



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

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

Today, the 24th day of January, 2022

**The Police
(Inspector Clayton Camilleri)**

-vs-

Yermakov Mykhailo, holder of Maltese Identity Card no. 157995A;

Stepan Stankov, holder of Bulgarian Identity Card no. 195249802, and

Dorde Dudic holder of Maltese Identity Card no 0194500A

Criminal Proceedings No.82/2020

The Court,

Having seen the charges brought against the defendants **Yermakov Mykhailo, Stepan Stankov** and **Dorde Dudic**, who are being charged with having:¹

On the 16th of February 2020 at around five o'clock in the morning (05:00hrs) whilst in Kavetta Street at St Paul's Bay (Malta) opposite of Babylon Club and/or on these Islands for having:

1. Caused grievous injuries to the person of Temitope Akinribomu Olankunie, as certified by Dr. Winston Bartow [recte: Bartolo] Med. No. 3558 and on

¹ Fol.2-2A

Henry Onweabuchi as certified by Dr. Carina Debattista Med. No. 3464 as in breach of Article 217 and 218 of Chapter 9 of the Law of Malta;

2. And also, for having attempted to use force against Temitope Akinribomu Olankunie and on Henry Onweabuchi;
3. The prosecution requested a guarantee in favour of Temitope Akinribomu and in favour of Henry Oweabuchi in terms of Article 383, 384 and 385 [of the Criminal Code];
4. The Court was also requested to apply the provisions of Article 412C [of the Criminal Code] in favour of Temitope Akinribomu Olankunie and Henry Onweabuchi;
5. The prosecution also charges Yermakov Mykhailo and Stepan Stankov that on the same date, place, time and circumstances, they worked as a private guard on behalf of an agency or as a private guard or so offered their services, provided that they did not have a licence from the Commissioner of Police.

Having seen the note by the Attorney General indicating the Articles of Law in terms of Article 370(3)(a) of Chapter 9 of the Laws of Malta dated the 9th February, 2021:²

1. Articles 214, 215, 218 of the Criminal Code, Chapter 9 of the Laws of Malta;
2. Articles 383, 384, 385, 412C and 533 of the Criminal Code, Chapter 9 of the Laws of Malta;
3. Articles 3 and 25(b) of the Private Guards and Community Officers Act, Chapter 389 of the Laws of Malta.

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

Having heard witnesses.

Having seen all the acts and documents exhibited.

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

Considered,

² Fol. 269

Police Statements

Interrogated by the investigating officer Yermakov starts by admitting that he was working illegally at Babylon Club. A group of Africans were at the club and had begun acting as a nuisance to other customers, shouting and pushing each other, so he asked them to stop and they did. Later they started fighting between them and together with Stepan, a bar tender, they managed to lead them out of the club. He had returned to the club but as he went out again, he noticed that a fight had erupted and he saw 'George' - in reality this is Dorde Dudic since a variant of this Serbian name is Georgije - holding an African in a chokehold and the latter bit Dorde.

Yermakov stated: *"I grabbed the black guy away from George as he was still biting him and I put him straight away on the floor and told him to stop but at the same time **I punched him just one time on his upper leg** when he was on the floor to keep him quiet while telling him to stay on the floor quiet..... Then he started to fight with a friend of George the one who was with the motorbike with the helmet. This friend of George I think he is from Serbia because of his accent and some words that I heard him say. The friend of George started to punch the black guy a lot and George was punching as well both of the on the black guy. In the mean time I started to hold another black person without punching him and took at the same time a broken bottle from his hands as well. When I took the bottle from his hands, I threw it away. All the black guys were all drunk. After he crossed the road, the black guy picked up one big brick and threw it at our direction and there was one customer with his wife that saw this happening. Then the friend of the big black guy that was beaten by George and his friend [recte] threw a glass bottle on me and he hit me on my eye with it.³ While myself and....Ion were holding the without punching not to hurt us.....Myself and Stephan we were only holding the black guys and a bit of pushing ...leg...but me and Stephan we did not fight or punch anyone we were just pushing not to be punched and maybe grabbing not to continue to fight in a defensive way while at the same time telling them to go home".⁴*

It turns out the big African man is Henry and Temitope is the smaller African. The footage, which will be considered further below, proves that **Yermakov did much more than deal one punch to Temitope**. Whilst undoubtedly there was pushing, the footage shows **beatings** by Yermakov which he conveniently fails to mention!

Stepan Stankov under interrogation described what happened after he, together with Mykhailo Yermakov, escorted some African men outside the club

³ Fol.9A

⁴ Fol.10

after they had started arguing between themselves. The said Africans were threatening and insulting them. *“The second security comes and he took one of them to the side⁵ and Mykhailo took the other to the middle of the road⁶. I saw the other security punching one of the black guy. Then I went downstairs for about 20 seconds and when I came back out of the club I saw the black guys throwing rocks and the big black guy⁷ came to fight with me and told me to come here fat [recte] bastard I will kill you and he was spitting at me. The security that I dont know his name put the black guy on the floor and started to hit him and punching him and the black guy bite his leg. I ran inside to tell them to call the police. When I was inside another black guy came inside as well and I told him to tell his friends to calm down and I told him as well to call the police and he called the police. I go down stairs back inside Babylon I took a soft drink and the bar man who was there Ryan he told me lets go outside to wait for the police to arrive. And when I went out **side I saw one of the black guy with blood on his face**. The other big black guy he push Mykhailo and he came on to me to do the same but I pushed him back.”⁸ Stankov states that the African men began throwing rocks at Dudic.⁹*

From this initial statement by Stankov various facts come to the fore:

- a). **The man with the bleeding face was Temitope and what Stankov omits to state, but is shown in the footage, was that he was the one who dealt him the initial blows!**
- b). In his statement Stankov refers to Dudic as a security. He is right in doing so and this evidences the fact that they knew each other for although Dudic was not working as a security at Babylon on the day, Dudic admits he works as a security with Signal 8!
- c). Stankov mentions that when Dudic was fighting the African men, a man on a motorbike stopped and joined Dudic in the attack, leaving together on a bike. This is a **blatant lie** as footage shows the Dudic and his friend leaving on foot.
- d). From the very start Stankov is untruthful and adamant to mislead the police with half-truths and outright lies.

Dorde Dudic explained to the Police that he did not work at Babylon but worked as a private guard with Signal 8 security firm.¹⁰ He admits that he does not know what happened inside the club before the two Africans were escorted

⁵ Footage reveals this man as Temitope

⁶ Footage reveals this is Henry

⁷ Henry

⁸ Fol.14A

⁹ Fol.15

¹⁰ Fol.20

out by the co-accused. *“All of a sudden while I was next to the steps of the club the fight started and one of them tried to tackle me but he was so drunk that he could not do that. I caught him and threw him on the ground gently and tell him at the same time not to fight. Then while he was on the ground he grabbed my leg and bit me right under my knee. As he grabbed me and bit me I fell down on the ground. As he started to bite me I was calling the others to remove him from me and probably as I was afraid and shocked I started to push him and punch him to stop. He opened his mouth while I was still on the ground and all of a sudden he bit me again but this time lower 15 cm below my knee with greater force.*

Because of the pain I started to call the others to remove him. While they were removing him from me he injured me more. They moved him from me and I moved again next to the entrance of the club. Then he come back again next to me and as you can see on the CCTV my hands were up high and telling him to move from here to stop making problems. After that he tried to land a punch but I avoided that punch but he tried to punch me again and then I hit him. Immediately after the punch I again moved to the side to avoid provocation. Then the other African come and started saying I know were you live, I know were you work, I will kill you all. In the mean time I had problem with that guy they were throwing bricks and they started breaking bottles because I think that they wanted to cut us. After that I went with my motorbike to hospital because of my bite marks.bite marks”. He contends that it was he who was provoked and that it was the Africans who started the fight.¹¹

The footage clearly contradicts this version by Dudic. He was far from “gentle” and to allege otherwise is an insult to one’s intelligence! In actual fact he was the most aggressive of the men kicking and beating Temitope, even as he lay helpless and motionless on the ground. When Temitope bit him, it was **after he was knocked down following the initial beating**. He managed to bite Dudic precisely because Dudic was still over him kicking him whilst he lay on the pavement. Dudic had no reason to intervene as he was not a security at the Club, nor to remain on the scene anxious to deliver a few more blows when the occasion presented itself (as can be attested when the footage is reviewed).

Interestingly, in his testimony on the witness stand, he mentions he was at the Club socialising which corroborates Temitope’s version¹² that he was chatting his girlfriend up, and when he confronted him, he was pushed against the wall, giving rise to the whole incident.

¹¹ Fol.20A

¹² Temitope testifies that Dudic was flirting with his girlfriend and when he confronted him, he pushed him against the wall, leading Temitope to seek an explanation for such a reaction which was not forthcoming, thereby giving rise to the unhappy turn of events.

The Witnesses

Temitope Akinribomu Olakunle explained how, on the night of the incident, he went to Babylon Club together with some friends and his girlfriend. At some point, Temitope recounts that he did not see his girlfriend beside him, so he decided to look for her.¹³ He saw her outside the club together with Dorde Dudic, one of the accused, who was holding her from the wrist, *“I said why are you doing this to me...He said just get out of here, he just pushed me [to the wall]”*.

A point of clarification should be made at the outset. Throughout the proceedings it became very clear that various are the witnesses who speak of “outside” not simply as the street that is the public thoroughfare, but the area excluding the bar/dance floor area; outside is taken to mean not inside the bar per se, namely the area leading to and conversely away from the bar/dance floor area is deemed ‘outside’ the bar. Yermakov explains that before reaching the bar as one enters from the street one finds two sets of stairs.¹⁴ Indeed one can see the different areas which distinguish the bar/dance floor area from the rest of the club in the footage¹⁵ and stills¹⁶ captured from cameras 3 and 14. In fact when one views the footage, Temitope appears on the street when the attack takes place, not before, when Dudic is on the street, on the pavement next to the entrance alone. Thus, the flirting and the injury with the knife took place in the area leading away from the bar area on the landing, stairs before exiting the club. So much so that Henry speaks of his taking a call ‘outside’ when the footage him being escorted outside from this landing/lounge area. He is seen on the street once the commotion began not before.

Temitope continues that after Dudic’s reaction he returned to the bar to complain with the staff about the way he had been treated by Dudic who, similarly to Stankov, he also refers to him as a security guard. He was followed by one of the staff outside in a bid to assess what had happened. At that same time his friends stood up to join him as he was shouting.¹⁷ At that point **Stepan brought out a small knife** and his friends, upon seeing this ran off.

On the 26th February, 2020, ten (10) days after the incident, from a distance of one metre, he indicated to the Court where Stepan injured him¹⁸. The Court could assess a scar of around three centimetres (3cm) which was highly visible

¹³ Fol.51

¹⁴ Fol 277-278: *“I explain, there is a straight ladder [recte stairs] when you go down the club. You go like this then you turn left and you need to go down again and you come to the club.”*

¹⁵ **Doc.JS**

¹⁶ **Doc. JSR**

¹⁷ Fol.52-53

¹⁸ Fol.54-55

on the upper left eye. Hence, even though there was this time-lapse, the injury remained visible even beyond talking distance with this fact assuming relevance when the Court considers the nature of the injuries sustained by Temitope.

Temitope is adamant that it was **only Stankov who injured him with a knife while Dudic hit him in the stomach.**¹⁹ Hence had he wanted to embellish the story to inculcate the other two accused, nothing would have prevented him from blaming them too, but he did not and distinguishes between the roles each played in the savage attack he unleashed upon him.

This in itself indicates that Temitope is being truthful in his account as to how he sustained those injuries.

Temitope adds that the three accused pushed him outside and that Stankov hit him with the knife on the stairs which are found after one leaves the bar area. He identifies **Mykhailo Yermakov as the one who held him from the neck with his hand against his throat whilst Stepan was hitting him.**²⁰ **Dudic hit him and he fell to the ground.**²¹ Describing the actions of the accused Dudic and Mykhailo he states *“One of them was holding my neck and one of them hit me...Yes they hit me both”.*²² After Stepan hit him with the knife he went towards him and told him he doesn’t want to fight since he was too weak to fight back. He admits that he was knocked down and lost consciousness after he got hit once and that before being hit, he threw a bottle of wine to fight back since he was annoyed having already suffered the knife injury to his forehead.²³ During the beating suffered, he was with a certain Henry who was also attacked by the accused.²⁴

Even this admission of an act of violence on his part, throwing a bottle, continues to give credibility to Temitope’s version. At no point does he try to exculpate his actions. Instead, he incriminates himself by admitting to an act of violence on his part due to his having retaliated after receiving the injury on his forehead at the hands of a knife wielded by Stankov. The honesty of Temitope’s testimony contrasts with that of the accused’s. The accused go to great lengths to portray themselves as innocent victims who throughout the incident sought a peaceful solution to the matter.

¹⁹ Fol.54

²⁰ Fol.55-56

²¹ Fol.56

²² Fol.57

²³ Fol.58

²⁴ Fol.60

The footage throws this line of defence out of the window!!

When cross-examined, Temitope confirmed that it was the first time that he had visited Babylon Club. The argument started after he saw Dudic touching his girlfriend. He denied threatening the bar tender and the securities *“Never, I just asked him why did you do this, I just asked him and he pushed me”*.²⁵ He had gone to speak to Stankov and complain about the manner in which Dudic treated him. At this time, his three friends heard him and stood up and joined in to see what had happened thereby giving rise to a commotion in the bar and thus they were asked to leave so as not to cause a nuisance to other clientele. He admits he was agitated at the way he was treated. ***“The commotion stated inside” causing Stankov to bring out the knife.***²⁶ He continues to explain *“After my friends stand up.... I swear that there was a knife, that is when my friends went outside...we tried to go outside...I tried to escape [the knife]”*. He got hit with the knife once he was outside.²⁷ He could not see his friend throwing a brick because his face was covered in blood after he was beaten up and could not see anything. He denied being hit by a brick and is very incisive in his reply to that suggestion ***“Not bricks, I saw the knife” which eventually was used to hit him on the head.*** He admits that he was angry at Dudic *“I only got angry with him.....I just go to him.....[I asked him] what are you doing with my girlfriend”*. Before that he was chatting away with his friends.²⁸

Temitope is also clear in describing the knife with which he was attacked; a small knife with a jagged saw-like blade which he drew to enable the Court to visualise.²⁹ When he was attacked with the knife by Stepan he was not in the Club per se but on the staircase situated before the club’s door (again insisting that the area was outside the bar area).

These specific details continue to afford credibility to his testimony!³⁰ Similarly he is very clear in his reply when learned defence counsel suggests that before going to Babylon – where he has no qualms confirming that he was drinking vodka with energy drinks – he had been drinking in other venues, Temitope corrects him immediately and in a definitive tone answers: *“Not places, only one place...No I did not drink anything [apart from when at Babylon]”*.³¹

²⁵ Fol.61

²⁶ Fol.64

²⁷ Fol.65

²⁸ Fol.68

²⁹ **Doc. TO1** a fol.87

³⁰ Fol.67

³¹ Fol.71

In the Court's opinion, at no point is Temitope caught out off guard; nor is he caught out to be inconsistent or at worse lying! He likewise is unhesitant in confirming that he had ordered another bottle of vodka. The fact that the witness is able to give a highly detailed account as to the manner in which the attack happened clearly defies attempts by the accused to portray Temitope as having been stone drunk so as to be unable to give a credible and honest account of the events of those fateful hours. *"I wasn't drunk, if I was drunk the first time that he hit me I would have hit him back for sure, I would hit him back for sure...If I wanted to fight with him first place with anger I would fight him, I wouldn't go to report him at the bar"*.³²

He reiterates that he saw Dudic holding his girlfriend's hand near the Club's door in the area after the entrance/before the exit.³³ He thinks his girlfriend was tipsy as they had been drinking together and that Dudic was *"...holding her like it was his girlfriend"*³⁴. He adds that he thought she was being taken advantage of by Dudic because of her tipsiness.³⁵ Temitope continues in providing a vivid account of what he saw giving details such as the fact that Dudic was to the left of his girlfriend where he also held her by the waist. He admits that when confronting Dudic *"I didn't say it in a calm voice"*; in fact, he was angry³⁶ as Dudic was seen caressing his girlfriend.³⁷ It was in the area where the stairs are situated that he suffered the knife injury.

In fact, Temitope again identifies Stankov as the man who had used the knife to hit him with it on the forehead. The same man that and was supporting Dudic as he continued to beat him inside the club, before the Club's exit/entrance.³⁸ Dudic is seen in the footage preventing Temitope from re-entering the bar indicating that Temitope had already been escorted outside after having been injured by Stankov.³⁹

Temitope denies biting Dudic on the shin *"No I didn't bite him"*.⁴⁰ Considering the server beating and the injury to his forehead which covered his face with blood coupled to the pain he must have felt at each punch and kick he was receiving, the Court deems that it is not strange at all that Temitope denies this resulting fact. Pain may make one oblivious to one's actions. In this regard the

³² Fol.72

³³ Fol.75

³⁴ Fol 76

³⁵ Fol.83

³⁶ Fol.76-77

³⁷ Fol.82

³⁸ Fol.78

³⁹ 05: 47:01 on Camera 7

⁴⁰ Ibid.

Court notes the dental expert's findings⁴¹ namely that when Dudic suffered the bite, inevitably Temitope was on the ground and that this bite was a reaction to the pain he was being subjected to. Moreover, Temitope himself admits that once he was thrown to the ground, he could not recollect what happened, having lost consciousness and given that he had a bloodied face, he could not see what was happening. Stankov, as does Henry, state that Temitope's face was covered with blood, corroborating Temitope's account.

The court questions not why Temitope's mouth was so close to Dudic's leg but indeed what Dudic's leg was doing so close to Temitope's face! It is the footage that provides the answer which is unambiguous and unequivocal in that it manifests the savagery of the accused actions on this man of small build.

Throughout his testimony Temitope reiterates that initially he had sought Stankov's help after Dudic punched him in the stomach but instead he was **hit by Stankov with a knife "he is the one who hit me"**.⁴² Once outside the club Mykhailo Yermakov pinned him to the ground and also punched him *"He is holding me and beating me... when everybody ran outside, they beat me"*.⁴³

The cctv footage also corroborates this version of events recounted by Temitope. **Dudic is clearly seen kicking** and rearing for more, anxious in his actions to beat him. **Stankov** lies over him, **hitting him mercilessly** whilst **Mykhailo Yermakov** does not shy away from **continuing to batter him after hurling him to the ground!**

It is the belief of the Court that at no point did this witness exaggerate or add colour to his account of the beating he suffered. This belief is further strengthened by his reply to the defence's last question when he is asked whether this incident was prompted by racial discrimination. Temitope, who could easily have made himself out to be a victim of racial discrimination, promptly rebuts this suggestion: *"No I don't think it is because of race, it is because you know that you can beat me that is why you do it...To beat someone because I cannot do anything. That is why I believe."*⁴⁴

The medical certificate exhibited by Temitope cannot be considered given that the said document does not satisfy the requirements of Article 646(7) of the Criminal Code which states:

⁴¹ Vide below

⁴² Fol.79

⁴³ Fol.81

⁴⁴ Fol.85

(7) Notwithstanding the provisions of this Code or of any other law, a certificate purporting to be issued by a registered medical practitioner or registered dental surgeon concerning his examination of any person, whether alive or dead, or concerning any bodily harm suffered by, or any physical or mental infirmity afflicting, any person, shall be admissible as evidence and shall, until the contrary is proved, be evidence of its contents, provided the certificate bears the clearly legible stamp of the medical practitioner or registered dental surgeon issuing it showing his name, professional qualifications, expertise and address **and** provided that such certificate is confirmed by the affidavit of the medical practitioner or the dental surgeon, as the case may be:

Provided further that it shall be lawful for either of the parties to produce the said medical practitioner or the said dental surgeon, as the case may be, for the purpose of examining him in court and viva voce, as well as for the court ex officio to require such examination.

The same reasoning applies also with reference to the certificate which was exhibited by Henry Onweabuchi, the other victim in this incident. However, Dr. Mario Scerri had examined Temitope on the very same day in the course of the Magisterial Inquiry and his findings and testimony will be considered below.

Henry Onweabuchi, the other victim, described that he is a frequent client at Babylon Club. On the date of the incident, he was having a drink alone at Babylon Club when he received a phone call and went outside⁴⁵ to answer. When he was outside, he saw four men beating an African person who was **already covered in blood**.⁴⁶ He witnessed the African man already **full of blood as he was brought out of the club** *“This guy was full of blood.... inside the Babylon.... ...they kept beating this guy outside”*.⁴⁷

This goes on to provide corroboration that Temitope suffered the initial injuries inside the club, outside the bar area before exiting the Club! It tallies with Temitope’s version that he was hit with the knife by Stankov before exiting the Club, after he sought an explanation for Dudic’s aggressive reaction when confronted regarding his flirtatious behaviour towards Temitope’s girlfriend. Also beating Temitope was a short man who is a bar tender and with whom Henry was familiar⁴⁸ but he was not amongst the accused. Henry adds that in Mykhailo’s hand he saw a small *“key holder pen knife, the little one.... He used it on me as well that is why I got the scratch”* on his head.⁴⁹ He knew Mykhailo from his visits to the club. He failed to recognise Dudic although there is no doubt that Dudic was on the scene.

⁴⁵ It has already been determined that “Outside” does not necessarily mean on the road but outside the bar area.

⁴⁶ Fol.190-191

⁴⁷ Fol.192

⁴⁸ Fol.195

⁴⁹ Fol.194

It is therefore evident that during the whole incident two knives were used; different knives wielded by different persons. Their description differs; Temitope speaks of a knife with a jagged edge the size of a biro (14-15cm long)⁵⁰, Henry speaks of a small pen knife which was attached to a key chain. Henry continues describing what he witnessed:

“Court: You are also recognising Stankov. So now you already told me what you saw Mykhailo doing, what did you see Stankov doing?”

Henry Onweabuchi: At the moment he was the one on top of the guy. He put his leg on the guy.

Court: So you saw Stankov with his leg on the African guy?

Henry Onweabuchi: Yes because the guy was on the floor, he was kicking on the guy. I tried to warn him.

Court: So when the African guy was on the floor, Stankov was on him and kicking him at the same time.

Henry Onweabuchi: same, this was a mass beating, it was a mass beating.

Court: But you saw Stankov besides putting his knee on him on the ground also kicking him?

Henry Onweabuchi: Yes he was the one, I wanted to stop beating this guy because this guy was full of blood.

Court: So one of them is your friend who was actually beating him also

Henry Onweabuchi: He normally sells drinks to me.....

Court: Ok, I want now slowly to tell me what you saw Stankov do, he was holding him with his knee

Henry Onweabuchi: He was holding this guy, kicking with his knee beating, the other guys was beating this man, punching hard on this guy.

Court: Mykhailo was also punching while he was on the ground?

Henry Onweabuchi: Yes they were 4 guys

Court: But I don't care about the four, I got 3 in front of me and you have pointed at Mykhailo and Stankov that when the person was on the ground they kept on beating him?

Henry Onweabuchi: Yes exactly”⁵¹

Apart from Stankov and Mykhailo he insists two others were beating Temitope.⁵² Stankov and Mykhailo were beating Temitope as he lay on the ground, “full of blood, on his clothes, on everything”.⁵³ Indeed there were four men since the accused were aided by Dudic’s friend who arrived on the scene on a scooter. Henry’s account of Temitope’s beating is corroborated in full by the footage as will be considered further on in this judgement.

⁵⁰ Fol.66

⁵¹ Fol.195-196

⁵² Fol.198

⁵³ Ibid.

Henry denies seeing Dudic on the scene. In the footage one clearly makes out Dudic who throughout proceedings was always formally dressed and wore spectacles.

It must be emphasised that had Henry not been honest in his testimony, he would have found no hesitation in confirming Dudic's presence on the scene. This also goes to how that Temitope and Henry did not agree and plan ahead what to testify thus continuing to afford all credibility to their testimonies!!

In the footage Dudic is seen wearing a dark hoodie. There is no doubt that he was on the scene as the footage shows him ruthlessly beating on Temitope. His close proximity to the victim is confirmed by the bite-mark he suffered, a bite-mark caused by none other than Temitope as he lay on his knees and on the ground; a posture he was constrained to take due to the brutality of the attack he was subjected to at the accused's hands!

Onweabuchi confirmed that he goes to the club often, on weekends and that it was the first time that he had seen Temitope at the club. Again, this corroborates the testimony given by Temitope that it was his first time at Babylon.

Henry gives a vivid description of the time and place when Temitope was attacked, insisting that Temitope was not drunk:

"Henry Onweabuchi: This guy was not drunk

Court: How do you know? Because you saw him on the floor

*Henry Onweabuchi: **He was beaten from inside to outside, mass beating, he collapsed***

Court: But how do you know he was not drinking?

Henry Onweabuchi: Because I was inside when my phone rang by a friend who I live with to go and give him a key to go inside the house

Court: So when you saw him you did not see him drinking?

Henry Onweabuchi: Yes he was drinking with his friends but he was not drunk, he was not drunk

Pl Quentin Tanti: Was this guy alone?

Henry Onweabuchi: He was with his girlfriend"⁵⁴

Henry did not see how the beating started but **when Temitope emerged from the club he was already "in a pool of blood"**⁵⁵ This goes to show he was already beaten inside the club, not in the bar area but as he states on the stairs leading to the Club's door.

⁵⁴ Fol.200-201

⁵⁵ Fol.202

Henry continues describing how Temitope had collapsed and he kept putting water over him to revive him *"he could not get up, I rescued this guy"*.⁵⁶ After Temitope came to, he stood up and *"He tried to speak to the guy who gave him the injury. He told me that he was stabbed inside with a knife"*.⁵⁷ Although Henry thinks Mykhailo hit Temitope with the knife, since it is in Mykhailo's hands that he saw a knife, it is clear from Temitope's testimony that it was Stankov who hit him with a knife. Infected when Temitope stood up, he approached Stankov, not Mykhailo Yermakov, who was at the entrance and demanded to know why he suffered the aggression.⁵⁸ Henry admits he threw a stone as Mykhailo kept approaching him with a pen knife directed at his stomach.⁵⁹ It was Mykhailo who kept *"Insisting in beating this guy"*.⁶⁰ Once Temitope went to speak with the men who beat him Mykhailo went after him (Henry) threatening with the penknife which he held with his wrist close to the waist *"Yes at that point and I was full of blood which he did on my head the same pen knife"*.⁶¹

This fact that Henry thinks it was Mykhailo who used the knife on Temitope proves three things: 1. Firstly it confirms that there was no agreement between the two victims; 2. Secondly, there was a second knife used and this one was in Mykhailo's hands and 3. Lastly, Mykhailo was also hitting Temitope. Moreover, Henry's account of the beating suffered by Temitope is fully confirmed by the footage as will be considered further down in this judgement.

Thus, even Henry, similarly to Stankov, admit seeing Temitope exit the club with his face already bloodied. This corroborates Temitope's account that Stankov hit him as he was being escorted out of the Club after leaving the bar area where he had been drinking with his friends.

Henry admits that after he was attacked with the pen knife by Mykhailo Yermakov he threw a brick of around 20cm to dissuade him from going after him again. In this respect the Court deems this was an act of retaliation on Henry's part but in no way does it detract from the heinousness of the accused's conduct towards Temitope in particular. Henry also confirms that Temitope was being told to leave the scene but denies he was similarly asked to leave.⁶² Instead of leaving the scene Temitope wanted to know why he was beaten up and kept asking Stankov to give him an answer. He had also suffered an injury

⁵⁶ Fol.203

⁵⁷ Fol.204

⁵⁸ Fol.205

⁵⁹ Fol.206-207

⁶⁰ Fol.207

⁶¹ Fol.208

⁶² Fol.211

and thus went with Temitope to the Police Station.⁶³He confirms that when Temitope, went to inquire why he was beaten up, the beating started again. This too is confirmed in the footage.

Henry reiterates that he learnt of the beating when he saw Temitope *“full of blood coming out from outside dragging being hold one on the neck you know”* with Stankov holding him with the elbow (chokehold). As he was dragged outside on to the road, Temitope was trying to free himself but notwithstanding his bloodied clothes the **four men continued to beat him outside the Club**⁶⁴. It was at this moment that Temitope collapsed to the ground, ⁶⁵ as can be confirmed by the footage.

Ryan Genovese, a substitute at Babylon, explained that on the night of the incident, he was at the bar. Yermakov went over to “speak nicely” to a group of Africans who were arguing with a group of Serbians.⁶⁶ Instead the Africans challenged Yermakov to a fight outside.

The Court finds it hard to believe that a barman tending a heavily populated bar – as footage shows, where music was clearly being played and people dancing – could hear Yermakov speaking nicely and similarly hear the Africans provoke him into a fight outside!

When asked by the Court why he continued to serve the Africans if he saw them in a drunken state, he fails to give a reasoned answer!⁶⁷ His difficulty in answering the questions put to him, is clear. The untruthfulness of this witness’s testimony is all the more evident, when he apparently forgets that the whole incident was captured on footage and he actually goes on to state that Yermakov *“he kept the situation calm and he got them outside quietly and then outside they started attacking him.”*⁶⁸..... *In the bar no fights and no nothing. They escorted them outside quietly while they were shouting and threatening them ‘fuck your family,’ something like that and outside when I heard them attacking them. The Africans started attacking these. That’s what happened. In the bar we remained quiet, patient and inside nothing happened.”*⁶⁹

The chaotic scene as Temitope is seen being escorted outside not just by Yermakov but also by Stankov, also contradicts this version and undermines

⁶³ Fol.213

⁶⁴ Fol.217

⁶⁵ Fol.218

⁶⁶ Fol.311

⁶⁷ Fol.312-314

⁶⁸ Fol.314

⁶⁹ Fol.316

all semblance of credibility of this witness whose character is questionable in view of the fact that he found no difficulty employing illegally Yermakov and Stankov.⁷⁰ Henry speaks of a barmen who hit him too and thus it is very likely why this witness goes into great lengths in his attempt to convince the Court of the gentle manners with which the African men were escorted outside!

Genovese states that outside he witnessed Henry⁷¹ throwing rocks and bottles towards Yermakov⁷² "*rocks coming down and a customer who was coming drinking there they even hit him, they knocked him. They knocked him with a rock and he fell down stairs*"⁷³ yet is unable to offer any names.⁷⁴ However the Court cannot but remark at this **completely new and contradictory version** given that in his initial statement to the Police on the day of the incident, Ryan Genovese stated that he saw none of the fight outside: "*He also stated that when all of them were outside, he was in and doesn't see anything.[sic]*".⁷⁵ The Court finds great difficulty relying on a testimony of a witness who apparently is only keen to deflect any potential criminal liability from attaching to him.

The Accused's' Testimony

Before considering the testimonies of the three accused, it is to be underlined that whatever an accused states cannot be used in favour or against another co-accused in terms of the principal originating *a contrario sensu* from the provisions of Article 636(b) of the Criminal Code:

⁷⁰ Fol.320

⁷¹ Fol.324

⁷² Fol.315 and 325

⁷³ Fol 317

⁷⁴ Fol.318

⁷⁵ Fol.26

No objection to the competence of any witness shall be admitted on the ground -

(b) that he was charged with the same offence in respect of which his deposition is required, when impunity was promised or granted to him by the Government for the purpose of such deposition;

Mykhailo Yermakov chose to testify and explained how on the night of the incident he was working at the Babylon Club as a security guard with his shift starting at 12am. Around 1:30am, a couple of African men went to Babylon Club. Yermakov also explained that he saw *"a couple of black guys and they was not drunk or something but they were very loud"*⁷⁶ following which, he asked them to lower their voices. Temitope reacted by telling him to *'fuck off'*.⁷⁷ He warned him politely, that if they will not quieten down, he would have to ask them to leave. At around 3am, Yermakov went inside the club and saw Henry Oweabuchi arguing with another man, and he told Oweabuchi to control himself or else he would have to ask him to leave. After going outside, Yermakov heard some noises and when he went inside, he noticed a *"...couple of African guys. They start to going on other sofas where was there couple of Serbian guys and they tried to attack them"*. Yermakov continued *"You can see it on the camera, I come straight in the middle to avoid the fight. Inside wasn't any fights and I decided to tell the African guys to leave because I must to leave one couple, I cannot remove two because they start to fight outside."*⁷⁸ He continued to explain that the Africans were not happy when they were asked to leave, and so he asked Stepan and a bartender to assist in escorting the Africans outside, to avoid a fight breaking out between the Africans and the Serbians.⁷⁹ When he went outside, he confirmed that he saw *"Temitope and Henry was start jumping on the guys who was on the ladder [recte: stairs]. I explain, there is a straight ladder when you go down the club. You go like this then you turn left and you need to go down again and you come to the club. I fell down, I saw like Temitope to start fighting Dorde. I come, I remove him on the floor, I swear Madame, I remove him on the floor, **I punch him one time in the leg it is true and one time in the stomach but not too much just to calm him down and I ask him please enough"***.⁸⁰

The description of the premises given by Mykhailo continues to show that the area where Temitope alleges he was stabbed in, is outside the bar area, just as he stated. The club's door is separated from the bar – sited at basement level -

⁷⁶ Fol 276

⁷⁷ Ibid

⁷⁸ Fol 277

⁷⁹ Ibid.

⁸⁰ Fol 277-278

with two flights of stairs⁸¹ which can be seen in the stills and the footage as Henry is being escorted outside.

Yermakov continued that, after he let go of Temitope, the latter grabbed a bottle and threw it at him but missed. In the meantime, Henry Oweabuchi was getting very aggressive and was holding a beer bottle. He states: "*Temitope started going around and he started basically to attack me Madame. I did one step back, you can see it on the camera. **And I punch him** with a step back so basically I was defence myself otherwise he will attack me. **It was KO honest. Like for three seconds he was out of mind.***"

Admitting that Temitope was unconscious, militates against any finding that Temitope's denial that he bit Dudic was a conscious fabrication on his part.

At this time Henry Oweabuchi picked up a brick and threw it "*inside on the way where is the entrance*" and it hit "*one guy in the helmet tall one, by his language I understood he was from Serbia.....The brick fell down and it hit this guy and another Maltese who was a regular client around 60 years old*". Temitope also grabbed a bottle of 'Heineken' and threw it in the direction of the entrance where Yermakov and his friends were. Yermakov states that the bottle hit his eyes.⁸² Yermakov also stated that the guy in the helmet, a Serbian on a scooter, grabbed the brick, and punched Henry Oweabuchi in the head. Hereafter this unidentified individual shall be referred to as 'H' and the Commissioner of Police will be asked to investigate the incident further.

Henry was also threatening to kill him. Once H learnt the police had been called, he left the scene straight away⁸³. Yermakov mentions that he was taken to the policlinic and was suffering from a black eye, however as no certificates were exhibited attesting to his injuries, his version lacks corroboration. When cross-examined, he states that he had **punched Temitope three times at most**, in the leg and in the stomach⁸⁴ with **another punch** on the chin⁸⁵ being dealt to Temitope when the latter approached him holding a bottle. The accused denied having a knife or any weapons on his person that night.⁸⁶

⁸¹ "*there is a straight ladder when you go down the club. You go like this then you turn left and you need to go down again and you come to the club*".

⁸² Fol.278

⁸³ Fol.279

⁸⁴ Fol.282

⁸⁵ Fol.284

⁸⁶ Fol.285

It is evident Yermakov is economical with the truth as he is with the number of punches he contends he dealt Temitope as can be attested upon viewing the footage.

Stepan Stankov also chose to testify and explained how on the 16th of February, 2020, he was working at a Sports Bar, the Corner Pocket, located on top of the Babylon Club. He closed the bar around 2:00am and went to eat around the corner. Around 3:30am he went to Babylon Club to bid good night to his friends. When he went inside, he saw a group of Africans and a group of Serbians with Mykhailo Yermakov between them.⁸⁷ He asked Yermanov what was happening whilst noticing that both groups were drunk. However, the Africans were acting more aggressive and they decided to take them outside in order to avoid a fight breaking out between the Serbians and the Africans.⁸⁸ Stankov explains that when they took the Africans outside, they were not pushing them but "touching a bit to take them out to the door"⁸⁹. He continued that whilst he was outside, there was Dorde Dudic with him as Yermakov had gone back inside. It was at this time that Temitope tried to re-enter the Club and when he was refused entry, he tried to attack him causing him to "I pushed him in the face.... he fell down on the right side".⁹⁰ When Yermakov returned Temitope was insulting them and threatened to kill them.

Strangely enough, taking into account that the club Babylon is also situated below another sports bar, Corner Pocket, wherein Stankov worked as a barman. Stankov repeats *verbatim* what his flat-mate Yermakov⁹¹ had testified,⁹² namely that he asked the Africans to stop being so loud as a woman with a baby lived above the club.⁹³ This is hard to believe given that at 5am (*vide* footage) customers were still seen entering the Club. It is highly unlikely, although certainly commendable were it to be true, that securities of a licensed Club be so caring of neighbours living in the vicinity when it was the Club itself that remained accepting patrons in the early hours of the morning! It is Stankov himself who despite the late hour states "*Customers were coming inside the club...*".⁹⁴

Such an assertion defies reason and common sense.

⁸⁷ Fol.288-289

⁸⁸ Fol.289

⁸⁹ Fol. 292

⁹⁰ Fol.289

⁹¹ Vide particulars in the charge sheet. Stankov and Yermakov share the same apartment.

⁹² Fol.289

⁹³ Vide evidence by Yermakov a fol.276

⁹⁴ Ibid.

Stankov states that when Temitope stood up and approached him, he **pushed him again** and Temitope fell down on the floor **a second time**. When Temitope stood up, he grabbed pieces of bricks and started throwing them at their direction. They asked the barman to call the police. Stankov confirmed that although he did not work at the club, nor was he a security guard, he had assisted his friends in ushering out the Africans.⁹⁵ His boldness knows no end when, fully aware of the fact that the premises were covered by cctv cameras, he gives absurd answers which the footage manifestly contradicts as it shows him **brutally punching and beating (not 'pushing' as he tries to make believe)** Temitope, even as this man lies helplessly on the pavement:

*"S. Stankov: By the law, I didn't touch them, I took them with the hands like this
Court: At the moment the witness is showing that he is pushing with his hands upfront, palms open
S. Stankov: Not pushing, but touching a bit to take them out to the door
Defence [recte Prosecution]: You were guiding them lets say
S. Stankov: Yes.....
Defence [recte Prosecution]: In the CCTV as well it shows clearly that you had a brawl, you had a fight with one of the Africans on the pavement, what do you say about this?
It caught you fighting with one of the Africans
S. Stankov: I hit the second one
Defence [recte Prosecution]: To be exact if my memory serves, he pulled a right, you ducked and you hit him and continue hitting him
S. Stankov: I don't remember this, I remember first time, I pushed him in the face and after the second time
Court: You pushed him in the face? From the face you pushed?
S. Stankov: Yes".⁹⁶*

Dorde Dudic testified that on the night of the incident, he was at the Babylon Club socialising. He saw the commotion which had started inside, between a group of Africans and another group. Dudic explains how the Babylon's security had to escort the Africans, who were drunk, out of the club since they were getting very aggressive. When the security escorted the Africans outside, Dudic went outside because he had parked his motorbike in front of Babylon Club and wanted to ascertain that no one will damage his bike.⁹⁷ When Dudic went outside, he saw the Africans had become even more aggressive and started throwing bottles and bricks. At one point, Dudic recalls "*the brick hit one guy who was going down the stairs and the bricks hit in the back and he slipped in the steps down. At one point they attacked me and I pushed them*".⁹⁸

⁹⁵ Fol.291

⁹⁶ Fol.292-293

⁹⁷ Fol.296-297

⁹⁸ Fol 297

This is not borne out by the footage which shows Dudic approaching Temitope not vice versa! Instead of moving away to protect his bike as he alleges – a bike which he leaves behind when he leaves the scene and in truth, never actually proves that it was indeed outside - he **gratuitously flings himself on Temitope and hits him mercilessly! He did far, far more, than merely “push” Temitope.** Thus, he tries to give the impression that the fight had already started when he came outside when this is clearly contradicted by the footage wherein, he is seen preventing Temitope from re-entering the Club. Moreover, the footage clearly manifests that the brick throwing incident towards the Club’s entrance, took place after Temitope had risen to his feet again after being thrown on to the ground and not before as Dudic claims. It must have been also very clear to Dudic himself as he was facing Temitope who was trying to raise himself off the ground at the time the stones were hurled from way behind Temitope, that it could never have been Temitope who threw them. Thus, why attack an innocent man for the actions of another!

The Court is certain that Dudic attempts, albeit unsuccessfully, to change the sequence of events purposely in a bid to camouflage his aggression as defensive behaviour or at least to substantiate his contention that he was provoked. Yet the provocation line of defence is thwarted by the same Dudic who, on the witness stand, admits that at no point was he truly attacked thereby making his violence even more loathsome and atrocious:

“Dorde Dudic: Yes and they found big pieces and started throwing it in the way of the club on the people. As I remember the brick hit one guy who was going down the stairs and the bricks hit him in the back and he slipped on the steps down. At one point they attacked me and I pushed them

Court: So after they attacked you, you just pushed? Because if someone attacks me I dont just push

Dorde Dudic: But they were drunk so it wasnt attack like, they became aggressive on me and I just pushed them from me and I said listen I dont want problems. As you can see on the video I stayed next to the entrance and then they grabbed my leg. He took me down and he bit me on the leg..... He bit my leg and I tried to shake him off but when I tried to pull him from me, the pain was even bigger because he had my flesh in his teeth, very good grip. After even the others saw it his bit and I am on the floor and he is biting me in the leg. They tried to move him and they managed to move him from my leg but as soon as he released the first bite, he bit me again in the knee area. In the knee area he didnt grab me that good cause I managed to bend my knee and the skin stretched, he couldnt grab [Court: Cause there is the bone] ... They put him away from me and it was very painful at that moment and I didnt see anyone injured them. I didnt injure them, I didnt hit them, I didnt even see the blood in the scar and the injuries on their face”.⁹⁹

⁹⁹ Ibid.

What Dudic fails to realise was that the footage disproves this version. When Temitope bit his leg, Temitope was already sprawled on the ground to the right side of the entrance. It is **Dudic who is seen brutally kicking Temitope whilst the latter is lying on the road after being beaten to a pulp**, having already established - through Henry's testimony and Stankov's statement under interrogation¹⁰⁰ - that **Temitope's face was already all bloodied**. It is no coincidence that **both Yermakov and Stankov claim they punched Temitope so violently that he was knocked down senseless!**

Dudic mentions how he witnessed a man who had arrived on a scooter and parked it at the Club's corner, who started hitting Temitope with the helmet. It is interesting and very revealing of this accused's unworthiness and absolute lack of credibility, that he chooses to act as if he does not know this man, H!

The Court, after meticulously viewing the footage, is certain they knew each other and well enough at that. Whilst Dudic wants the Court to believe that this man was a stranger to him, the footage reveals otherwise! There are other reasons why H, and indeed Dudic in particular, are keen not to share H's identity. The fact that one sees H making off hurriedly as soon as the police car enters the road where the club is sited, is telling indeed! Yermakov admits as much in his testimony "*...after he told the police he will come, he sit on the bike and he left straight away*".¹⁰¹ H's quickening of pace when he leaves together with Dudic on foot, once he catches sight of the police car, is unmistakeable; his anxiety not to be seen by the police forcing him to overtake Dudic in hurried pace Dudic as they walk up the road away from the Club and towards where H parked his bike.

When cross-examined, Dudic stated that he did not take part in the fight, but he was attacked because he was standing there and the African's were aggressive. Earlier he had stated he was not attacked but they approached him in a drunken state. Hence the inconsistency in Dudic's own testimony! His version is not based on the truth, nor is it rooted in common sense. Having stated that he only went outside to check on his bike which was parked outside the club, he is unable to account why he chose to remain on site and get involved in the ensuing altercation instead of simply moving his bike away from the spot it was supposedly parked in and continue with his "socialising" or driving away. It must be remembered that Dudic was seen already on the pavement before the brawl moved outside.

¹⁰⁰ "*...when I went out side I saw one of the black guy with blood on his face.*" (fol.14A)

¹⁰¹ Fol.279

“Court: But why did you interfere in this afray, you were a car park attendant somewhere else, what made you go into the whole thing, go near them?”

Dorde Dudic: As I tell you I had my parking up there so I just went to check because they were very drunk and they can damage the bike

Court: And when you went to see the bike, why would not you remain there? You saw the bike, its alright and move back

Dorde Dudic: It wasnt only me up there, there was a lot of people who were passing there, to be honest it was like a show, you hear the African people, it wasnt a usual situation.....

Court: How many other people did the Africans bite. Did they bite any other person or just you?

Dorde Dudic: Temitop bit me

Court: But did he bite anyone else?

Dorde Dudic: No they didnt but maybe he bit me because he grabbed my leg first and take me down and he was holding my leg like this. He didnt know what to do

Court: So for nothing, he bites you?

Dorde Dudic: Exactly

Prosecution: Dont forget that there are CCTV's

Dorde Dudic: Of course I know

Prosecution: So you assumed that the bike was in some peril and you went up to check the bike and all of a sudden this African person mixed you up with someone and bit you instead of me for instance Dorde Dudic: I really dont know

Prosecution: And if I have to tell you that on the CCTV it shows that you are hitting and taking as well if my memory serves one of the Africans that he bit you, what do you say to this?

Dorde Dudic: I do not remember

Prosecution: And if I have to say as well that he bit you out of self defence because you were hitting him first

Dorde Dudic: I dont know....

Prosecution: And you never struck him?

Court: You never hit him?

Dorde Dudic: No no. When he was biting me I took him off, I tried to release my leg because very very very painful”.¹⁰²

The Dental Expert's Report

Dr. David Mifsud, a court-appointed expert, testified that upon examination of Dorde Dudic he noticed *“elliptical bite marks on the right knee joint and the right lower limb. The one on the right lower limb was more pronounced”*.¹⁰³ Dr. Mifsud further explained that he had used impression techniques in order to capture the bite marks on the lower right limb. Mifsud also interviewed Temitope and confirmed that he *“had normal mouth opening but he had some tenderness coming from his left temperiamble joint, probably you know as a result of the brawl....I suspected*

¹⁰² Fol.300-302

¹⁰³ Fol.104

that a fracture was present"¹⁰⁴. Dr. Mifsud also took the impressions of the upper and lower teeth of Temitope.

Following an in-depth analysis of the bite mark impressions and the casts from Temitope's mouth, Dr. Mifsud concluded that he had "So I did all the measurements and I have no reason to doubt that Mr Temitope bit Mr Dudic in the lower right limb"¹⁰⁵. Dr. Mifsud also stated that he could only confirm the compatibility of the bite on the lower part of the limb against Temitope's impression, since with respect to the other bite mark "an impression was made but since the skin there stretched, I could not super impose the cast"¹⁰⁶.

The Court extended Dr. Mifsud's task in a bid to assess whether, upon viewing the CCTV footage, he could ascertain whether the bite in question was an act of aggression or a defensive reaction, namely a reaction to pain as an attempt to defend oneself. After viewing the footage, himself, Dr. Mifsud presented a second report.¹⁰⁷ He confirmed that to be able to inflict such bite marks, Temitope "had to be very close in proximity of the limbs of the assailant.... on the CCTV I could see that Temitope was on his knees in very close proximity"¹⁰⁸ to Dorde Dudic.

In his second report Dr. Mifsud concludes "***the bite marks suffered by Dudic occurred at a time when Temitope was being beaten up after being thrown to the ground. Thus, the said bite mark as evidenced by its position on Dudic's limb is compatible with a defensive action***".¹⁰⁹

The Nature of Temitope Akinirumbu's Injuries

Dr. Mario Scerri, appointed in the course of the Magisterial Inquiry, examined Akinirumbu Olakune Temitope on the day of the incident at Mater Dei Hospital and certified that "He alleged he was hit with a pen knife. He had an ***incised wound on the left side of the forehead***. It was a clean wound with clean margins ***compatible with an incised wound inflicted by a sharp pointed instrument that heals by formation of fibrous tissues and it probably leaves a permanent mark on the face***. Then the haematoma on the right side of the templary region due to blunt trauma. These are injuries. One of them might remain permanently as a visible scar".¹¹⁰

¹⁰⁴ Ibid.

¹⁰⁵ Fol. 105

¹⁰⁶ Fol. 106

¹⁰⁷ **Doc.DMZ** a fol.231 et seq

¹⁰⁸ Fol. 228

¹⁰⁹ Fol.235

¹¹⁰ Fol.121

In his **Medico-legal Report**¹¹¹ Dr. Scerri concludes:

*“3. Illi l-lezjoni deskritta fuq in-naha tal-lemin tal-mohh kellha sharp margins, ma kinitx fonda, kienet suturata u klassifikata bhala **incizjoni maghmulha minn strument li jaqta’**;*

4. Illi l-lezjoni deskritta fuq il-parti tan-nofs tal-mohh kienet dbengila ta’ kulur vjola u kompatibbli ma’ blunt trauma;

5. Illi l-lezjoni deskritta fuq il-periatal region tax-xellug kienet haematoma u kompatibbli ma’ blunt trauma;

*6. Illi l-incizjoni deskritta fuq in-naha tax-xellug tal-mohh tista’ tibqa bhala **marka permanenti u vizibbli fuq il-mohh**”¹¹².*

Injuries entirely consistent with the blows he described as having suffered; particularly the wound caused by the knife wielded by Stankov, an incised wound.

In its decision **II-Pulizija vs Salvinu Vella** the Court of Criminal Appeal considered *funditus* the difference between grievous injuries under articles 216 and 218 of the Criminal Code. It is obvious that those suffered by Temitope are classified as grievous in terms of Article 218 of the Code:¹¹³

17. L-artikolu 216 (1)(b) jtkellem fuq mankament jew sfregju fil-wicc, fil-ghonq jew f’wahda mill-idejn tal-offiz. It test Inkliz juza l-kelma “*hands*” u dan hu ta’ ghajnuna ghad-dibattitu mqanqal mill-imputat meta jghid li la darba l-ligi titkellem fuq l-idejn dan minnu nniffsu jeskludi id-drigh, ossia li l-id ma tinkludix id-drigh. Tajjed li ssir referenza ghal dak li jinsenja l-Professor Mamo fin-**Notes On Criminal Law** – Revised Edition 1954-1955 pp 228 meta jelenka l-elementi ta’ dan ir-reat u jghid: “*Any external injury which detracts from the appearance of the face, or of the neck or of either of the hands – the most conspicuous parts of the human body...*” (Sottolinear tal-Qorti);

18. Meta offiza ggib mankament jew sfregju fill-wicc, l-ghonq jew wahda mill-idejn, dik l-offiza tkun wahda gravi ex artikolu 216(1) (b) tal-Kodici Kriminali anke jekk dak l-isfregju jdum ghal ftit hin. Jekk jipperdura, fejn allura jkun jehtieg ezami vizwali minn distanza mhux ragjonevoli, dak l-isfregju jtgies sfregju gravi fit-termini tal-artikolu 218(1)(b).

22. Tajjed li in rigward issir referenza ghas-sentenza ta’ din il-Qorti tat-28 ta’ Marzu 2008, **II-Pulizija vs Desmond Falzon**, li ccit b’approvazzjoni s-sentenza taghha **II-Pulizija vs Paul Spagnol** tat-12 ta’ Settembru 1996, fejn kien ritenut hekk:

¹¹¹**Doc.MS** a fol.123 et seq

¹¹² Fol 132-133

¹¹³ Per His Honour Mr. Justice Giovanni M. Grixti; Appeal No. 496/2015; Dec.30th September, 2019

B'mankament ... fil-wicc, il-ligi qed tirreferi ghal kull deterjorament ta' l-aspett tal-wicc li, anke minghajr ma jnissel ribrezz jew ripunjanza, jipproduci sfigurament "cioe' peggioramento d'aspetto notevole o complessivo, o per l'entita' della alterazioni stessa o per l'espressione d'assieme del volto" (Manzini, V., Trattato di Diritto Penali, Volume Ottavo, Cap. XXVIII, p. 235). Sfregju, mill-banda l-ohra u a differenza ta' mankament, hija kull hsara li tista' ssir fir-regolarita' tal-wicc, fl-armonija tal-lineamenti tal-wicc, u anke f'dik il-hija s-sbuhija tal-wicc. Skond gurisprudenza ormaj pacifika, din il-hsara li tammonta ghal sfregju trid tkun vizibbli minn distanza li hi dik 'li soltu jkun hemm bejn in-nies meta jitkellmu ma' xulxin' (Il-Pulizija vs Emily Zarb App Krim. 15/2/58, Kollez. Deciz. XLII.iv.1245, 1248). Ghalhekk mhix korretta l-proposizzjoni li temergi mill-bran tas-sentenza appena citata, li jekk ikun hemm cikatrici necessarjament hemm sfregju, izda ma jkunx hemm sfregju jekk ikun hemm simplici skolorament tal-gilda. Anke skolorament tal-gilda jista' jipproduci kemm sfregju kif ukoll mankament fil-wicc fis-sens spjegat. Kollox jiddependi mill-entita' tal-hsara; mhux importanti x'tissejjah il-hsara fil-gergo mediku jew popolarment; dak li hu importanti hu l-effett li thalli fuq il-wicc.

19. Naturalment dak li intqal dwar il-wicc huwa ugwalment applikabli ghall-ghonq u ghall-idejn. Ghalhekk sabiex ikun pruvat l-aspett materjali ta' dan ir-reat mhux necessarju li l-offiza tkun tali li "tista" thalli mankament jew sfregju. Dik il-possibilita' tirrafigura biss fl-ezami tar-reat kontemplat fl-artikolu 216(1)(a). Sabiex tkun skontata l-prova tar-reat kontemplat fl-artikolu 216(1)(b) huwa bizzejjed li l-offiza kienet fuq l-idejn, fl-ghonq jew fuq il-wicc u l-kwistjoni ta' permanenza jew possibilita' jew probabilita' ta' permanenza ma jiccentraw xejn. Dan hu hekk ghaliex il-legislatur donnu jaghti protezzjoni specjali ghal dawk l-estremitajiet tal-gisem li solitament huma dejjem mikxufin u ghaliex mankament jew sfregju fihom igibu magghom il-konsegwenzi naturali u ovvji fuq l-offiz.

20. Fis-sistema legali tagha, l-offiza fuq il-persuna tista' tkun wahda hafifa u ta' importanza zghira, hafifa, gravi jew gravissima. Issa, kif tajjeb imfisser fis-sentenza ta' din il-Qorti fl-ismijiet **Il-Pulizija vs Fortunato Sultana** tal-5 ta' Frar 1998, fost diversi ohrain, il-ligi ma tirrikjedix li l-isfregju jipperdura ghal zi zmien partikolari. Sfregju fil-wicc, fil-ghonq jew f'wahda mill-idejn anke jekk ta' ftit zmien jibqa' sfregju ghall-finijiet ta' l-imsemmija disposizzjoni. Il-permanenza ta' l-isfregju hi relevanti biss meta, abbinata mal-gravita', taghti lok ghal-hekk imsejha "offiza gravissima" skond l-artikolu 218(1)(b) tal-Kodici Kriminali. Ghal-esposizzjoni aktar profonda tal-kwistjoni in tema, tajjeb li ssir referenza ukoll ghas-sentenza ta' din il-Qorti deciza fil-15 ta' Frar 2011 fl-ismijiet **Il-Pulizija vs Jonathan Farrugia** fejn oltre s-sentenza citata saret refeneza ghal-diversi sentenzi ohra foshom dik **Il-Pulizija vs Antonio sive Anthony Randich** tat-2 ta' Settembru 1999 kien ritenut hekk:

Kif din il-Qorti kellha l-opportunita' li tirrimarka f'okkazzjonijeit ohra, l-isfregju ('disfigurement') fil-wicc (jew fl-ghonq jew fl-id) kontemplat fl-artikolu 216(1)(b) tal-Kodici Kriminali jista' jkun anke ta' natura temporanea, bhal per ezempju, sakemm il-ferita tfig. Huwa biss fil-kaz tal-hekk imsemmija 'offiza gravissima' fl-artikolu 218(1)(b) li l-ligi tirrikjedi l-permanenza (oltre l-gravita') ta' l-isfregju. Mir-ritratti esibiti din il-Qorti tara li l-ewwel Qorti setghet legalment u ragjonevolment..."

21. Fi kliem iehor, **offiza gravi tista' ssehh fuq kull parti tal-gisem, pero' fejn si tratta tal-wicc, l-ghonq jew l-idejn hija dejjem gravi jekk iggib sfregju anka ghal ftit hin kif fuq spjegat. F'kaz ta' permanenza, dik l-offiza tkun gravissima.** Issa jekk l-offiza ssir fuq parti ohra tal-gisem il-kwistjoni dwar jekk tkunx wahda hafifa, gravi jew gravissima tiddependi minn jekk tirrientrax f'dak ravvizat fil-kumplement tal-artikoli 216, 218 u fin-nuqqas 221(1).

22. Hija l-fehma ta' din il-Qorti illi la darba l-offiza mhix fuq il-wicc, l-ghonq jew l-idejn tal-kwerelant, u la darba ma gabet ebda wahda mill-konsegwenzi msemmija fl-artikoli 216 jew 218 fuq xi parti oħra tal-gisem, l-offiza hija wahda hafifa. Ghalhekk filwaqt li ma tistghax tinsab htija ta' offiza gravi qed tinsab htija ta' reat anqas gravi u cioe' ta' offiza hafifa fit-termini tal-artikolu 221(1) tal-Kodici Kriminali bl-aggravanti msemmi fis-subartikolu (2).

Dr. Scerri examined Akinribomu Temitope a second time on the 6th October, 2020, and confirmed that **the scar shall remain a permanent mark on the face.**

114

It is worth noting that for purposes of Article 533 of the Code, the second report was not being taken cognisance of.¹¹⁵ The person the court ordered to be examined was not Temitope Akinribomu but Henry Onweabuchi. Nonetheless the testimony given by Dr. Scerri relating to Temitope's last examination remains admissible given he was appointed as a court-expert in the inquiry and his appointment confirmed by this Court.¹¹⁶

Moreover, the Court itself had ascertained the nature of the scar suffered by Temitope as it is fully competent to certify the type of injury suffered. As confirmed by the Court of Appeal in its judgement **Il-Pulizija vs Generoso Sammut** delivered on the 2nd August 1999:

Hi żbaljata l-idea, spis ventilata, li biex issir il-prova skont il-Liġi u sal-grad li trid il-Liġi ta' offiża fuq il-persuna hemm bżonn ta' ċertifikat mediku jew tad-depożizzjoni ta' tabib. Tali ċertifikat jew depożizzjoni jistgħu jkunu meħtieġa jekk mid-depożizzjoni ta' xhieda oħra, inklużi l-parti offiża, jibaqa' xu dubju reġonevoli dwar jekk verament kienx hemm offiża fuq il-persuna u jew tat-tip jew natura ta' dik l-offiża.¹¹⁷

There is absolutely no doubt that the injuries suffered by Temitope have left him with **a permanent disfigurement of the face**, the offence in terms of Article 218 of the Criminal Code.

Mention has already been made of the fact that the medical certificate exhibited by Henry Oweabuchi is inadmissible and cannot be taken cognisance of by the Court according to the dictates of Article 646(7) of the Criminal Code. Consequently, in view of the doubts surrounding the nature of these injuries, given that they remain unconfirmed by the doctor's affidavit coupled to the fact that although Henry did indicate the site where he suffered injuries to the Court when he testified, the Court could not ascertain to the required level of proof

¹¹⁴ Fol 237

¹¹⁵ Fol.266

¹¹⁶ Fol.89

¹¹⁷ Vol LXXXIII.1999. Pt.IV. page 365

their nature, the Court has no option but to acquit the accused of having caused injuries on Henry Onweabuchi.

The Footage¹¹⁸

A. Babylon Club

In his report, **Doc.JSR**,¹¹⁹ court expert John Sacco states that with the club Babylon's footage there is a discrepancy between the time appearing on the footage to real time. The discrepancy is that of 58 minutes and 55 seconds ahead. Thus, to arrive at the real time appearing on the footage one must subtract almost 59 seconds from the time appearing on the footage.

This means that the incident commenced around **04:45am and lasted until 05:10am**

Camera 3

At 05:46 (04:44 real time) people are still dancing at bar.

Camera 14

05:46 shows Henry being calmly led out of the Club by Yermakov and Stankov

Camera 7: This camera captures the entrance immediately outside the Club on the street.

05:46:51 **Dudic comes out of the bar and stays on the pavement.**

- This goes to show that the initial altercation between Dudic and Temitope occurred precisely where Temitope stated, inside the Club's premises but not in the bar area, where the former was flirting with Temitope's girlfriend.
- Dudic is wearing black runners with white lines. In view of his testimony, one would have expected him to go and check his bike but he remains at the exit whilst no fight has as yet erupted outside. Unless Dudic is gifted with prophecy he had no reason to check his bike at this time, if there ever was a bike! Unless he remained outside to confront Temitope once the opportunity presented itself, which it did.

¹¹⁸ **Doc.JS** a fol.156

¹¹⁹ Fol.141 et seq

05: 47:01 In fact, Temitope had already been escorted outside when he tries to re-enter the bar and Dudic stops him and takes him to the side. Henry is seen exiting the club and tries to go to Temitope's aid (05:47:08) as he is being restrained by securities.

05:47:11-12 Stankov is wearing a t-shirt with a marking on the back which is fluorescent. **As Temitope falls to the ground, Stankov hold his face up with the left hand and punches him in the face with his right.** Temitope punches back and tries to kick his assailant off.

05:47:16-17 **Dudic kicks Temitope in the face and Temitope is knocked out.** Yermakov tries to keep him on the ground without heavy handed measures. As Temitope gets off the ground, from behind him (thus, clearly not his doing) objects are thrown in the direction of Dudic and an African lady standing at the entrance to the club (05:47:52; 05:48:15-23). **Dudic clearly grabs Temitope in a chokehold, throws him to the ground continues beating him in the upper part of his body since the legs are clearly visible. Yermakov returns and seeing Temitope on the ground delivers no less than 9 punches to his chest and face whilst Stankov stands over them without stopping or at least attempting to restrain Yermakov (05:48:31-38).**

05:48:52 Dudic is seen checking his leg, evidence that he was bitten by Temitope after it was he who first attacked him by throwing him on the ground. Although the accused brutally attacked Temitope, it was clear that the heavy objects were not thrown by the latter; Temitope was lying on the ground with his back to the direction from where the objects were thrown.

05: 49:57 Henry is the one being held back from approaching the entrance by a security guard whilst the accused remain stationary at the entrance to the club.

05: 50:12-15 the three accused re-enter the club whilst Henry is restrained by another security. As soon as he is let go, he heads towards entrance and apparently throws something down the stairs. Stankov appears at the entrance when at 05:50:40 a boulder is thrown at the entrance and down the stairs.

- Given that two minutes earlier Dudic is seen checking his leg, there is no doubt that **Henry's reaction followed – although can never be condoned – the attack on Temitope, with the first bearings, occurred between (05:47-05:48:38 footage time).** When Temitope gets up and moves towards Yermakov in the middle of the road, **he is again pounced in the face by Yermakov and falls to the ground (05:49:35). He remains motionless until 05:50:16 in the middle of the road.**

- Thus, Henry becomes violent seconds after witnessing the continued aggression on Temitope by no less than three men!

05:50:59. Whilst Stankov remains at the top of the staircase leading to the Club, Yermakov emerges and says something in the direction of Temitope and Henry. The security keeps Stankov and Yermakov from going back in the street and leads them to the stairs beckoning them to go back in the club (05:51:28). Stankov removes the stone and it is set aside.

05:51:42 another stone is thrown in Yermakov and Stankov's direction whilst another security was trying to quieten matters with Temitope and Henry.

- Strangely enough the prosecution did not summon this person as a witness notwithstanding he was a pivotal eye witness. The same can be said of the other African persons who were continually restraining Temitope and in particular Henry!

Stankov and Yermakov remain on the steps leading to Babylon. Whilst the security mentioned by Yermakov, "Ion"¹²⁰, motions to Temitope to calm down, Temitope grabs a rock with a bottle in his right hand. This is taken away from him by the security guard (05:52:15-31). As the security is moving Temitope away **Stankov proceeds towards him and hits him** (05:52:26). At this time Temitope is seen trying to talk to the security guard (05:53:13). Temitope remains on the street seated against street furniture (advertisement) but moves away soon after (05:53:28).

05:53:53 The three accused walk towards Temitope and Henry and move out of vision from camera 7. Soon after they return in the camera's vision and Dudic is seen fists clenched making swift going forwards and backwards movements (not unlike one sees in a boxing ring), indicating he is rearing to go and attack Temitope, who together with Henry remained on scene. Similarly, Stankov also is holding clenched fists in fighting posture (05:54).

It is the other security who again pushed Yermakov off, preventing him from approaching Henry and Temitope. Other Africans are seen talking to Stankov. It is the same security guard who at 05:56:23 again tries to lead Yermakov and Stankov inside the club whilst Dudic remains at the entrance. When Stankov tries to emerge, he is told to go back in by the same man who appears to have been the only one truly committed to calm matters and avert further aggression.

¹²⁰ Fol.10

- Yet another clear sign as to who was committing the aggression and who was bearing its brunt. It remains a mystery why the prosecution chose not to call this person up as a witness!

At 05:57:17 Henry again approaches the club's entrance and addresses Stankov but he is stopped by the security. He is visibly badly agitated and at times even acts with hostility (05:57:28). Whilst **Dudic again assumes again fighting posture**, Yermakov comes up the stairs. Temitope also comes to the entrance yet the security holds back Henry and Temitope thereby preventing them from approaching the three accused.

- It is obvious who was attacked first! Although one would have expected a victim of an attack to leave the scene and immediately and head off to report the incident, this in no way detracts from the fact that the said person was a victim of aggression and aggravated by this to no end!
- The least he could expect was a reason why he had to suffer such a fate. His demeanour proves as much, as he continually tries to communicate as one does when he is seeking to learn why this brute force was unleashed upon him. This is in fact what Temitope testified that he would not leave before learning why he was attacked.

05:58:24 Temitope, who is seen addressing Yermakov and Stankov who is on the stairs, tries to pass by Yermakov but the latter pushes him away in a non-violent manner. At this time Dudic remains exactly at the top of the stairs in a fighting posture as described above (05:58:41). Dudic clearly knows H since he addresses him and directs him to stand behind him (05:58:48) all whilst Temitope is seen weak with his head resting on a man's chest.

At 05:59:17 H picks a bottle¹²¹ which had been set aside earlier by the security (on the small landing on the left of the stairs), and holds it in hand, all while talking to Dudic. At 05:59:27 Henry and Temitope stay close to the entrance with H and Dudic, whilst not working at the Club, remaining exactly next to them instead of moving away.

- Clearly this manifests in no unclear terms the Dudic's and H's exuberant willingness to attack the two Africans. The fact that Dudic remained at the entrance gives credibility to Temitope's version that Dudic was indeed with his girlfriend hence why leave now?!

¹²¹ Seen clearly at 05:59:37

- It is Dudic himself who on the stand admits he was only at the club to socialise and not due to his being employed there. The great interest he personally takes in the altercation, speaks volumes and affords corroboration to Temitope's version.

At 05:59:38 Temitope lunges at the security guard after escaping from the hold his friend had on him, **Dudic and H follow them and start beating Temitope**. Henry is moved away by another man (0:59:48). At this time both Yermakov and Stankov re-emerge from the club (05:59:54). It is precisely as Stankov is on the first step that he comes face to face with H, only this time the helmet is in hand and he looks straight at Stankov (05:59:58) and words are exchanged.

- Thus, Stankov's version that H was always wearing a helmet is unsubstantiated and indeed contradicted by the footage.
- H arrives at 05:58:33. The hoodie he is wearing has a black mark on the left upper arm (58:43) and on the front it has slanted zipped pockets. Although he later takes off the helmet, his jacket is unmistakable and his shoes, leaving visible ankles, are identical to the attire worn by the man who later remains close to Dudic, tends to his wound later and even leaves the scene with him. Indeed, several are the instances when H's face becomes visible on both the Babylon footage as well as that taken from Team Tickers.
- This reveals how untruthful Dudic is when he declares that he did not know the man in the helmet¹²². **Yet it is in his assertions that he was provoked that the falseness of his testimony comes to the fore.** Knowing full well that the whole incident was captured by the cctv he takes a chance in continuing to lie his way through this incident, hoping, and in vain, that the Court would be put off from analysing hours of footage!

Dudic is still making aggressive movements and keeps rubbing his fists (06:00) whilst Yermakov and Stankov remain on the stairs with the other security. At 06:01:23 Temitope returns talking to the guard. Even Henry approaches the club again 06:03 and addresses Yermakov who is held back and prevented from confronting Henry. Henry himself holds back Temitope who is finding difficulty standing upright. This corroborates the version that he was badly beaten (06:04:11). At 06:04:45 Temitope keeps trying to approach the club's entrance and walks up to address Stankov who remains mid-way on the stairs.

¹²² Fol.298

At 06:05:37 Yermakov is held back by an African man as Henry kept addressing him and moving towards him. By 06:07 Henry himself tries to stop Temitope from entering the bar and Temitope is visibly agitated whilst talking to Dudic with Yermakov is standing by on the pavement.

H, still wearing the helmet, is seen holding a piece of stone (06:06:37- 06:08:09) which he uses to beat Henry with, when the latter falls to the ground in his tussle with the security who had been restraining him. **H and Yermakov beat Henry as he lies on the ground (06:08:11) whilst Dudic kicks Temitope in the chest whilst he was holding on to the railing.**

At 06:08:02 Henry, now held by a security guard, picks something from the ground and tries to hit Dudic who is on the stairs. **Dudic continues to kick Temitope** who is holding himself up only by clinging on to the stair rails (06:08:23). Temitope keeps addressing Dudic who remains in fighting posture and in no way engages in aggressive conduct.

H is captured holding another stone behind his back at 06:11:01 but the security appears to tell him to throw it away (06:11:15). It is at 06:11:25 that he removes his hoodie revealing his face and proceeds inside the Club (06:11:54) after Dudic shows him his wound.

06:13 Stankov and Yermakov are seen chatting to Dudic and H.

- The falsity of Dudic's testimony is indeed all pervading. The lengths to which Dudic goes to so as to protect H's identity is telling in itself yet it clearly continues to undermine his entire testimony. It is also telling of the other co-accused since they too denied knowing H when in fact, they were all around Dudic helping him tend to his wound after the incident ended.

06:15:32 For some reason, Stankov empties beer bottles on to the stairs and wets his arms.

6:11:34 Dudic is seen showing his leg to the security guard. Close to him and talking with him is H who brings over a glass of alcohol which Dudic proceeds to pour over the area of the bite mark. Before leaving with H, **Dudic hugs Yermakov and shakes Stankov's hand** (06: 13:47-53) as well as that of the security man.

Camera 11: This camera captures the sidewalk to the right of Babylon's entrance

At 05:47:09 it clearly shows Henry being restrained and taken away from the entrance.

05:47:11 shows **Stankov dealing a punch to Temitope** (captured by Camera 7).

05:47:16 shows **Dudic kicking Temitope**.

05:47:50 Henry has been let go but instead of walking away picks a bottle and tries to hit Stankov with it, having seen Stankov punch Temitope. It is at this time 05:48 that Temitope, having been **already hit** by Stankov (and according to his testimony, also hit with a knife) also tries to punch Stankov.

Stankov retaliates and Temitope again falls to the ground. When he tries getting up, he is **kicked and punched in the face by Stankov several times (05:48:02)**. Henry is restrained and taken to the middle of the road. Temitope now tries to retaliate but falls to the ground. Clearly, he is finding difficulty to steady himself. It is here that **Yermakov keeps him pinned to the ground whilst hitting him 05:48:47**. Throughout this time Henry is restrained and told to move away but he remains arguing with the securities.

When Temitope gets up and moves towards Yermakov in the middle of the road he is again **punched in the face by Yermakov and falls to the ground (05:49:35)**. He remains motionless until 50:16 when his friends try to revive him as a car was trying to get through.

At 05:50:49 Henry is seen holding behind his head a large boulder and aims at the club's entrance but is prevented from throwing it by a security.

At 05:52:08-12 (after he has already been knocked out due to the initial beating), Temitope is seen picking up two bottles and throws them at the entrance. Although told to leave he remains arguing on scene. Henry comes running across the road towards Temitope and the affray begins all over again. It is interesting to point out that this time, Stankov and Yermakov move backwards as Henry proceeds towards them 05:52-05:54. 05:54:34 another bouncer leads with some force Temitope away from the scene yet he returns hitting also an African who was holding back Henry. It is 05:55 when Temitope leans into a front yard and picks a rock and throws it at the securities.

- One notes, although certainly does not excuse Temitope's throwing of stones and bottles happened after Temitope was knocked senseless twice

and Henry was trying to stop him getting beaten any further (05:47-05:50 footage time).¹²³

- It is interesting to note that whilst stones and bottles were being hurled across the street, Dudic shows no concern for his supposed bike which according to him was parked outside Babylon.¹²⁴ Nor is he at any time seen wearing a helmet given he stated he had a bike.
- One must also underline the fact that in his interrogation he claimed that after the incident *"I went with my motorbike to hospital because of my bite marks"*¹²⁵. It is Yermakov who makes an effort to pick up fragments of the boulder Henry was made to let go of. Yermakov clearly is aware that these can be picked up by Henry and Temitope. Instead Dudic, notwithstanding his declared concern for his bike is nowhere to be seen accessing it, although two bikes were parked outside Babylon and no one bothered to move them away! The extent of the lack of any veracity in Dudic's version knows no bounds especially when after catching a glimpse of the police car's lights, he rushes off with H on foot and with no helmet in hand!

At 05:58:20 H first appears and parks at the side of Babylon. **He uses a bottle to hit Temitope** and promptly intervenes in the fight (59:48). **Dudic also** takes an active part holding Temitope before flinging him to the ground once more (05:59-05:59).

- At 05:58:29 he lifts the helmet's visor revealing his face. H's face is also clearly visible at still 05:59:40-41 and 05:59:54 and significantly at 06:00, 06:03:35-56; 06:06:29-30; 06:07-18; 06:08:36-06:09:02; 06:11:12
- Had police truly investigated thoroughly the incident and reviewed the footage as the Court did, **this man would have been identified** since sufficient images exist to give police a fighting chance to succeed at his identification, if necessary, through help of other international police bodies.

¹²³ Given that two minutes earlier (05:48:50 footage time) Dudic is seen checking his leg, there is no doubt that Henry's reaction followed – although can never be condoned – the attack on Temitope when the first bearings occurred between (05:47-05:48:38 footage time). When Temitope gets up and moves towards Yermakov in the middle of the road he is again punched in the face by Yermakov and falls to the ground (05:49:35). He remains motionless until 05:50:16. Thus Henry becomes violent seconds after witnessing the continued aggression on Temitope by the three accused!

¹²⁴ Fol.297 and fol.300

¹²⁵ Fol.20A

At 06:01:01 H walks to the left of the camera and re-appears on Camera 11 coming from same direction at 06:01:19. At 06:01:40 he puts his helmet back on and rides off. He is captured driving to the left of the club by camera 15 at 06:01:53 and turns on the left corner of the road. He re-appears walking from the direction he had just taken towards the Club at 06:03:35-56 face clearly visible.

At 06:04:02 H appears again though this time not wearing the helmet but clearly wearing same attire and shoes baring his ankles. He walks towards the left and is out of vision (06:04:19) of Camera 11 but caught by Camera 15.

- The still at 06:04:36 shows **Temitope's bloodied face**.

Footage at 06:05:51 clearly sees H holding a piece of stone behind his back moving slowly towards Henry who is restrained by two men. H's face is again visible at 06:06:29-30.

By 06:12:06 Temitope and Henry walk past the club and leave the scene. Camera 15 captures them leaving at 06:12:11 after Henry held Temitope back preventing him from approaching entrance.

It is 06:27:31 when Stankov is seen entering the Club. The police have arrived on the scene and Yermakov is with them

Camera 15: Captures the left side of the Club and Street

06:14:06 Camera 15 captures **H and Dudic walking together** in the direction taken by H when he had previously left the scene on the bike; the same direction he returned from on foot and without the helmet. Incidentally they leave as soon as the blue lights of the police vehicle appear. Dudic at no point carries a helmet given he had testified that he had his bike parked on the street and it was only out of concern for same that he became embroiled in this incident!

B. Team Tickers

The footage - in real time (no offset) - is that of a child care centre which is situated a few metres to the left of Babylon Club. It offers a perfect vantage point from where one can see the actions of H, his close proximity throughout to Dudic who leaves the scene with him on foot - with no bike as Dudic claims!

File ending6050001.DAV

To the right hand of the screen the commotion caused by the aggression can be seen. 04:51 Henry is seen holding a large boulder behind his head as described above.

File ending6053043.DAV

05:00:00 - 05:00:27 H wearing a helmet can be seen at the back of the crowd but then goes straight into the thick of it beating someone who, from the Club's footage considered above, is clearly Temitope.

05:00:35 H removes helmet as he is in the middle of the street opposite the club. 05:00:36 H picks up an object on the pavement next to the club. 05:01:36 he crosses the road and, as he walks along the pavement, he is constantly looking down as one would when trying to look for something. 05:01:55 he bends down and picks something up until at 05:02:33 he leaves the scene on the bike wearing the helmet.

He returns without the helmet wearing a hoodie at 05:04:29 and until 05:05:43 remains on the opposite pavement facing the commotion. He crosses the road and is seen holding something in his hands behind his back. At 05:06:31-33 the object appears white and H goes next to where Henry is being restrained. At 05:07 he remains behind Temitope who at this time is holding to the rails of street furniture (an advertisement) just outside the club. The object he holds behind his back is visible at 05:07:52-59 and at 05:08:50 when Henry falls to the ground, he uses it to beat him. It is still in his hand at 05:09:01.

At 05:09:19 he walks towards the camera and places the elongated object which, as said, looks like a jagged piece of rock, on the outer wall of the centre's terrace. At this time (05:09:25) his face is fully visible, proceeding to walk and remain at Dudic's side. (05:09:48). He removes his hoodie (05:10) and returns to retrieve the rock (05:10:04) but Henry sees him and warns him to throw it away. During this time, even whilst standing outside the Club, his face is fully visible (05:10:46). He remains near Dudic and starts tending to his leg (05:12:09) so much so that he enters the club at 05:12:37. At 05:13:10 he hands Dudic a glass. Whilst Dudic is seeing to his leg, he holds Dudic's jacket.

At 05:14:44 exactly as the police car enters the street Dudic and H leave the club hastily. At 05:14:46 as the police car approaches H quickens his step and even overtakes Dudic, seemingly intent on not being on the scene when the police get there! Dudic removes his hoodie at 05:14:50 and keeps following H.

- It is this footage which clearly shows the extent of the involvement of H in the attack which took place. He clearly is oblivious to the presence of this camera since it is precisely in full view of the camera that not only does he feel safe enough to remove his hoodie, but can also be seen hiding and later retrieving parts of a stone (which evidently has been broken down) on the boundary wall of the child centre's terrace.
- H never leaves Dudic's side unless it is to plunge into action hitting and beating Temitope and Henry. In the footage it is Henry who follows him after seeing him pick part of a boulder and doesn't allow him out of sight until he disposes of it. H is seen tending to Dudic, pouring some liquid from a glass he gets from the Club apparently to disinfect the bitemark.
- This footage also gives particular insight into the relationship H had with Dudic and consequently of the great lengths that Stankov and the said Dudic would go to in a bid to protect this man's identity.
- An identity which, it must be pointed out, could have easily resulted had proper and more thorough investigations been carried out. Had the police studied and analysed the footage rather than displacing the investigations on to the court expert and this Court, they would have known what other footage could have been obtained such as that from inside the club when H goes in to fetch a glass of alcohol for Dudic.

It is evident that when a court expert is appointed, the police are duty bound to investigate in parallel. It is the investigating officers who possess the details of the offence, who have spoken to witnesses and who should assist the experts in the search for truth and not transfer their duties and responsibilities on to court experts and indeed the court who is left to assess for itself what is relevant and what is not! Had this been the case here, various stills could have proved pivotal and obviated the need for the Court to hours on end studying the footage itself.

Given that this case was subject to various renvoi by the Attorney General, it is hard to understand had the footage been viewed at least in a cursory manner that various were the eye witnesses. Yet not even the security guard employed with the same Club who plays an active role in trying to suppress the violence that ensued, was summoned to testify. It has already been remarked that the medical doctors who issued the certificates attesting to Henry's and Temitope's injuries were not summoned either.

Thus, defence's attempts, especially in their final submissions¹²⁶ and through the note presented as part of the said submissions, that the stranger on the motorbike was responsible for the beatings, fail. Indeed, defence's submissions are contradicted by the wealth of evidence provided by the footage which only corroborates Temitope's version of events. This man, H, clearly went to assist Dudic. Defence's submission - that the beating was done by a stranger who simply happened to be passing by, saw a fight and decided out of the goodness of his heart and at the cost of suffering injuries himself, decide to deal a few pinches and then drive off - is not rooted in common sense and finds no corroboration. The evidence in fact disproves it what at best can only be defined as a ludicrous argument which is insulting to anyone possessing an iota of common sense.

The fact that the defence, in its note, chose even to describe the exact make of the scooter (Honda PCX 125)¹²⁷ - when this was not part of the evidence tendered - given the darkness surrounding the area where H parks it, speaks volumes, contradicting and undermining the same line of defence that H was a stranger to all of the accused.

Indeed, this is effectively what happens when one is caught up in a web of lies, falsehoods and fantasy!

Considers,

The First Charges: Bodily Harm

In conclusion, after reviewing the said footage and having determined that Temitope is a credible witness upon whose testimony the Court can rely on without any hesitation, the court harbours no doubt that the injuries suffered by Temitope were the result of the fruitless and vicious aggression suffered at the accused's hands. Henry too, despite of his aggressiveness, is credible in so far as concerns Temitope's injuries and the beatings that caused them.

Although H, as claimed by learned defence counsel in their final submissions, played an active role in the beatings, this in no way can be a cause to exonerate the violence perpetrated by their clients. **The footage provides graphic evidence of all of the three accused's ferociousness, their brutality and uninhibited callousness.**

¹²⁶ Fol.328 et seq. Vide also **Doc.JD** a fol.333 et seq

¹²⁷ Note filed in Maltese on the 12th October, 2021 at fol. 337 et seq

There can be no doubt that Temitope's reluctance to leave the scene and his retaliation to the unwarranted and gratuitous initial aggression that spurred his taking to violence himself, occur once he has been already punched, kicked senseless to the ground on no less than three occasions. In fact, Dudic sees to his wound at 05:48:50. Temitope's first beatings occurred between 05:47 and 05:48:38 at Stankov's and Dudic's hands, whilst not forgetting that Stankov hit Temitope with the knife before even exiting the Club, so much so that Temitope's face was already bloodied when he exited the club (Stankov and Henry confirm this). When Temitope seeks to go towards Yermakov he is punched in the face by this accused, falls to the ground (05:49:35) and remains motionless until 05:50:16 (all times are footage times).

Temitope's refusal to leave the scene before receiving an explanation for this wanton attack, gave the accused just the pretext they needed to continue beating him; even at his frailest when sprawled on the ground due to the massive blows he was receiving from the various accused.

The Court could not but observe that it is **Dudic who throughout the onslaught, appears the keenest to beat Temitope.**

It serves the accused no purpose to claim that they acted in self-defence or out of provocation. The footage unmistakably undermines any such lines of defence and contradicts it completely. There is no shadow of doubt that **Temitope was beaten up by all three accused and H receiving the injury with the knife wielded by Stankov.** Temitope's modest stature was no match for any of the three accused, let alone for all of them including H and the security guard who showed true professionalism in his attempts to contain the incident.

The accused failed in proving, to the level required by them - that of probability - that they acted out of self-defence or only after being provoked. Temitope was provoking no-one. Before being beaten again for the last time, he is seen hanging on to a railing outside the club checking his mobile clearly posing no threat to the three accused!

Finally, the findings of the medical expert continue to corroborate Temitope's testimony.

The knife, and more importantly its blade, as drawn by Temitope and which he reiterates on several occasions that was used by **none other than Stankov** to inflict the wound on his forehead, is precisely **an instrument which was capable of inflicting the type of wound he suffered and which left him disfigured permanently.**

Dr. Mario Scerri testified that *“He alleged he was hit with a pen knife. He had an incised wound on the left side of the forehead. It was a clean wound with clean margins compatible with an incised wound inflicted by a sharp pointed instrument.... Then the haematoma on the right side of the temple region due to blunt trauma. These are injuries. One of them might remain permanently as a visible scar”*.¹²⁸ It was the Court itself which could ascertain that the scar was visible within talking distance. Yet the medical expert also confirms the Court’s conclusion when he stated: *“[the lesion] healed by the formation of a scar, a very slightly scar which appears prominently and it appears well within talking distance. This is a permanent mark on the face”*¹²⁹.

Consequently, the Court finds that the prosecution satisfactorily proved the first charge but only in so far as this relates to the injuries suffered by Temitope Akinribomu Olankunie. These injuries constitute injuries of a grievous nature in terms of article 218 of the Criminal Code, which provides:

218. (1) A grievous bodily harm is punishable with imprisonment for a term from five to ten years -

(b) if it causes any **serious and permanent disfigurement of the face**, neck, or either of the hands of the person injured;

(2) Any debility of the health or any functional debility of any organ of the body, and any mental infirmity, serious disfigurement, or defect shall be deemed to be **permanent** even when it is probably so.

Given that the learned defence counsel attempt to bring in H into the picture attributing the injuries suffered by Temitope to him and him alone, article 237 of the Criminal Code undermines and defeats that attempt and line of defence. The said provision states:

237. Where in an accidental affray a homicide or bodily harm is committed and it is not known who is the author thereof, each person who shall have taken an active part against the deceased or the person injured shall, on conviction, be liable –

..... (b) in the case of a grievous bodily harm producing the effects mentioned in article 218, to imprisonment for a term not exceeding one year;

(d) in the case of a slight bodily harm, to the punishments established for contraventions:..... .

In truth this provision is superfluous as there is no doubt as to who caused the injury which brought about Temitope’s permanent disfigurement.

¹²⁸ Fol.121

¹²⁹ Fol.237

Temitope never wavered and was consistent in identifying **Stepan Stankov as the man who hit him with a knife whilst he was on the staircase leading out of the club.**

Temitope sustained other injuries and together with **Stankov** also identifies both **Yermakov and Dudic as the persons who kicked and punched him.**

Dr. Scerri concludes that *“Then the haematoma on the right side of the temple region due to blunt trauma.”*¹³⁰ With regards to the other injuries suffered by Temitope the medical expert declares:

“...4 Illi l-lezjoni deskritta fuq il-parti tan-nofs tal-mohh kienet dbengila ta' kulur vjola u kompatibbli ma' blunt trauma;

*5. Illi l-lezjoni deskritta fuq il-periatal region tax-xellug kienet haematoma u kompatibbli ma' blunt trauma;...”*¹³¹.

In view of the foregoing and in terms of the said Article 237 of the Criminal Code, the accused are being found guilty of the offence of slight bodily harm in terms of Article 221 of the Criminal Code which is a lesser offence included in that of grievous bodily harm.

Given the reference being made to Article 237 of the Criminal Code, despite this provision not having being indicated amongst the articles of law cited by the Attorney General, jurisprudence has established that this presents no obstacle to a court in considering the said provision nonetheless. In the judgement **II-Pulizija vs Bernard Briffa u Stephen Catania**, the Court made the following considerations:¹³²

Illi fl-aggravvju imressaq ‘il quddiem mill-appellanti li jikkoncerna l-applikabbilita ta’l-artikolu 237 tal-Kodici Kriminali, jishaq illi fil-fehma tieghu l-Ewwel Qorti malament applikat dan l-artikolu tal-ligi li jitkellem dwar ir-rissa u li ma kienx gie indikat mill-Avukat Generali fin-nota ta’ rinviju ghal gudizzju. Illi jinghad minnufih illi din il-lanzanza ma tistax tigi akkolta. Dan ghaliex huwa mgħalllem fil-gurisprudenza illi:

“Meta ... 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 jiziedu reati li dwarhom ma tkunx saret il-kumpilazzjoni; l-Avukat Generali, naturalment, jista' jnaqqas reat jew reati u anke jzid skuzanti. Bhal fil-kaz

¹³⁰ Fol.121

¹³¹ Fol 132-133

¹³² Qorti tal-Appell Kriminali Per Onor. Imhalled Dr. Edwina Grima; Appell Nru. 195/2016; Dec. 31 ta' Mejju, 2017

tal-att ta' akkuza, jekk fin-nota ta' rinviju għall-gudizzju taht l-imsemmi Artikolu 370(3) l-Avukat Generali jakkuza 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.¹³³

Huwa pacifiku allura li meta l-Avukat Generali jibghat lura l-atti tal-kumpilazzjoni biex il-kaz jigi deciz mill-Qorti tal-Magistrati, l-unika haga li biha tkun vinkolata dik il-Qorti hija illi m'ghandhiex aktar tikkunsidra li mill-fatti tista' tislet xi reat iehor mhux indikat mill-Avukat Generali li hu ta' kompetenza tal-Qorti Kriminali. Il-Qorti tal-Magistrati izda tibqa' libera għal kull haga ohra. Kwindi ma hemm xejn x'josta lill-Ewwel Qorti gjaldarba saret kompetenti li tiddeciedi l-kawza illi issib htija għarreat tal-offiza gravi meta din tkun giet ikkagjonata f'rissa billi r-reat jibqa' l-istess u cioe' dik ta'l-offiza gravi u l-applikazzjoni ta'din id-disposizzjoni tal-ligi ma jbidel xejn minn natura tieghu b'dan illi fic-cirkostanzi hemmhekk indikati l-awtur jehel piena inqas. Dan l-aggravvju għalhekk ukoll qed jigi michud. [emfazi ta' dik il-Qorti]

The Second Charge: Attempt to Use Force

Although this offence has been satisfactorily proven, the Attorney General when indicating the articles of law on which this Court was asked to deliver judgement, did not indicate article 339(1)(d) of the Criminal Code.

As such the accused are being acquitted of this charge.

The court must also point out that whilst in the Maltese version the accused were also charged with the offence in terms of Article 339(1)(e) of the Code, this offence does not appear in the English version of the charge sheet.

The meticulousness with which charges should be issued and studied laboriously should never be overstated. This is a duty owed to society by those placed to protect it. Similarly, it is also the prosecuting authorities' duty not to charge persons with offences which are either left unproven or are unwarranted in the first place.

Charge no.5 re: Yermakov and Stankov. Cap. 389 Laws of Malta

Inspector Sarah Magri testified that Yermakov Mykhailo and Stepan Stankov never applied for a private guard licence.¹³⁴ Hence, Stankov and Yermakov were not licensed under the Private Guards and Community Officers Act, Chapter 389 of the Laws of Malta.

¹³³ **Il-Pulizija vs Michael Carter** Deciza 07/12/2001 App.Krim

¹³⁴ Fol 271-272

Yermakov himself confirms that he was working without a guard's licence "*I was without licence, its true, I was on probation period*".¹³⁵.

Considers,

Punishment

In its considerations on punishment, the Court took note of the serious nature of the offence of which the accused are being found guilty, in particular that of bodily harm. The intensity and ferociousness of the beating attests to the unsocial and uncivilised nature of the accused. It was expected that as security guards, the accused - especially Stankov and Yermakov who were employed with the same person who owned the club - once they chose to intervene, should have upheld the law whilst protecting patrons and the club. To that extent was their remit, no more, no less. There was no reason for them to gratuitously indulge in this generous beating simply because they deemed themselves entitled to unleash their animal instincts on another frail human being.

Dudic, a security guard working for Signal 8, manifestly was relishing the opportunity to get into a violent argument as his conduct manifests itself throughout the footage. He seized the moment as soon as he realised an altercation could be afoot and remained on the scene on standby waiting to unleash his brute fury and savagery on a defenceless person.

Now, although one may argue that had Temitope not remained outside the Club, had he not kept returning trying to confront the accused with justified indignation after sustaining the initial injury after Stankov decided to slash his forehead, the altercation could have fizzled out earlier and the outcome would have been different. Perhaps, it may be thought, had Temitope left immediately after sustaining the initial injury which left his face bloodied, his actions would not have continued to infuriate them; a fury which prodded them to beat Temitope uncontrollably! Arguments of such ilk are flawed, doomed to fail and have no prospect of militating in the accused's favour. Temitope remaining on the scene was the result of the grievous injury gratuitously caused by Stepan Stankov when he was still inside the Club. Stankov failed to prove - not even at the level of possibility - that his actions were caused by provocation or committed out of self-defence. And how could he when it is the same Stankov who admits, as evidence also shows, that he only assisted Yermakov in

¹³⁵ Fol.281

escorting the Africans outside and that it was Yermakov who at that time was inviting the Africans to leave. Moreover, Article 229(c) of the Criminal Code states:

229. The excuse referred to in article 227(c), shall not be admissible –

(c) where the offender has either sought provocation as a pretext to kill or to cause a serious injury to the person, or endeavoured to kill or to cause such serious injury before any provocation shall have taken place.

The first injury sustained was the laceration of Temitope's forehead at Stankov's hands, thus clearly this excuse does not apply!

The accused demonstrated that they cannot exercise self-control, have no respect for others especially the frail and the weak, and thus have no place in the community which is governed by laws designed to protect its members from the peril such individuals pose. Through their actions the accused demonstrated that they constitute a real threat to society. Society has no place for such individuals. Not until they have proven themselves to be well and truly rehabilitated.

Reference is made to the judgement by the Court of Criminal Appeal **Il-Pulizija vs Josef Camilleri**¹³⁶ wherein the court quoted from another judgement of the same Court differently presided **Il-Pulizija vs. Joseph Azzopardi** [30.7.2004]: -

“... bhala regola, meta si tratta ta' vjolenza fuq il-persuna il-piena ghandha tkun dejjem 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 zventrat mill-arroganza jew il-prepotenza li timmanifesta ruha f' xi forma ta' vjolenza fizika ”

Reference is also made to the decision **Il-Pulizija vs Francis Mamo**:¹³⁷

Fil-verita l-iskop tal-piena muhiex wiehed ta' tpattija. Huwa ben stabbilit li l-piena m'ghandhiex isservi bhala xi forma ta' vendikazzjoni tas-socjeta` fil-konfront tal-hati. Il-piena ghandha diversi skopijiet. Wiehed minnhom huwa sabiex jigi ripristinat it-tessut socjali li jkun gie mcarrat bil-ghemil kriminali ta' dak li jkun. Taht dan l-aspett jassumu importanza, fost affarijiet ohra, kemm ir-rizarciment tad-dannu da parti tal-hati kif ukoll ir-riforma tal-istess hati.

Skop iehor tal-piena huwa dak li tigi protetta s-socjeta`. Dan l-iskop jitwettaq kemm billi fil-kaz ta' persuni li b'ghemilhom juru li huma ta' minaccja ghas-socjeta` dawn jinzammu inkarcerati u ghalhekk barra mic-cirkolazzjoni, kif ukoll billi, fil-kaz ta' reati gravi, is-sentenza tibghat messagg

¹³⁶ Per Onor. Imhalled Joseph Galea Debono; Deciza 15 ta' Novembru, 2007; Appell Kriminali Numru. 268/2007

¹³⁷ Qorti tal-Magistrati (Malta) Bhala Qorti ta' Gudikatura Kriminali, per Onor. Magistrat Dr. Doreen Clarke, Dec. 14.02.2013; Kump. Nru.711/2008

car li jservi ta' deterrent generali. Il-Qrati ta' gustizzja kriminali dejjem iridu jippruvaw isibu l-bilanc gust bejn dawn u diversi skopijiet ohra tal-piena.¹³⁸

Illi huwa propju ghalhekk illi ghal kull reat il-Ligi ma tistipulax piena fissa imma tistipula minimu u massimu; jispetta lill-Qorti biex fid-diskrezzjoni taghha, u entro dawk il-parametri, teroga dik il-piena permezz ta' liema, skond ic-cirkostanzi ta' kull kaz, tipprova ssib dak il-bilanc gust bejn d-diversi skopijiet li ghandhom jintlahqu

Illi huwa car li l-imputat mhux persuna ta' kondotta vjolenti jew li ghandu bzonn ta' xi tip ta' riforma fil-karattru tieghu; dan pero ma jfissirx necessarjament li huwa m'ghandux jinghata piena karcerarja jekk hija din il-piena li tohloq dak il-bilanc gust bejn id-diversi skopijiet li jridu jintlahqu permezz taghha, inkluz dak li tibghat messagg car li jservi ta' deterrent.¹³⁹

Illi fil-kaz in ezami l-imputat m'ghandux l-iskuza ta' l-inesperjenza jew il-blugha taz-zghozija; huwa ragel adult u ta' certa esperjenza li pero ghazel li jinjora dak li din l-esperjenza bil-fors kienet ghallmitu;

Citing **Lord Justice Lawton**, the Court of Criminal Appeal encapsulated one of the guiding principles of sentencing:¹⁴⁰

Jinghad ukoll li, filwaqt li gudikant, fil-ghoti tal-piena (u dan mhux biss fil-kaz ta' jekk sentenza ta' prigunerija ghandhiex tigi sospiza o meno) ghandu jiehu kont talimpatt tar-reat fuq is-socjeta` u tar-reazzjoni tas-socjeta` ghal dak it-tip ta' reat (tali reazzjoni hija r-rifless ta' dak l-impatt) ,..... Kif qal Lord Justice Lawton fil-kawza **R v. Sargeant** [(1974) 60 Cr.App. R. 74.]:

“Society, through the courts, must show its abhorrence of particular types of crime, and the only way in which the courts can show this is by the sentences they pass. The courts do not have to reflect public opinion. On the other hand, they must not disregard it. Perhaps the main duty of the court is to lead public opinion.” [Emphasis by that Court]

The Criminal Court in its judgement in the Trial by Jury proceedings **Ir-Repubblika ta' Malta vs Victor Pace** stated:¹⁴¹

Dan it-tip ta' agir li, fortunatament f'dan il-kaz, ma kellux konsegwenzi aktar tragici, ma jista' jigi qatt kondonat mill-Qrati li ripetutament irritenew li “l-vjolenza ghandha, bhala regola generali, dejjem iggib maghha l-piena ta' prigunerija b'effett immedjat, aktar u aktar fejn jintuzaw armi” w li “mhuwiex inoltre tollerabbli li f'socjeta' civili persuna ggorr arma fuqha kontra l-ligi – hi x'inhil r-raguni.” (Ap. Krim. Ir-Repubblika ta' Malta vs. Noel Mizzi [15-12-2005] u ohrain). Ghalhekk l-insenjament tal-oghla Qorti fil-kamp penali huwa li f'dawn il-kazijiet m'ghandix tinghata sentenza ta' prigunerija sospiza imma wahda effettiva w immedjata.

¹³⁸ **Ir-Repubblika ta' Malta vs Rene sive Nazzareno Micallef**, Appell Kriminali, Dec. 28.11.2006.

¹³⁹ **Il-Pulizija vs Antoine Cassar**, Appell Kriminali, Dec. 22.09.2009.

¹⁴⁰ Per H.H. The Chief Justice Vincent Degaetano LL.D.; **Il-Pulizija vs Maurice Agius**; 13th November 2009; App No. 328/09

¹⁴¹ Mr. Justice Joseph Galea Debono; Sitting of the 25th January, 2006; Bill of Indictment No. 27/2003

The cited jurisprudence espouses the principle that violent individuals lose their right to continue to live amongst law-abiding members of the community. Society abhors such behaviour and has a right to ensure that violent and aggressive individuals are not allowed to roam uninhibited and with impunity our communities which should reflect a social fabric woven with civility and not threatened by criminal behaviour such as that of the accused. The Court is conscious of the fact that the accused's behaviour left an indelible scar not merely on Temitope's forehead, but the veiled scar which Temitope is forced to carry in his memory for the rest of his life, namely that he was an innocent victim of unknown individuals who "*...because you know that you can beat me that is why you do it...To beat someone because I cannot do anything.*"¹⁴²

It is for the Courts to voice society's abhorrence to the violence through the sentence it is now called to pass.

The Court could not disregard the fact that throughout these proceedings and notwithstanding the clarity of the accused's actions captured on the footage, the said accused never showed any remorse for their actions, nor compassion for the victim. The uncontrolled savagery of their actions demands that these men are taken out of circulation until society is assured of their rehabilitation.

Nonetheless, the Court in its considerations on punishment is factoring in the circumstance that undoubtedly Temitope's cited indignation would have proved irksome and a cause of frustration to the accused which left them exasperated. Yet by no stretch of the imagination could this be said to tantamount to a finding that Temitope provoked the accused.

Finally with regards to Stepan Stankov, who is being found guilty of having committed offences of both a grievous as well as of a slight nature, the principle of formal concurrence of punishments applies and consequently, the defendant is being sentenced only for the graver offence, that sanctioned through Article 218 of the Criminal Code.

Decide

In view of the foregoing, whilst acquitting all of the accused from the second charge, the Court:

¹⁴² Fol.85

- (i) With regards to **Stepan Stankov**, having seen articles 17, 31, 214, 217, 218(1)(b)(2),¹⁴³ 221 and 237 of the Criminal Code, Chapter 9 of the Laws of Malta and Articles 3 and 25(b) of the Private Guards and Community Officers Act, Chapter 389 of the Laws of Malta, finds the accused guilty of the first charge but only with regards to Temitope Akinribomu Olankunie and finds him also guilty of the last charge (no.5) and condemns him to a term of imprisonment of **five (5) years and four (4) months**;
- (ii) With regards to **Yermakov Mykhailo**, having seen articles 17, 31, 214, 221 and 237 of the Criminal Code, Chapter 9 of the Laws of Malta and Articles 3 and 25(b) of the Private Guards and Community Officers Act, Chapter 389 of the Laws of Malta, finds the accused guilty of the first charge but only with regards to Temitope Akinribomu Olankunie and only of slight bodily harm, and finds him also guilty of the last charge (no.5), and condemns him to imprisonment for a term of **one (1) year** and to a fine (*multa*) of two thousand and five hundred Euros (€2,500);
- (iii) With regards to **Dorde Dudic**, having seen articles 17, 31, 214, 221 and 237 of the Criminal Code, Chapter 9 of the Laws of Malta, finds the accused guilty of the first charge but only with regards to Temitope Akinribomu Olankunie and only of slight bodily harm and condemns him to imprisonment for a term of **eighteen (18) months**.

In terms of article 533 of the Criminal Code, condemns the accused to the payment of **€590.01 each** representing costs incurred in the employment in the proceedings of any expert or referee, including such experts as would have been appointed in the examination of the process verbal of the inquiry.

In terms of article 382A of Chapter IX of the Laws of Malta, the Court is issuing a restraining order against the accused in favour of Temitope Akinribomu Olankunie and Henry Onweabuchi¹⁴⁴ for a period of three (3) years.

Having seen article 15A of the Criminal Code orders the accused Stepan Stankov to the payment of **five thousand Euros (€5,000)** to Temitope Akinribomu Olankunie as compensation for injuries suffered.

The said order shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure.

¹⁴³ This offence carries a punishment of imprisonment for a term from five to ten years

¹⁴⁴ Given his status as eye witness

Moreover, the Court orders the Commissioner of Police to continue with their investigations in a bid to identify any third party, who could be liable to prosecution for the injuries sustained by Temitope Akinribomu Olankunie and Henry Onweabuchi.

To this end a copy of this judgement and a copy of the footage **Doc.JS¹⁴⁵** are to be sent to the Commissioner of Police.

The Court orders that a copy of this judgement and the testimony of Inspector Sarah Magri is sent to Jobsplus so that they may investigate any third party who could be liable to prosecution for offences under the Employment and Training Services Act, Chapter 594 of the Laws of Malta.

Finally, the Court recommends that once the accused have served their sentence, the Principal Immigration Officer exercises the powers vested in him *inter alia* by Articles 14 and 22 of the Immigration Act, Chapter 217 of the Laws of Malta.

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

¹⁴⁵ Fol.156