

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

**Magistrate Dr. Claire L. Stafrace Zammit B.A. LL.D.**

**The Police**

**[Inspector Trevor Micallef]**

**vs**

**Giacomo Farrugia**

**Duncan Fenech**

**Zoran Kutlic**

**Srdjan Tintor**

**Comp. Number: 1376/2010**

**Today, 20<sup>th</sup> May 2022**

**The Court;**

**Seen charges against the accused Giacomo Farrugia holder of  
Identity Card Number 607681(M);**

**Duncan Fenech holder of Identity Card Number 547174(M);**

**Zoran Kutlic holder of Serbjan Passport Number 007840692 and**

**Srdjan Tintor holder or Serbjan Passport Number 7502515 as they have been charged with having in these Islands, on the 12th October 2010, at about quarter past two in the morning (02:15a.m.), in St. George's Road, St. Julians and/or in the vicinity without the intent to kill or to put the life in manifest jeopardy, caused grievous bodily harm on the person of Jason Genovese.**

Accused them further for having on the same date, time, place and circumstances wilfully committed any spoil, damage or injury to or upon movable or immovable property 'spectacles' to the detriment of Jason Genovese which damage does not exceed the amount of Euro 116.47c but exceeds the amount of Euro 23.29c.

Accused them further for having on the same date, time, place and circumstances wilfully committed any spoil, damage or injury to or upon movable or immovable property 'chocker' to the detriment of Jason Genovese which damage does not exceed the amount of Euro 1,164.29c but exceeds the amount of Euro 116.47c.

Accused them further for having on the same date, time, place and circumstances committed theft of a choker to the detriment of Jason Genovese which theft is aggravated by 'violence', 'means', 'value' and 'time'.

Accused him further for having on the same date, time, place and circumstances took active part in an argument where Jason Genovese was injured.

Accused them further for having on the same date, time, place and circumstances provoked a tumult or an affray for the purpose of committing a bodily harm to the detriment of Jason Genovese.

Accused them further for having on the same date, time, place and circumstances wilfully disturbed the public peace and order.

Accused Zoran Kutlic and Srdjan Tintor alone for having on the same date, time, place and circumstances worked or were employed as private wardens without the necessary permits from the competent authorities.

Accused Duncan Fenech alone for rendering himself a recidivist by the Courts of Malta which sentences are definitive and cannot be changed.

The Court was kindly requested that if the accused are found guilty to provide for the safety of Jason Genovese according to article 383, Chapter 9 of the Criminal Law.

Heard examination of all the accused four (4) years after the filing of the charges whereby the accused pleaded not guilty to the charges brought against them;

Heard all the witnesses namely:-

Dr. Anna Maria Bonello who was the doctor who examined the aggrieved party Jason Genovese and who was the person who issued the medical certificat at folio 8 of the proceedings wherein she suspected a skull fracture and therefore issued it with grievous bodily harm. She confirms that Genovese was discharged from hospital the next day but was referred to ENT and Ophtalmic.

Jason Genovese on his part confirmed that on the date of the charges he went out to Paceville with two of his friends namely Daniela and Clinton. They went to a private club and they were seated on a sofa where they ordered a bottle of wine. He continued that he gave the waitress a forty Euro (€40). When the waitress got the wine, he offered to his friends. Soon after he decided to go and look for a girl that he had met the night before, so he rose from the sofa and went to look for her but didn't find her and then he decided to go and smoke a cigarette outside.

When he went back inside next to their table, he noticed that the change wasn't there and neither the wine bottle and therefore he asked the waitress what had happened to them. She replied that his friend had taken them and when he went outside to ask his friend, he replied that he would never do that. Then he went in with his friend to have some answers. Suddenly, he said that a Maltese person came out from behind the bar who was the Manager, but the witness couldn't recognise no one. He said that after arguing with this Manager two securities came which one, he could recognise as the accused Zoran Kutlic. These two securities grabbed him from his arms and started escorting him outside whilst the Manager was telling him that this was all for seventeen

Euros (€17) and that he could give them to him. Then he says that three (3) more securities came to help. The witness was not sure if the accused Duncan Fenech was the manager in question. He also vaguely recognised the accused Giacomo Farrugia as one of the securities in question where he said that he was the one who assaulted him outside. The witness also complained that the glasses which he was wearing was thrown out on the floor and consequently the lenses were broken.

The witness also explained that whilst he was on the last step going out, he tripped and there he was assaulted and to this effect his choker was broken. He confirmed that he couldn't state who was giving him the punches. He then said that the securities took him up the stairs and then they literally threw him. Then he said one of the securities came and lifted his shirt to show a bite which he was saying that Genovese did it for him and this security punched him in the right eye.

Under cross examination the witness confirmed that before they went to Paceville they were in Marsascala eating and drinking and then at one (1:00 am) in the morning they went to Paceville. He confirmed that he had consumed about eight (8) drinks in all. He

once again confirmed that he does not recognise totally the accused and if they had a role in the assault.

**PS 928 Ramon Mifsud Grech** testified that he was on patrol on the twelfth (12th) of October of the year two thousand and ten (2010) at Paceville during the night where around quarter past two in the morning (2:15 a.m.) outside Club Private in St. George's Street they saw a man lying beneath the pavement with blood coming out of his face and head. They tried to speak to the person, but he was unconscious and smelt of alcohol. The day after he confirmed that the victim was Jason Genovese who recalled to him that there was an argument regarding a bottle of wine in the said club. The role of the sargeant was to compile a police report (Dok RMGZ – fol 149).

**Jesmond Baldacchino** who is a jeweller confirmed on oath the value of the gold choker, which was allegedly broken, and which was worth two thousand and one hundred Euros (€2,100).

**Daniela Grixti** testified very concisely that on the night she was with the aggrieved party and there was an argument between Jason and

someone from the club. She did not identify any of the accused before the Court.

Clinton Attard also very concisely confirmed the wine bottle incident but again did not identify anyone. He confirmed that there was truly a commotion but did not give any details of who was involved or what actually happened.

The Court took note of the statements of the accused which were transcribed by Dr. Stephanie Abela duly appointed by the Court and are found at folios 202 et seq.

Having seen the note of renvoi of the Attorney General dated the ninth (9th) of February of the year two thousand and sixteen (2016) whereby the articles of the law whereby guilt is being sought and these are (fol. 247) but which were never read out to the accused and the latter never gave their consent that these proceedings be tried summarily and this in accordance with Article 370 (3)(b)(c) of Chapter 9 of the Laws of Malta:

WITH REGARDS TO GIACOMO FARRUGIA ONLY:



- a. Articles 214, 215 and 218 (1)(a)(2) of Chapter 9 of the Laws of Malta;
- b. Articles 325(1)(b) and (c) (prior to the entry into force of the amendments by virtue of Act XXIV of the year 2014) of Chapter 9 of the Laws of Malta;
- c. Articles 237(b) of Chapter 9 of the Laws of Malta;
- d. Articles 238(b) of Chapter 9 of the Laws of Malta;
- e. Article Article 338 (dd) of Chapter 9 of the Laws of Malta;
- f. Articles 382A, 383, 384, 386 and 412C of Chapter 9 of the Laws of Malta;
- g. Articles 23, 31 and 533 of Chapter 9 of the Laws of Malta;

WITH REGARDS TO DUNCAN FENECH ONLY:

- a. Articles 214, 215 and 218(1)(a)(2) of Chapter 9 of the Laws of Malta;
- b. Articles 325(1)(b) and (c) (prior to the entry into force of the amendments by virtue of Act XXIV of the year 2014) of Chapter 9 of the Laws of Malta;
- c. Article 237 (b) of Chapter 9 of the Laws of Malta;
- d. Article 238(b) of Chapter 9 of the Laws of Malta;
- e. Article 338(dd) of Chapter 9 of the Laws of Malta;

- f. Articles 49 and 50 of Chapter 9 of the Laws of Malta;
- g. Articles 382A, 383, 384, 386 and 412C of Chapter 9 of the Laws of Malta;
- h. Articles 23, 31, 49 and 50 and 533 of Chapter 9 of the Laws of Malta;

WITH REGARDS TO ZORAN KUTLIC ONLY:

- a. Articles 214, 215 and 218(1)(a)(2) of Chapter 9 of the Laws of Malta;
- b. Articles 325(1)(b) and (c) (prior to the entry into force of the amendments by virtue of Act XXIV of the year 2014) of Chapter 9 of the Laws of Malta;
- c. Article 237(b) and (2) of Chapter 9 of the Laws of Malta;
- d. Article 238(b) of Chapter 9 of the Laws of Malta;
- e. Article 338(dd) of Chapter 9 of the Laws of Malta;
- f. Articles 3, 6, 14, 22(2) and 25(b) of Chapter 389 of the Laws of Malta;
- g. Articles 382A, 383, 384, 386 and 412C of Chapter 9 of the Laws of Malta;
- h. Articles 23, 31 and 533 of Chapter 9 of the Laws of Malta;

WITH REGARDS TO SRDJAN TANTOR ONLY:

- a. Articles 214, 215 and 218(1)(a)(2) of Chapter 9 of the Laws of Malta;
- b. Articles 325(1)(b) and (c) (prior to the entry into force of the amendments by virtue of Act XXIV of the year 2014) of Chapter 9 of the Laws of Malta;
- c. Article 237(b) of Chapter 9 of the Laws of Malta;
- d. Article 238 of Chapter 9 of the Laws of Malta;
- e. Article 338(dd) of Chapter 9 of the Laws of Malta;
- f. Articles 3,6, 14, 22(2) and 25(b) of Chapter 389 of the Laws of Malta;
- g. Articles 382A, 383, 384, 386 and 412C of Chapter 9 of the Laws of Malta;
- h. Articles 23, 31 and 533 of Chapter 9 of the Laws of Malta.

The Court also heard witness Francis Camilleri who owns an optician shop in Valletta and confirmed that the spectacles of Mr. Genovese were repaired and the cost of such a repair amounted to one hundred and five Euros and sixty cents (€105.60c). However even though witness stated that he was confirming receipts, no receipts were found in the acts.

This Court heard evidence of defence after which it was exempted to hear evidence afresh due to change in presiding Magistrate.

The Court heard evidence of accused Giacomo Farrugia where he stated that he used to work at the Dragonara Casino and that the night of the alleged incident he went to Club Private since his girlfriend worked there. This was around eleven at night (11:00p.m.). He stated that on that evening whilst he was having a drink at the bar, he saw a commotion and one of the persons bit him under his arm as he came rushing towards him. Then instantaneously the accused pushed him to avoid other injuries. Before there were two persons who were holding Genovese who after biting accused moved swiftly towards the other door. Accused also stated that he was struck at the back by a sharp object but cannot say by whom. At the outside the commotion continued wherein these two people were trying to control the person. He stated that he didnt know twho these securities were.

The Court having seen verbal of Dr. Shazoo Ghaznavi for the accused Duncan Fenech dated the third (3rd) of December of the year two thousand and eighteen (2018) wherein he pleaded the

nullity of the acts in view of the fact that the terms of Article 401 (2) of Chapter 9 of the Laws of Malta were not complied with. He pleaded as well that a number of charges in respect of Duncan Fenech are time barred due to the fact that the incident took place on the twelfth (12th) of October of the year two thousand and ten (2010) and the accused was notified with the correct charges on the twenty first (21st) of October two thousand and fourteen (2014).

**Duncan Fenech** the accused gave evidence on oath and confirmed that on that night he was chatting in the club in which he is one of the directors with some friends and all of a sudden he heard a loud bang of a door where a man came rushing in and went to talk to the waitress. He decided to go see if he needed help and this person starting verbally assaulting him. He stated that he showed clear signs that he was drunk. The waitress then informed him about the incident of the wine bottle. He then told him to come behind him so that they can speak outside quietly. During this period the person continued uttering words and saying that he wanted the money from the cash and not from accused. Outside two people from security came to assist but they could not understand what was happening as they were not Maltese. These

were the other two accused Zoran Kutlic and Sedjan Tinter. The accused recounted the tiff between the other accused Giacomo Farrugia and the aggrieved party and stated that he tried to go between them to stop the fight. The witness explains and describes the scene as a “mess”. However as far as this witness is concerned the incident stopped when the aggrieved party and Giacomo Farrugia were outside since he had to go inside to see to the broken door.

The accused Sedjan Tintor was next to give evidence and he confirmed that he used to work at the club by the name of Private at the time of the incident and it was his first night working there. He was duty outside when he saw the other accused Zoran talking to a male person who was very agitated and looked like drunk. He said that this person went downstairs in the club and him and Zoran followed him. There he started talking to the manager Duncan and a scuffle ensued between them. So, they decided to escort him out and before the exit there is a small space where there were a few people and a fight started there between the agitated person and some unidentified people and this person ended up on the floor. Then someone helped the witness escort him out of the club. The witness said that the person seemed more

drunk than beaten up and that he didn't see any visible signs of bruising when he took him out from the club. The witness confirmed that Giacomo showed him the bite mark in his rib area. The witness said that after escorting him out from the club he didn't see this man again that night and for him the incident ended.

The last accused Zoran Kutlic testified that on the night of the incident he was outside and out of three people there was a man who came shouting at him in Maltese and he told him that he was not understanding what he was saying. Then this man went downstairs, and he followed him where he saw him shouting at Duncan the manager and when this person approached the small reception area where there were a few people a fight ensued in between this crowd. The accused said that this person looked visibly drunk and was swinging his arms about.

The Court heard all submissions by the parties which were done orally and in writing.

HAVING SEEN that it transpires from the acts of the proceedings that after the second examination of the accused in front of the first Magistrate wherein it was decided that the proceedings were

to be conducted in the English language even though two of the accused do not understand the English language and therefore proceedings had to be conducted in the Maltese language after that a translator from English to Maltese had to be appointed, the former Magistrate did not deliver a decree *prima facie* under Article 401 (2) of Chapter 9 of the Laws of Malta. This in fact states that:

*“On the conclusion of the inquiry, the court shall decide whether there are or not sufficient grounds for committing the accused for trial on indictment. In the first case, the court shall commit the accused for trial by the Criminal Court, and, in the second case, it shall order his discharge.”*

The wording of the law here is very clear that it makes it mandatory for the Court to either give a decree *prima facie* or else discharge the accused. It is clear that in this case this did not happen and therefore all that came after is vitiated and consequently is null and void. This is being said also in view of the fact that the Attorney General for some reason did not notice this



procedural defect and therefore did not attract the attention of the Magistrate presiding the Inquiry at the time.

Another procedural defect which was also pointed out earlier in this judgment was that the former Magistrate never read out the note of the Attorney General regarding the Articles of the Law under which the accused could have been found guilty and in turn the accused were never given the possibility to give their consent that these proceedings be tried summarily. This defect also leads to nullity of the proceedings against the accused.

It is also to be pointed out that all the accused, at the time of their statement in the year two thousand and ten (2010) were not given the right to have a lawyer present with them and therefore this in itself is contrary to various judgments that were given on the matter. In particular the judgment of **Aldo Pistella** was duly delivered on the fourteenth (14th) of December of the year two thousand and eighteen (2018) by the Constitutional Court in favour of the accused in that the statement therein given by him was deemed to be inadmissible.

Furthermore in the judgment of the Court of Appeal (App. No. 333/2018 CSH) decided on the 15th January 2019 in the names **Il-Pulizija v. Nicholas Dimech** it was decided after quoting various judgments from the European Court of Human Rights that substantially the right of a fair hearing of the accused was prejudiced by the simple fact that the accused did not have a right of access to a lawyer. This right even applies when for example the accused waives his right to even speak to a lawyer in pre-trial stage and even when he pleads guilty to the charge. This right is closely connected to the right that the accused has to have full disclosure of all facts and evidence by the prosecution. In this manner all rights are being protected without the possibility of any arising problems in the future at trial stage and which problems would definitely prejudice the outcome of the proceedings.

This Court agrees perfectly with the above reasoning and reiterates that since the introduction to the above rights in our legal system and since it is deemed to be a fundamental human right of the accused to have a right to consult a lawyer and access to a lawyer, this right is either given *in toto* or nothing. It cannot surely be given in a piecemeal fashion.

In this regard reference is made to the judgment delivered by the Court of Appeal in the case **Il-Pulizija Spettur Dennis Theuma Spettur Spiridione Zammit Vs Claire Farrugia** decided on the 20th of November 2018 (Appeal Number: 259/2018) whereby it was said:

*“Il-kliem uzati f’dik it-twissija hija 'int ghazilt li ma tixtieqx tikkonsulta jew tigi assistit', ma jirrizultax jekk il-kliem 'tigi assistit' jirreferix ghal qabel l-istqarrija jew matul. Madankollu tenut kont tal-fatt li l-ligi fiz-zmien li l-appellanta ghamlet iz-zewg stqarrijiet ma kinitx tiprovdi d-dritt li tkun assistita waqt it-tehid tal-istqarrija jikkonferma li l-kliem 'tigi assistit' f’dik it-twissija qieghed jirreferi ghal qabel l-ghoti tal-istqarrija. Din il-Qorti tikkunsidra wkoll li l-fatt li l-appellanta irrifjutat id-dritt li tikkonsulta ma Avukat qabel l-istqarrija kif kellha kull dritt li taghmel, ma jfissirx li hi kienet ser tirrorifjuta li tkun assistita matul l-interrogazzjonijiet li kieku kellha d-dritt. Ghalhekk din il-Qorti, kuntrarjament ghal dak li stqar l-Avukat Generali fin-nota tieghu ma tistax tintepreta' r-rinunzja tal-appellanta milli tikkonsulta ma' Avukat*

*qabel it-tehid tal-istqarrija bhala rinunzja tacita ghad-dritt li jkun hemm prezenza ta' Avukat waqt it-tehid tal-istqarrijiet u dan stante li fiz-zmien tat-tehid tal-istqarrijiet, il-ligi ma kinitx tipprovdi ghal dan id-dritt u ghalhekk l-appellanta ma kellha l-ebda ghazla x'taghamel rigwardanti l-prezenza o meno ta' Avukat waqt l- interrogatorju.*

*Tenut kont ta' dan, din il-Qorti sabiex ma jigux lezi d-drittijiet tal-appellanta sejra tiskarta iz-zewg stqarrijiet maghmulha mill-appellanta u tiddikjarahom inammissibli."*

However, it is to be pointed out that it is true that a statement which does not follow the above guidelines has to be discarded by the Court if it tends to incriminate the accused, the contrary is not the case. If a statement given whereby the accused did not have his lawyer present is given and is subsequently confirmed by the said accused in his testimony in Court under oath, then such statement is not to be discarded.

That as regards the merits of the case and without prejudice to the nullity of the proceedings as stated earlier, and after having seen the note of renvoi of the Attorney General dated the ninth (9th) of February of the year two thousand and sixteen (2016) will not go into detail of each charge but instead some observations are being made namely:-

- a) The evidence of the aggrieved party Jason Genovese was not credible at all and this due to the fact that in the first place it was not corroborated by the evidence of his friends who were present at the night of the incident and secondly due to the fact that it was the same Genovese who was drunk at the time of the incident as stated by all the accused and therefore it is more credible that he started all the argument. The accused's versions were all consistent from their statements to their testimony in front of the court and the prosecution did not manage to prove that they are guilty of any injuries or damage to any property of Genovese;
  
- b) As regards the injuries the Attorney General is accusing him under Article 218 of Chapter 9 of the Laws of Malta and this referring to grievous injuries of a permanent nature. From the

evidence it transpires that Genovese was not kept in hospital for a long time and that nowadays his injuries are gone, and he does not suffer any longer from such injuries. To add insult to injury, the Attorney General never asked the Court to appoint an expert to determine the nature of the injuries and therefore even these are not proven;

c) As regards the voluntary damages the Court heard the testimony of a jeweller to confirm the value of a necklace and that of an optician to confirm the value of repairs to a pair of spectacles but nowhere are the two confronted with pictures of these objects and nowhere in these acts we find the pictures of these objects allegedly damaged. Therefore, even this charge was not proven beyond reasonable doubt;

d) As regards the charge of affray under Article 237 of Chapter 9 of the Laws of Malta it is to be said that from the act of the case it transpired that the cause of the affray was not from the accused but from the aggrieved party himself and therefore the said accused cannot be considered guilty of something which other people have been involved in;

e) As regards the charges by which the accused Zoran Kutlic and Srdjan Tantor are accused that is under Chapter 389 of the Laws of Malta it is to be stated that since these were notified of these charges four (4) years after the alleged incident and since these charges establish a punishment to a fine (*multa*) not exceeding four thousand and six hundred and fifty-eight Euro and seventy-five cents (€4,658.75c) and to imprisonment or a term not exceeding six months or to both such fine and imprisonment which impose impose a prescriptive period of two (2) years as established by Article 688 of Chapter 9 of the Laws of Malta which states *inter alia*:

*“Save as otherwise provided by law, criminal action is barred*

–

*(e) by the lapse of two years in respect of crimes liable to imprisonment for a term of less than one year, or to a fine (multa) or to the punishments established for contraventions; . . . “*

Therefore, it is clear that even these charges are not proven and the same applies to the charges relating to contraventions since these impose a prescriptive period of three (3) months from date of incident;

- f) Finally, as regards the charge sheet specifically in relation to the accused Duncan Fenech there is a mistake in his date of birth in that he cannot have been born in the year two thousand and ten (2010) and as such this mistake was never corrected.

Therefore, in view of the above, since none of the charges against the four accused have been proven they have to be acquitted and the charges of recidivism follow suit (note that no judgments were found in the acts referring to the charged of recidivism).

Therefore, the Court is not finding the accused **Giacomo Farrugia, Duncan Fenech, Srdjan Tintor and Zoran Kutlic** not guilty of all the charges brought against them and consequently acquits them from all of the charges.

---

**Ft./Dr. Claire L. Stafrace Zammit B.A. LL.D.**  
**Magistrate**

**Benamina Mifsud**  
**Deputy Registrar**