings

⁷ A fol 70 to fol 77 records of the proceedings

saw his nephew Jordan Agius on the ground and Nicholas Scerri challenging him to fight. He stated that he went over, dragged Jordan Agius away but then as he looked back he saw Scerri on the ground. According to him Scerri could not have been hit by Jordan Agius. Furthermore he stated that he could not recognise anyone else.

Dr. Gabriel De Giorgio⁸⁸ was the doctor who examined Nicholas Scerri in hospital on the 2 August, 2020. According to him Nicholas Scerri was suffering from a bruise on his head but the skin was intact. This bruise was 5cm long.

Nicholas Scerri also had a scratch 1cm in length over his eye brow on the left hand side as well as another scratch 2cm long under his eye. There was another 2 cm scratch on his right nostril and a 2cm scratch on his right upper lip. Nicholas Scerri also had a bruise on the right hand side of his jaw. The bruise was swollen and was 4 cm long. His neck was also swollen on both sides and the swelling was 10cm. The doctor surmised that the swelling was muscular because Nicholas Scerri was in pain when trying to turn his head.

As regards the feet, Nicholas Scerri was in pain when trying to move the left foot, and his small toes was painful. Left ankle was swollen too. The right ankle was painful but there was no swelling.

A CT Scan examination showed that there was a swelling in the neck. An X Ray of the foot showed that the small toes of both feet were fractured. According to Dr. Degiorgio the healing time for the bruises depends on the individual. As regards the scratches these heal after a week and the fractures should heal within 6 weeks.

On counter examination Dr. Degiorgio stated that Nicholas Scerri had told him that the injuries he was suffering from were as a result of the fight the day before. This doctor stated that he was quite surprised as to why Nicholas Scerri took so long to go to hospital. He stated that he had noted that Nicholas Scerri was limping.

⁸⁸ A fol 100 to fol 107 records of the proceedings

Anthony Camilleri⁹ stated that he did remember that there had been a fight near the restaurant *Arragosta* but he could not recall when that was. He stated that he saw people fighting but he moved away. He did recollect that he had seen Scerri on the ground and that Scerri had been to his restaurant earlier drinking just before the fight broke out.

PS 698 Shaun Tabone¹⁰ told the court that on the 2nd August, 2020 at 2:00am an anonymous person called the police station and informed them that there was a fight at Marsalforn near *Arragosta*. When the police arrived at the scene the fight had ended however there were still arguments being hurled around. There was Nicholas Scerri with his son Julian on one side and on the other side there was Kenneth Cutajar and his employees. This police officer stated that according to Nicholas Scerri, Kenneth Cutajar attacked him first and then his employees joined in the fray. According to this police officer it was clear that Nicholas Scerri was drunk and that he had no control whatsoever. He further added that Scerri told him that some three years ago he had an argument with Cutajar.

PS 698 Shaun Tabone stated also that Julian Scerri told him that Kenneth Cutajar had punched even him. PS 698 then stated that Cutajar had told him that he had received a phone call from one of his employees who asked him to proceed to the restaurant as there was a man who was insulting his employees. Cutajar informed the police officer that he did go to the restaurant and both him and Scerri ended up insulting each other. This witness also told the court that he did tell Scerri to go to hospital but the latter refused.

As regards the footage of the fight, he stated that this was on social media. From the footage it was clear that the accused was hitting Scerri. furthermore the accused was requested to go to Rabat police station. The accused also refused to answer any of the questions put to him during the interrogation.

⁹A fol 110 to fol 115 records of the proceedings

¹⁰ Fol 120 to fol 122 records of the proceedings

The statement.

The Court notes that the accused in the presence of his lawyer chose not to answer most of the questions during the interrogation. In fact he answered the questions relating to his work but then chose not to answer any question relating to the incident.

Considers.

This court points out that after a thorough examination of the depositions given by the witnesses produced by the Prosecution, it is clear that the version of events as described by Nicholas Scerri is in contrast with the witnesses accounts given throughout the case.

It is an accepted principle that the onus is on the prosecution to present before the court the best evidence so as to convince the court that the offences the accused is being charged with, have actually taken place. The famous jurist Manzini¹¹ had this to say in relation to such an onus:

“Il così detto onero della prova, cioè il carico di fornire, spetta a chi accusa – onus probandi incumbit qui osseruit”.

Aside from the aforementioned principle, it must also be emphasized that for an accused to be found guilty of an offence, it is the duty of the prosecution to present that evidence which proves that the law has been breached and this beyond any reasonable doubt. The latter phrase has been interpreted to mean that the elements of the offence the accused has been charged with, have to be proven beyond doubt as dictated by reason. This however does not mean that any smidgeon of a doubt would be enough to have the accused acquitted of all the charges. So much so that in the judgement delivered by the Court of Criminal Appeal on the 5th December, 1997 in the names **Il-Pulizija vs. Peter Ebejer**, it was decided that the degree of proof that the Prosecution has to satisfy is that degree that leaves no reasonable doubt in mind and hence the prosecution is not required to provide proof of such a degree that leaves no shadow of a doubt. Hence this Court 's decision has to be based on an evaluation of

¹¹ Diritto Penale, Vol III, Cap. IV, Ediz.1890

the facts and circumstances presented to it. This evaluation process involves the application of common sense and a moral conviction that the offence has actually taken place. Such a process was aptly described by Lord Denning in **Miller vs. Minister of Pension**¹² -

“Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence ‘of course it is possible but not in the least probable’ the case is proved beyond reasonable doubt, but nothing shall of that will suffice”.

It was also decided that ¹³:

“It is true that conflicting evidence per se does not necessarily mean that whoever has to judge may not come to a conclusion of guilt. Whoever has to judge may, after consideration of all circumstances of the case, dismiss one version and accept as true the opposing one”.

From an analysis of the above it is clear that when the court is faced with conflicting versions of the same incident, then it has to apply its common sense, sift through the evidence and decide which version to accept and which to reject. It is very pertinent to note that conflicting versions do not necessarily lead to a declaration of innocence by the court but rather that the court has to carefully evaluate all the evidence and apply the criteria as set by Article 637 of Chapter 9, Laws of Malta.

Indeed the court may even decide to accept the version given by just one witness and this in line with what is provided by Article 638(2) of the Criminal Code. This Article makes it very clear that the deposition of just one witness, if deemed credible by whomever is judging is enough to constitute the required degree of proof. Consequently the credibility of the witnesses brought before the court is of utmost importance.

¹² 1974, 2 All ER 372

¹³ Il-Pulizija vs Charles Ducker, Court of Criminal Appeal, dedided 19 th May, 1997

For the court to assess credibility note must be had not just of the account of the incident but to the behaviour of the witness, his police conduct, his character and the consistency with which the events are recounted¹⁴. Credibility is not just one isolated factor but a multi faceted concept which the court has to attentively observe when witnesses are giving evidence as its absence or otherwise has an impact on the court's final decision.

Hence this Court has to first decide which of the versions presented to it in the course of the proceedings by the different witnesses regarding the incident of the 2nd August 2020, is credible. In other words is the version given by Nicholas Scerri a credible version?

At this stage this Court deems it imperative to declare that it has to discard the footage of the incident from its evaluation process and this for the simple reason that throughout the proceedings the prosecution failed to produce the person who filmed the fight in order to confirm under oath the authenticity of the contents¹⁵. In the opinion of this Court the footage without the confirmation of authenticity by its creator amounts to documentary hearsay evidence and therefore of no value to it for its evaluation process. This same line of reasoning was adopted by the Criminal Court in the case **Repubblika ta' Malta vs David sive David Norbert Schembri**¹⁶.

The Court also notes that during his testimony Nicholas Scerri does not in any way mention the accused or identify him as his aggressor or one of his aggressors. Throughout his deposition Nicholas Scerri focuses on Jordan Agius and Kenneth Cutajar and does not refer to the accused at all. Indeed none of the witnesses, including Nicholas Scerri's son Julian, mentioned the accused or identified him in person as being involved in the fight. The accused does not feature in any of the depositions given. After sifting through the evidence brought before it this Court could find no connection between the accused and the incident.

¹⁴ Article 637 , Criminal Code

¹⁵ This Court also noted the deposition given by Max Xuereb who was appointed by the Court to examine the footage wherein he stated that he was not even in a position to confirm whether the footage was the version original or else whether it had been tampered with.

¹⁶ Decided 31 st May, 2007

Decide.

From what has been heard by the Court and in the light of the above considerations, it is the opinion of this Court that the charges brought against the accused do not result.

Hence, the Court declares the accused Aleksandar Trajkovski not guilty of all the charges brought against him and consequently acquits him of the said charges.

Dr. Brigitte Sultana
Magistrate

D. Cordina
Dep/Registrar