



CRIMINAL COURT

Hon. Madame Justice Dr. Consuelo-Pilar Scerri Herrera LL.D.

Bill of Indictment Nr. 7/2022

THE REPUBLIC OF MALTA

vs

Viktor Dragomanski

Today the 6th of September, 2022

The Court,

Having seen the bill of indictment number seven (7) of the year two thousand and twenty-two (2022) brought against Viktor Dragomanski holder of Residency Permit number 187641A. **Wherein the Attorney General in the first count of the bill of indictment premised:**

Whereas on the eighteenth (18th) of August of the year two thousand and twenty (2020) at about half past ten in the evening (22:30 hrs / 10:30pm), the Homicide Squad within the Malta Police Headquarters was informed through the Police Control Room that a shooting incident had occurred at the address '22, Locker Street, Sliema'. At that point in time, the information was that three (3) male persons had allegedly been seen entering the aforementioned residence and, subsequently to that fact, gunshots were heard inside the concerned residence.

Immediately after these gunshots were heard, the three (3) male persons were allegedly seen leaving the area in a white vehicle, with a license plate 'JET 082';

Whereas officers from various branches of the Malta Police Force reported immediately at the address, whereby from a preliminary stage of the investigation it resulted that the tenants of the residence, Christian PANDOLFINO and Ivor Piotr MACIEJOWSKI, were shot dead inside same residence. Christian PANDOLFINO was found lying on the floor, at the entrance of said residence in the ground floor, whilst Ivor Piotr MACIEJOWSKI was found lying dead near the stairs between the ground floor and the first floor level of the residence. At that stage it was also noted that the victims have had jewellery snatched from their physical persons, as there were other parts of such jewellery scattered near and around the bodies. Even at that stage, the evidence was indicating that the crime in question was of that of an armed robbery which for some reason escalated into a double homicide;

Whereas further investigations discovered that the main door of the residence had visible marks of a recent break-in, suggesting that the perpetrators had gained access to the residence by forcing the door open. Preliminary evidence indicated that once inside, the perpetrators must have somehow immediately encountered Christian PANDOLFINO near the entrance, who was then shot five (5) times. It appeared that the perpetrators then proceeded upstairs and shot MACIEJOWSKI dead with a single (1) shot close to the forehead. From the available evidence at that stage, it seemed that MACIEJOWSKI was rushing to proceed downstairs after hearing the commotion (including the gunfire aimed at Christian PANDOLFINO) and ended up getting shot by the perpetrators;

Whereas the investigators proceeded to interview various neighbors and witnesses who were in the area at the time, and it was further established that

two (2) males were seen proceeding to the targeted residence and gaining entry, and soon afterwards gunfire was heard. Momentarily afterwards, one (1) of the perpetrators was seen proceeding outside again, and approached the car from where a third (3rd) male looking person came out and accompanied him directly back inside the targeted residence that was being robbed. After some time, all three (3) persons were seen leaving together, one (1) of them carrying what looked like being a brown bag, towards the same white vehicle in which they had arrived with on the scene. One of such witnessed further stated that he came out of his residence after hearing gunfire and noticed the three (3) men leaving in a white vehicle. At that stage, the information investigators had was that this vehicle was likely to be some sort of *Volkswagen* crossover, with the registration number 'JET 082', and this vehicle was seen leaving the crime scene through Tighe Street, Sliema;

Whereas a criminal inquiry was immediately opened and various experts were appointed for the preservation and examination of evidence. It was determined at an early stage that the cartridges possibly used by the concerned firearms were of nine millimeter (9mm) calibre and possibly compatible the ammunition that is used for a *Glock* semi-automatic pistol. After the forensic experts concluded their preliminary inquires, the investigators and other court-appointed experts proceeded inside the house in search of the CCTV recording system, which was located and preserved for further analysis.

Whereas upon permission of the inquiring magistrate, the investigators spoke to the court appointed expert in regards to the CCTV footage whereby the investigators were informed that the footage showed Christian PANDOLFINO, returning home on his quadbike at ten (10) minutes past ten in the evening (22:10hrs). The suspect white vehicle was observed on the CCTV footage scouting the area, stopping at upper Locker Street, some eighty (80) meters from the

targeted residence. A tall male person, followed by a shorter and stocky male, wearing distinguishable clothing, proceeding from the white suspect vehicle and entering the targeted residence. After a while, the stocky person with the distinguishable clothing, was observed coming out and walking towards the suspect vehicle and proceeding to the targeted residence again together with the third (3rd) suspect. Then all three (3) suspects were recorded leaving together, one of them holding a small bag and fleeing in the said white suspect vehicle towards Tigne Street;

Whereas from further enquires it resulted that registration number plates 'JET 082' were reported to having been stolen on the third (3rd) of August of the same year two thousand and twenty (2020) from a parking area in St. Julian's from a vehicle of the make *Seat Cordoba*. With the assistance of other authorities, the investigators were informed that on the fourteenth (14th) of August of the same year two thousand and twenty (2020), the said number plates 'JET 082' were recorded on a vehicle of the make *Peugeot 107*. It was established that after the homicidal armed robbery, the white suspect vehicle proceeded through the localities of Sliema, Kappara, Santa Venera, Msida and Pieta, arriving at the final destination minutes after the concerned incident;

Whereas on the twentieth (20th) day of August of the same year two thousand and twenty (2020) a white *Volkswagen Tiguan* in the parking area situated in Pieta, in the vicinity of St. Luke's Hospital, was located by a CID patrol. At the time of this discovery, this *Volkswagen Tiguan* (that looked closely identical of the suspect white vehicle, even by certain features and marks of the particular model) had license plates 'CCB 042'. According to the available information at that time, these particular licence plates had also been reported as stolen. The same forensic team as appointed by the Inquiring Magistrate were called on site where the *Volkswagen Tiguan* was discovered and a search was executed on said vehicle.

From this search, a brown female handbag was discovered, containing, amongst others, several items connected with Paula PANDOLFINO, who happens to be the sister of the aforementioned victim Christian PANDOLFINO, as well as other items similar to items which were noticed in the residence where the homicidal incident occurred;

Whereas most significantly, the licence plates 'JET 082' which were used during the commission of the homicide were found folded in said vehicle, further confirming that this was the same *Volkswagen Tiguan* that was used in the homicidal armed robbery. Furthermore, several items were found inside the back storage of the vehicle. These items consisted of wigs, clothes, masks, gloves and realistic firearm imitations that at stage were deemed to have been procured or used for the purposes of the armed robbery. Consequently, all these above mentioned items were preserved and the vehicle was taken into custody for further forensic examination.

Whereas from examination of further CCTV footages obtained from the parking area where the abovementioned Volkswagen Tiguan was found by the Police, it was observed that on the night of the homicidal armed robbery no cars came out of the said parking area for a long time but eventually three (3) persons fitting the description as those seen on the CCTV in the area where the armed robbery occurred, were observed. A trail of CCTV footage from different cameras was followed and examined by the investigators, where the same three (3) persons were practically followed via CCTV footage up to the bus stop in Marina Street, Msida. Eventually, these three (3) persons were observed via CCTV footage stopping at the bus stop in said Marina Street. At that stage, it was closely observed that one (1) of these three (3) persons had an elbow support sleeve;

Whereas further enquiries lead to police intelligence that a certain person who fitted closely the physical description of the tall person seen in the CCTV footage was observed in a different location two (2) days before the incident wearing an elbow support sleeve and driving a *Peugeot 106* identical to the one ascertained in data provided to the investigators by other governmental authorities. This gave the investigators a strong hypothesis that this person must be further closely investigated. At that stage, the other two (2) perpetrators could not be fully identified, although investigators took careful note of the clothes they were observed wearing in the CCTV footage being investigated;

Whereas further enquiries and intelligence gathering lead to the pinpointing of the aforementioned 'tall' perpetrator's cell phone in the area where the double homicide occurred, on that same night when such incident occurred. Further intelligence revealed that this person also missed a regular appointment with the Maltese authorities one (1) day after the double homicide, which caught the investigators' attention. Upon examinations of evidence lifted from the seized *Volkswagen Tiguan*, it was strongly indicated that said 'tall' perpetrator was using the concerned suspect vehicle;

Whereas on the basis of all the above and further facts established in the course of the investigation, the investigators obtained a warrant for arrest of the identified 'tall' perpetrator, who was eventually traced and arrested in a residence in Floriana on the twenty fifth (25th) of August of the same year two thousand and twenty (2020). This happened to be of a different address than that he was declaring to the concerned authorities. During the raid, arresting officers also managed to seize a semi-automatic pistol of the make *Glock* loaded with eleven (11) live bullets. Whilst a search was conducted in the residence and on this co-perpetrator's person, jewellery belonging to one of the victims of the

homicidal robbery was found, and it was notably visible that the sole of the 'tall' perpetrator's shoe had previously yet recently stepped on blood;

Whereas following further investigations, which included information given by the 'tall' suspect who was taken into custody, lead to the identification of one of the co-perpetrators, who was identified as Macedonian national Viktor DRAGOMANSKI, allegedly living in Sliema.

Whereas on the twenty seventh (27th) of August of the year two thousand and twenty (2020), the investigators conducted searches in Sliema for the suspect perpetrator Viktor DRAGOMANSKI, and after acquiring his cell phone number, live cell phone localisation was applied and Viktor DRAGOMANSKI's location at that time was pinpointed to be in the locality of Gżira, precisely in the *Blu Bay Hotel*, in Gżira. Following this information, the Police conducted a raid and search in this hotel, whereby during this raid Viktor DRAGOMANSKI was in fact sighted and pursued. During such pursuit, there was a point where Viktor DRAGOMANSKI jumped from two (2) storeys high to the street, in order to evade arrest, however he was eventually subdued and arrested;

Whereas after being arrested, informed of the reasons for his arrest, and informed of all applicable rights in accordance with the law, Viktor DRAGOMANSKI voluntarily expressed his anger at the whole situation in front of his arresting officers, claimed that he was lured into this whole situation, that the killing of those two (2) men Christian PANDOLFINO and Ivor Piotr MACIEJOWSKI was not desired by him, and declared his willingness to speak freely with the investigators. Viktor DRAGOMANSKI explained that on the day of the incident, he was approached by the one identified as the 'tall' perpetrator (who coincidentally at that time was driving a white Volkswagen Tiguan) and another person (precisely the other co-perpetrator) who asked him to join them on a

particular 'job'. Viktor DRAGOMANSKI accepted and joined these two (2) persons, however soon realised that there was no clear plan on how to execute the 'job', however upon reaching Locker Street in Sliema, the 'tall' perpetrator informed him of the intended robbery and pinpointed the targeted residence. Viktor DRAGOMANSKI also claimed that as soon as the 'tall' perpetrator stepped out of the car, he could see that he was in possession of a firearm, and warned him to exercise caution and not use the firearm in vain.

Whereas Viktor DRAGOMANSKI explained to the investigators that the two other perpetrators proceeded to the targeted residence, and whilst he was in the car, he heard gunfire. Momentarily afterwards, one of the perpetrators, the one identified by the investigators as having a stocky build, came out of the targeted residence and proceeded to fetch Viktor DRAGOMANSKI and asked him to go with him in the targeted residence. Viktor DRAGOMANSKI followed immediately, without protest, and as soon as he entered the targeted residence, he first noticed the body of one of the victims, Christian PANDOLFINO, and moments after, the body of the other victim Ivor Piotr MACIEJOWSKI. When one of the perpetrators declared that the 'job' is done and they should leave, they all left the residence upon such instruction and fled from the area;

Whereas furthermore Viktor DRAGOMANSKI confirmed with the investigators that they, the perpetrators, drove off from the area and eventually parked in that very place where the vehicle was eventually found by the investigators. Once parked they changed some of the clothes they were wearing whilst committing the homicidal robbery, and Viktor DRAGOMANSKI helped one of the perpetrators to change the number plates from those 'JET 082' to those 'CCB 042'. As soon as they were done, they then proceeded on foot towards the Msida waterfront where the aforementioned bus stop was mentioned in the course of

the investigations, whereby they eventually ordered a taxi and were transported to Viktor DRAGOMANSKI's abode in Sliema;

Whereas Viktor DRAGOMANSKI gave full access of his cellphone to the investigators, which enabled the identification of the third perpetrator of the stocky build who at the time was still at large. Viktor DRAGOMANSKI remained consistent in his version, and on the twenty-seventh (27th) of August of the same year two thousand and twenty (2020), Viktor DRAGOMANSKI gave three (3) audiovisual statements where it was ascertained that the 'tall' perpetrator was driving the vehicle, Viktor DRAGOMANSKI had stayed in the car whilst the gunfire was occurring in the targeted residence, and the first two (2) perpetrators to enter the targeted residence where those who had initially approached Viktor DRAGOMANSKI to assist them in this particular homicidal robbery, and when Viktor DRAGOMANSKI entered the residence with one of the co-perpetrators, at that stage the victims were already neutralized;

Whereas Viktor DRAGOMANSKI also confirmed with the investigators that the 'tall' perpetrator made use of the same wig that was found by the investigators whilst searching the aforementioned Volkswagen Tiguan, and when shown pictures of the realistic firearm replicas that were found in the said vehicle, he also confirmed to know about those. Viktor DRAGOMANSKI also confirmed that he was promised money by the 'tall' perpetrator, and although he received a sum of over three hundred euros (€300), and was due to receive more amounts however the remainder never arrived;

Whereas in consideration of all the above, it became abundantly clear that Viktor DRAGOMANSKI consciously and intentionally involved himself as an accomplice in the homicide of Christian PANDOLFINO and Ivor Piotr MACIEJOWSKI, and he did so:

- i. By joining said co-perpetrators, once approached, to participate in an unlawful 'job', therefore increasing not only their manpower but by extension also their general volition to make their way towards the targeted residence for their nefarious purposes;
- ii. By failing to desist from taking part in the unlawful activity even when becoming aware of the presence and possible use of firearms for the execution of the so called 'job';
- iii. By failing to desert such an unlawful operation even when becoming aware that gunshots were fired and that things could have possibly taken a seriously ugly turn, being the same gunshots that killed Christian PANDOLFINO and Ivor Piotr MACIEJOWSKI;
- iv. By following one of the co-perpetrators back inside the targeted residence where the double homicide occurred, when asked to do so, and this after Viktor DRAGOMANSKI had heard the gunshots;
- v. By leaving the crime scene and subsequently fleeing the area together with the other co-perpetrators, and this also when instructed to by one of the co-perpetrators, ;
- vi. By assisting a co-perpetrator in necessary procedures to disguise evidence and any *corpus delicti* such as the getaway vehicle of the make *Volkswagen Tiguan*;
- vii. By accepting partial remuneration for his trouble and participation in the homicidal 'job', with the promise of receiving more payments in due course, and

by doing his very utmost to evade arrest (risking his own life and health during such evasion);

Therefore, with his own actions, the accused **Viktor DRAGOMANSKI** is guilty of complicity in a crime, specifically wilful homicide, by knowingly aiding or abetting the perpetrator/s of the crime in the acts by means of which the crime is prepared or completed, by strengthening the determination of the other perpetrators to committ the relative crimes and/or by promising to give assistance, meaning that on the eighteenth (18) of August of the year twenty-twenty (2020), in Sliema, Malta, rendered himself as an accomplice in the killing or to putting the lives of Christian PANDOLFINO and Ivor Piotr MACIEJOWSKI in manifest jeopardy, by strengthening the determination of another to cause the death of the same Christian PANDOLFINO and Ivor Piotr MACIEJOWSKI;

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, reasoning and facts which have already been mentioned above in this bill of indictment, accuses the mentioned **Viktor DRAGOMANSKI**, guilty of complicity in wilful homicide, that is on the eighteenth (18) of August of the year twenty-twenty (2020), in Sliema, Malta, maliciously, with intent to kill or to put the lives of Christian PANDOLFINO and Ivor Piotr MACIEJOWSKI in manifest jeopardy, by knowingly aiding or abetting the perpetrator/s of the crime in the acts by means of which the crime is prepared or completed, by strengthening the determination of the other perpetrators to committ the relative crimes and/or by promising to give assistance, caused the death of the same Christian Pandolfino and Ivor Piotr Maciejowski and/or put the lives of Christian PANDOLFINO and Ivor Piotr MACIEJOWSKI in manifest jeopardy;

As a consequence of the above, the Attorney General is requesting that the aforementioned **Daniel MUKA** is, according to the law, **sentenced to life imprisonment** in accordance with the content of articles **17, 31, 42(d)(e), 211 and 533 of the Criminal Code**, Chapter 9 of the Laws of Malta, or for any other sentence according to law that can be given to the aforementioned accused.

Wherein the Attorney General in the second count of the bill of indictment premised:

Whereas owing to the nature of the circumstances which took place on the eighteenth (18th) of August of the year two thousand and twenty (2020) and in the subsequent days afterwards, as indicated in the First (I) Count of this Bill of Indictment, it clearly resulted that Viktor DRAGOMANSKI involved himself and participated in what turned out to be a homicidal armed robbery at the targeted residence in the address '22, Locker Street, Sliema', and made off with an amount of jewellery together with the other co-perpetrators..

Whereas in the course of investigations, it resulted that Viktor DRAGOMANSKI participated in the theft of the concerned jewellery which involved the external breaking into a dwelling-place whilst accompanied by two (2) other persons, doing so whilst being armed and making use of a disguise of garment and/or appearance and of masks, and such theft eventually leading to the homicide of two (2) other persons.

Whereas Viktor DRAGOMANSKI confirmed with the investigators that he did not desert his co-perpetrators as soon as the robbery commenced, notwithstanding that he was hearing gunfire, and when requested by a co-perpetrator, he followed one of the co-perpetrators back inside the targeted residence after the gunfire, and also left the crime scene and the surrounding area

with the other co-perpetrators. He received monetary payment for his involvement.

Whereas the total value of the amount of jewellery stolen from the targeted residence where the homicidal robbery took place was confirmed at a subsequent stage of the investigation that it exceeded the amount of two thousand and three hundred and twenty-nine euros and thirty-seven cents (€2,329.37). This theft took place at a time after ten o' clock in the evening (22:00 hrs / 10 pm) during August in Malta, therefore occurring at night, that is to say between sunset and sunrise.

Therefore, with this own actions, **Viktor DRAGOMANSKI** is guilty for having, on the same date, during the same time, at the same place, and in the same circumstances as those explained in the previous First (I) Count and this Count, committed theft of jewellery and/or other items, which theft was accompanied with wilful homicide hence therefore aggravated by 'Violence', and also aggravated by 'Means', by 'Amount' that exceeds the amount of two thousand and three hundred and twenty-nine euros and thirty-seven cents (€2,329.37), by 'Place' and by 'Time' to the detriment of Christian PANDOLFINO, Ivor Piotr MACIEJOWSKI and/or other persons and/or entity or entities.

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, reasoning and facts which have already been mentioned above in this Bill of Indictment, accuses the mentioned **Viktor DRAGOMANSKI**, guilty for having on the eighteenth (18) of August of the year twenty-twenty (2020), in Sliema, Malta, committed theft of jewellery and/or other items, which theft was accompanied with wilful homicide hence therefore aggravated by 'Violence', and also aggravated by 'Means', by 'Amount' that exceeds the amount of two thousand and three hundred and twenty-nine euros and thirty-seven cents (€2,329.37), by 'Place' and by 'Time' to the detriment of

Christian PANDOLFINO, Ivor Piotr MACIEJOWSKI and/or other persons and/or entity or entities

As a consequence of the above, the Attorney General is requesting that the aforementioned **Viktor DRAGOMANSKI** is, according to the law, **sentenced to life imprisonment**, in accordance with the content of articles **17, 31, 211, 261(a)(b)(c)(e)(f), 262(1)(a)(b), 263(a)(b), 264(1), 267, 269(g), 270, 272, 272A, 275, 276, 277, 278, 279(a), 280, 280(a)(b) and 533 of the Criminal Code**, Chapter 9 of the Laws of Malta, or for any other sentence according to law that can be given to the aforementioned accused.

Wherein the Attorney General in the third count of the bill of indictment premised:

Whereas owing to the nature of the circumstances which took place on the eighteenth (18th) of August of the year two thousand and twenty (2020) and in the subsequent days afterwards, as indicated in the First (I) and subsequent Counts of this Bill of Indictment, it resulted that the perpetrators were using a stolen vehicle registration number plate, 'JET 082', that was reportedly stolen from a *Seat Cordoba* whilst parked in St. Julian's on the third (3rd) of August of the same year two thousand and twenty (2020). These registration plates, which were registered on that particular *Seat Cordoba* from which they were lifted and stolen, ended up on the white *Volkswagen Tiguan* that was driven by one of the perpetrators and used by himself and the other perpetrators not only to arrive on the scene of the homicidal armed robbery, but also to flee from the area once the deed was done. This was amply confirmed by eyewitness accounts and CCTV footage examined by the investigators;

Whereas these vehicle registration number plates 'JET 082' were eventually found bent and discarded in the back storage of the same aforementioned white *Volkswagen Tiguan*, thus validating the observations of eyewitness accounts in this regard. Furthermore, even from facts established in the course of the investigation, in particular subsequently to the arrest of the mentioned 'tall' co-perpetrator, there was little doubt that Viktor DRAGOMANSKI, on the night of the homicidal armed robbery, boarded and therefore made use of the white *Volkswagen Tiguan* whilst it was bearing the stolen registration number plates 'JET 082';

Whereas furthermore it is to be underlined that Viktor DRAGOMANSKI even helped one of the co-perpetrators change the vehicle registration number plate from 'JET 082' to 'CCB 042' on the *Volkswagen Tiguan*, and this for the purpose of 'disguising' the getaway vehicle before abandoning it in Pieta`, and this when the *Volkswagen Tiguan* could only bear the vehicle registration number plate 'CRS 240' for identification purposes;

Therefore, with this own actions, the accused **Viktor DRAGOMANSKI** is guilty of having made use of an identification number, specifically 'JET 082' and 'CCB 042' respectively, other than that allotted by the police or by an Authority in relation to a particular motor vehicle, specifically the *Volkswagen Tiguan*, which was registered with the relevant authorities with the vehicle registration number 'CRS 240';

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, reasoning and facts which have already been mentioned above in this Bill of Indictment, accuses the mentioned **Viktor DRAGOMANSKI**, of having, made use of an identification number ('JET 082' and 'CCB 042') other than that allotted by the police or by an Authority in relation

to a particular motor vehicle, and therefore on the eighteenth (18th) of August of the year two thousand and twenty (2020), , in Sliema, and in the preceeding days, made use of an identification number other than that allotted by the police or by an Authority in relation to a particular motor vehicle;

As a consequence of the above, the Attorney General is requesting that the aforementioned Daniel MUKA is, according to the law, **sentenced to a term of imprisonment not exceeding six (6) months or to a fine (multa) not exceeding one thousand and two hundred euros (€1,200), or to both such term not exceeding six (6) months and fine (multa) not exceeding one thousand and two hundred euros (€1,200)**, and this in accordance with the content of **Articles 17, 31, and 533 of the Criminal Code**, Chapter 9 of the Laws of Malta, and in accordance with the contents of **Articles 2 and 15(1A) of the Traffic Regulation Ordinance**, Chapter 65 of the Laws of Malta, or for any other sentence according to law that can be given to the aforementioned accused.

Wherein the Attorney General in the fourth and final count of the bill of indictment premised:

Whereas owing to the nature of the circumstances which took place on the eighteenth (18th) of August of the year two thousand and twenty (2020) and in the subsequent days afterwards, as indicated in the First Count of this Bill of Indictment (I) and subsequent Counts of this Bill of Indictment, it became manifestly clear during the investigation that Viktor DRAGOMANSKI had knowingly taken part in the disposal of a property which has been stolen or obtained by means of any offence, specifically the white *Volkswagen Tiguan* that was used by the perpetrators to reach Locker Street in Sliema where the targeted residence was situated;

Whereas this is being stated even in view of the vast amount of evidence the investigators accumulated which shows that Viktor DRAGOMANSKI rode in this *Volkswagen Tiguan* with the other perpetrators during the commission of the crimes in question (and this includes CCTV footage, DNA results, fingerprint examinations and information retrieved in the course of the investigation), it is an irrefutable fact that the concerned *Volkswagen Tiguan* was the same one as that which had been reported stolen by Malcolm Fava. On the fourteenth (14th) of September of the year two thousand and eighteen (2018), Malcolm Fava had attended at the Sliema Police Station to report that his vehicle had been stolen, that was essentially the same *Volkswagen Tiguan* which at that time displayed the vehicle registration number plates 'CRS 240', whereby the investigation at that time proved to be fruitless and no progress was made in the tracing back of said vehicle *Volkswagen Tiguan*;

Whereas furthermore, it has also resulted during the investigation that Viktor DRAGOMANSKI helped one of the other perpetrators 'disguise' the getaway vehicle *Volkswagen Tiguan* by changing the vehicle registration number plates from 'JET 082' to 'CCB 042', prior to abandoning (which is a form of disposal) said vehicle in Pieta, and therefore involved himself in the use of an incorrect identification number for the purposes of avoiding as much as possible their detection and apprehension, including that of the vehicle;

Whereas ultimately it resulted that Viktor DRAGOMANSKI has knowingly taken part, in any manner whatsoever, in the disposal of the vehicle *Volkswagen Tiguan*, and this by helping one of the co-perpetrators to change the vehicle registration number plate as part of a disguise before abandoning such vehicle, hence before disposing of such vehicle. This vehicle in question, the *Volkswagen Tiguan* which somehow ended up being used by the perpetrators in this case, had been stolen, and this as reported by its legitimate owner Malcolm Fava.

Therefore, with this own actions, **Viktor DRAGOMANSKI** is guilty for knowingly taking part, in any manner whatsoever, in the disposal of property, precisely the vehicle *Volkswagen Tiguan*, which has been stolen, misapplied or obtained by means of any offence;

Therefore, the Attorney General, on behalf of the Republic of Malta, in light of the circumstances, timeframe, reasoning and facts which have already been mentioned above in this bill of indictment, accuses the mentioned **Viktor DRAGOMANSKI**, guilty of knowingly receiving or purchasing property which has been stolen, misapplied or obtained by means of any offence, precisely the vehicle of the make *Volkswagen Tiguan*, or has knowingly taken part, in any manner whatsoever, in the sale or disposal of the same *Volkswagen Tiguan*, and therefore for having, on the eighteenth (18th) of August of the year two thousand and twenty (2020) and in the past days and/or weeks, in the Maltese islands, with several acts committed at different times and which constitute violations of the same provision of the law, and committed in pursuance of the same design, knowingly received or purchased property, that is a vehicle of the make *Volkswagen Tiguan*, which had been stolen, or obtained by means of any offence, whether committed in Malta or abroad, or, knowingly took part, in any manner whatsoever, in the sale or disposal of the same vehicle of make *Volkswagen Tiguan*.

As a consequence of the above, the Attorney General is requesting that the aforementioned **Viktor DRAGOMANSKI** is, according to the law, **sentenced to a term of imprisonment from thirteen (13) months to ten (10) years, and this in accordance with the content of Articles 17, 18, 31, 261(c), 267, 279(b), 334 and 533**

of the Criminal Code, Chapter 9 of the Laws of Malta, or for any other sentence according to law that can be given to the aforementioned accused.

Having seen the acts of the proceedings, including those of the compilation of evidence before the Court of Magistrates as a Court of Criminal Inquiry.

Having seen that the accused in terms of article 449 presented a note of preliminary pleas on the 17th May 2022 wherein the accused submitted:

1. The nullity of the first count (*complicity in wilful homicide of Christian Pandolfino and Ivor Piotr Maciejowski*) and third count (*use of an identification number other than that allotted by the police or by an Authority in relation to a particular motor vehicle*) of the bill of indictment on the basis of Article 449 (b) of the Criminal Code of the Laws of Malta, in relation to the fact that the requested punishment is being demanded for a third person, that is, Daniel Muka and not the accused Viktor Dragomanski against whom the bill of indictment 7/2022 was filed;

2. a. Without Prejudice to the previous plea, the accused is also asking for the removal from the acts of the documents marked as JG9 (a fol. 74 of the acts of the proceedings) and JG10 (a fol. 75 of the acts of the proceedings) which were presented by Inspector James Grech on the 9th September 2020 and which indicate two lawyer refusal declarations. This is being requested since the document numbers pertaining to the identity of the accused on the same document do not match and therefore there is a serious doubt as to the identity of the person who signed such declarations. The accused is humbly submitting that the vote of the law as held in Article 355 AUA (6) of Cap 9 of the Laws of Malta has not been satisfied.

- b. That, consequently, the statements released by the accused on the 27th August 2020 and the 28th August 2020 should also be removed from the acts and this due to the fact that the requisites at law were not strictly followed when releasing the same statements;
3. Without Prejudice to the plea of nullity mentioned above, the accused is requesting the removal from the acts of the documents marked as JG 14 and consequently any mention of the same including the removal of document marked as JG7 and this due to the fact that these objects were not elevated in the presence of the accused. That it is clear from the acts particularly from the testimony of Inspector James Grech given on the 9th September 2020, PC 605 Lino Parascandolo who testified on the 25th September 2020 and PC 432 Sandra Mamo who testified on the 10th November 2020 that these objects were found at the residence 7, Carmel Lane, Sliema whereby officers collected the accused's belongings after he was arraigned in the presence of housemate Josephine Hewitt;
4. Without Prejudice to the plea of nullity mentioned above, the accused is also requesting the removal of the *procès-verbal* exhibited as Doc MDB1 on the 25th September 2020, bearing number 1074/2020 drawn up with regards to "*qtil doppju ta' Christian Pandolfino u Ivor Piotr Maciejowski li sehħ fir-residenza 22, Triq Locker, Tigne, Sliema filghaxija tat-18 ta' Awwissu 2020*" in view of the following shortcomings which render the same null and void:
- a. That the *procès-verbal* was never translated into the English language but was only done in Maltese, a language which the accused does not understand. That therefore Article 534 AD of Cap 9 of the Laws of Malta was not strictly adhered to since at no point in the acts of the proceedings is it recorded that the accused

“recorded in writing” that a waiver to such right to translation of documents be made.

- b. That there is no recorded testimony in the acts of the proceedings as to the Deputy Registrar who exhibited the same. Although the minutes of the sitting whereby this document was exhibited indicate that Deputy Registrar Margaret De Battista exhibited *procès-verbal* bearing number 1074/2020 this testimony does not result as transcribed in the acts, rather the Note by the Attorney General filed on the 24th September 2020 indicates that Dr. Susan Cassar presented the same in front of Deputy Registrar Melanie Sciberras;
 - c. That the Magistrate conducting the inquiry did not abide strictly by the requirements contained in Article 550 (5) and 551 (1) of Cap 9 of the Laws of Malta when redacting the same *procès-verbal* and this due to the fact that it does not contain “a final paragraph containing the findings of the inquiring magistrate” as requested by Article 550 (5) of Cap 9 of the Laws of Malta and neither does it contain the Magistrate’s “finding as to the cause of death” as required by Article 551 of Cap 9 of the Laws of Malta;
5. Without Prejudice to the pleas of nullity mentioned above, the inadmissibility of the witnesses who testified in the *in genere*, since the defence never had the opportunity to cross-examine the same;
 6. Without Prejudice to the pleas of nullity mentioned above, the removal from the acts of the expert report rendered by Mr. Joseph Mallia and this in view of the fact that when the Prosecution made the plea to the Court for expert Joseph Mallia to elevate the finger prints of the accused for comparison purposes in the sitting of the 19th November 2020, the defence was never asked about its’ position and in fact the defence’s consent was never minuted;

7. Without Prejudice to the pleas of nullity mentioned above, the removal from the Acts of the translated report of Mr. Vincent Ciliberti presented by Dr. Katya Vassallo in the English language a fol. 704 of the acts of the proceedings and this since the same translator in this specific report did not declare on oath that she has transcribed the same honestly, faithfully and to the best of her ability the transcription from the Maltese to the English language;
8. Without Prejudice to the pleas of nullity mentioned above, the accused is registering his objection for Christine Cremona to be brought as a witness since she never testified during the pre-trial stage, that it was a certain Kristy Cremona that testified on the 22nd December 2020;
9. Without Prejudice to the pleas of nullity mentioned above, the removal from the acts of the expert report presented on the 22nd December 2020 by Ballistics experts PC 1525 Patrick Farrugia and PC 1561 Ian Farrugia in view of the fact that this refers to a different address than that of where the incident took place. Moreover, on the 1st July 2021, it was only one of the ballistics expert i.e. PC 1525 who testified to this effect and was allowed by the Court to correct the same, however, this does not transpire from the acts to have been done;
10. Without Prejudice to the pleas of nullity mentioned above, the removal from the acts of DOC MC1 and Doc NM1 presented on the 23rd March 2021 by Dr. Marisa Cassar and Architect Nicholas Mallia respectively, due to the fact that such documents are not found in the acts of the proceedings and neither are the transcriptions of the two experts of the day;
11. Without Prejudice to the pleas of nullity mentioned above, the removal of the acts of the two reports made by Mr. Francesco Zampa presented on the 14th May 2021

and this due to the fact that according to the said report he was nominated by means of a decree on the 30th April 2021 by the inquiring Magistrate when from the acts of the proceedings it transpires that he was nominated in the minutes dated 11 May 2021. That moreover, when the witness accessed Hall 25 for the gold to be analysed, he did so in the presence of a representative from the Attorney General and a representative of the parte civile but not in the presence of the accused. Furthermore, the decree extending his nomination for him to re-testify and re-qualify his report presented on the 12th August 2021 is not in the acts of the proceedings;

12. Saving further pleas permissible at Law, at a later stage;

Considered:

In his first (1st) preliminary plea, the accused is requesting the nullity of the first and third counts of the bill of indictment on the basis of Article 449(b) of the Criminal Code, in relation to the fact that the requested punishment is being demanded for a third person, that is, Daniel Muka and not the accused. Even though the accused is right in this observation, this mistake does not bring about the nullity of the first and third counts of the bill of indictment. However, in terms of Article 597¹ of the Criminal Code, this Court is ordering that a correction is made to the bill of indictment, specifically where there is mentioned the name of 'Daniel Muka' in both the first and third counts, and consequently be replaced with the name 'Viktor Dragomanski'. Therefore, this Court is rejecting the first (1st) preliminary plea brought forward by the accused.

¹ 597. (1) It shall be in the power of the court, either ex officio, or upon the plea of the accused, to make an order for the amendment of the indictment, provided this is done before the accused pleads to the general issue of guilty or not guilty: but nothing shall be added which might render the offence of a graver character.

In his second (2nd) preliminary plea, the accused is requesting the removal of Doc. JG9 and Doc JG10 since the document numbers pertaining to the identity of the accused on the same document do not match and therefore there is a serious doubt as to the identity of the person who signed such declarations. The accused is stating that the vote of the law as held in Article 355 AUA(6) of the Criminal Code has not been satisfied and consequently the statements of the accused should also be removed from the acts.

The accused is right in stating that there are two different identification numbers on one document and this for both Dok JG9 and Dok JG 10. These are 187641A and 131801A. After having gone through the acts of the case, this Court confirms that the accused's identification number is 187641A and not 131801A. However, Inspector James Grech a fol. 36 of the acts of the proceedings confirmed that he recognized all the signatures on both documents, including both the accused's signature and his. PS 512 Josef Gerada a fol. 83 of the acts of the proceedings also recognised all the signatures on the abovementioned documents including his signature and that of the accused. PC 606 Lino Parascandolo a fol. 272 of the acts of the proceedings, being shown both Dok JG9 and Dok JG10 stated that he recognized both his signature and that of the accused that was present in the court room. Therefore, this leaves no doubt that it was the accused Viktor Dragomanski who signed both Dok JG9 and Dok JG 10.

Article 355AUA(6) of the Criminal Code stipulates that:

(6) Where the person detained chooses not to seek legal assistance the Executive Police, investigating officer or any other law enforcement or judicial investigating authority shall record this fact in writing in the presence of two witnesses and thereupon questioning may proceed immediately. It shall not be admissible

for the prosecution to comment during any proceedings before a court of justice of criminal jurisdiction on the fact that the suspect or the accused person did not avail himself of the right to legal assistance in the course of his detention under arrest.

Furthermore, the vote of the law as held in Article 355 AUA(6) of the Criminal Code has indeed been satisfied and therefore the second (2nd) preliminary plea brought forward by the accused is being rejected in its totality.

In his third (3rd) preliminary plea, the accused is requesting the removal from the acts documents marked as JG14 and consequently any mention of the same including the removal of document marked as JG7 and this due to the fact that these objects were not elevated in the presence of the accused. The accused continues to explain that the police collected his belongings after he was arraigned and this in the presence of his housemate Josephine Hewitt. Inspector James Grech a fol. 36 of the acts of the proceedings and PC605 Lino Parascandolo a fol. 271 of the acts of the proceedings stated that the police went to Carmel Street, Sliem, where the accused used to reside, to collect his belongings. PC 432 Sandro Mamo a fol. 624 of the acts of the proceedings, however, stated that a 'search' was conducted in this residence. Whether the police went to collect the accused's belongings or conduct a 'search' in terms of Article 355L of the Criminal Code, is not a fact to be determined by this Court but by the jurors, who are often described as judges of facts. However, in both cases the police were not doing anything illegal when elevating the objects not in the presence of the accused and for this reason this Court is also dismissing the third (3rd) preliminary plea brought forward by the accused.

The fourth (4th) preliminary plea brought forward by the accused is divided in three sections, a, b and c. In the first section the accused is requesting the removal

of the *proces-verbal* exhibited as Doc MDB1 due to the fact that this was not translated from the Maltese to the English language. The Court here makes reference to the judgment in the names **Ir-Repubblika ta' Malta vs George Degorgio et**² where the following was stated:

Illi qabel xejn ghandu jigi rilevat illi l-ligi thares b'mod holistiku d-drittijiet tal-persuna akkuzata u dan fit-Titolu VI tal-Kodici Kriminali, Titolu li gie mizjud permezz tal-Att IV tal-2014, b'dan ghalhekk illi fih hemm inkorporat d-dritt li l-persuna suspettata jew akkuzata b'reat quddiem il-Qorti jkollha d-dokumenti kollha f'idejha li fuqhom hija imsejsa l-akkuza migjuba fil-konfront taghha sabiex b'hekk tkun f'posizzjoni tiddefendi ruhha skont il-ligi. Jekk dawn id-dokumenti jkun f'lingwa li dik il-persuna hekk akkuzata ma tifhimx, allura jekk dan id-dokument jitqies mill-qorti li huwa dokument essenzjali bhala prova, ghandha issir traduzzjoni ta'l-istess f'lingwa li l-persuna akkuzata tista' tifhem u dan kif hemm dispost fl-artikolu 534AD:

(1) Meta l-persuna suspettata jew l-akkużat ma jifhmux il-lingwa li tkun qed tintuza fil-proċeduri kriminali kkonċernati, huma għandhom, fi żmien raġonevoli, jingħataw bil-miktub traduzzjoni tad-dokumenti kollha essenzjali li jiżguraw li huma jistgħu jeżerċitaw id-dritt li jiddefendu ruħhom kif ukoll sabiex tiġi salvagwardjata proċedura ġusta.

(2) Id-deċiżjoni li tiddetermina x'jikkostitwixxi dokument essenzjali għandha tittiehed mill-Pulizija Eżekuttiva jew mill-Qorti skont ma jkun il-każ, u l-persuna suspettata jew l-akkużat

² Decided by the Criminal Court on the 30th October, 2020.

jew l-avukat tagħhom għandhom jissottomettu talba raġonata għal dak il-għan:

Iżda d-dokumenti essenzjali għandhom jinkludu kull deċiżjoni li ċċaħħad il-libertà tal-persuna, kull imputazzjoni jew att ta' akkuża, u kull deċiżjoni:

Iżda wkoll ma jkunx hemm il-ħtieġa li jiġu tradotti l-passaġġi tad-dokumenti essenzjali li m'humiex rilevanti għall-finijiet li jippermettu lill-persuna suspettata jew l-akkużat ikunu jafu li hemm każ kontribom.

(3) Xejn f'dan l-artikolu ma jiġi miftiehem bħala li jipprekludi li l-persuna suspettata jew lill-akkużat sabiex jitolbu li kull deċiżjoni li, f'kwalunkwe stadju tal-proċeduri kriminali, tgħid li m'hemmx bżonn traduzzjoni ta' dokumenti jew passaġġi tiegħu jkunu riveduti u, meta traduzzjoni tkun provduta, il-possibilità li wieħed jilmenta li l-kwalità tat-traduzzjoni mhijiex tajba sabiex tiġi salvagwardjata proċedura ġusta.

(4) Minkejja d-dispożizzjonijiet preċedenti ta' dan l-artikolu, tista' tiġi provduta traduzzjoni bil-fomm jew sommarju bil-fomm tad-dokumenti essenzjali minfok traduzzjoni bil-kitba, bil-kundizzjoni li din it-traduzzjoni bil-fomm jew sommarju bilfomm ma jippreġudikawx il-proċedura ġusta.

(5) Meta l-persuna suspettata jew l-akkużat jirrinunzjaw għad-dritt għal traduzzjoni ta' dokumenti msemmija f'dan l-artikolu, din ir-rinunzja għandha tiġi inniżzla bil-miktub u biss wara meta, il-Pulizija Eżekuttiva jew il-Qorti, skont il-każ, tkun sodisfatta li l-persuna suspettata jew l-akkużat ikunu rċieview

parir legali minn qabel jew xort'ohra kellhom għarfien sħiħ tal-konsegwenzi ta' din ir-rinunzja, u li r-rinunzja ma kenitx ekwivoka u mogħtija b'mod volontarju.

(6) It-traduzzjoni pprovduta taħt dan l-artikolu għandha tkun ta' kwalità biżżejjed li tissalvagwardja procedura ġusta, b'mod partikolari billi tiżgura li l-persuni suspettati jew l-akkuzati jkollhom għarfien tal-każ miġjub kontrihom u li jkunu jistgħu jeżercitaw id-dritt għal difiża.

Illi fil-fatt id-disposizzjonijiet tal-Kapitolu 189 tal-Ligijiet ta' Malta (Att dwar il-Proceduri Gudizzjarji) huma konsoni ma' din id-disposizzjoni tal-ligi meta hemm ipprovdut b'liema lingwa għandhom isiru l-proceduri meta l-persuna akkuzata ma tkunx tifhem bil-lingwa maltija biex b'hekk il-proceduri għandhom issiru bil-lingwa Ingliza b'dan illi anke r-Registratur għandu jiehu hsieb jara li l-atti jigu nnotifikati lil dik il-persuna li ma tkunx tifhem bil-lingwa maltija bil-lingwa Ingliza, u jekk dan ma jsirx il-persuna akkuzata għandha il-jedd titlob hi stess li ssir tali traduzzjoni. Illi huwa fir-rigward tad-deposizzjoni tax-xhieda biss li l-artikolu 3(e) tal-Kapitolu 189 tal-Ligijiet ta' Malta jimponi obbligu fuq ir-Registratur tal-Qorti li mill-iktar fis jara li titqieghed fl-inkartament it-traduzzjoni ta' dik id-deposizzjoni fl-ilsien li bih jkunu qed isiru l-proceduri, b'dan madanakollu li l-ligi ma tirraviza ebda nullita' fin-nuqqas li jsir dan.

Issa minn ezami tal-atti kumpilatorji ma jidhirx illi l-akkuzati f'xi zmien tallbu quddiem il-Qorti Istrutturja li ssir traduzzjoni ta' dawn id-dokumenti. L-akkuzati kienu tul il-proceduri abbilment assistiti mid-difensuri tagħhom

sabiex b'hekk lanqas ma jista' jinghad illi id-dritt taghhom ghal smiegh xieraq gie b'xi mod lez minhabba f'dan in-nuqqas. Fl-ebda hin ma lmentaw illi huma ma kenux qeghdin jifhmu il-kontenut ta' dawn id-dokumenti jew ukoll li ma setghux ihejju d-difiza taghhom. Mhux biss izda, sahsitra wara n-notifika lillu maghmula ta'l-Att ta'l-Akkuzat, l-akkuzat stess Alfred Degiorgio fil-Lista tad-Dokumenti minnu ipprezentata, jipprezenta traduzzjoni ta' diversi deposizzjonijiet ta' xhieda mill-lingwa Maltija ghal dik Ingliza, sabiex b'hekk il-Qorti tista' tasal biex tifhem illi l-akkuzati ahwa Degiorgio jifhmu bil-lingwa Ingliza.

Illu dan maghdud, madanakollu, ma hemm xejn fil-ligi li tirrendi tali rapporti u dokumenti inammissibbli stante illi l-akkuzati kellhom kull opportunita' li jitolbu li ssir it-traduzzjoni ta' dawn id-dokumenti, haga li naqqsu milli jaghmlu u kwindi ma jistghux jippretendu li issa fi stadju inoltrat ta' dawn il-proceduri l-Qorti tordna l-isfilz ta'l-istess minhabba nuqqas minn naha taghhom. Fuq kollox, jerga' jigi ribadit illi l-akkuzati dejjem kienu abbilment assistiti mid-difensur taghhom u fuq kollox ix-xhieda li pprezentaw dawn ir-rapporti u d-dokumenti spjegaw il-kontenut ta'l-istess fil-kors tad-deposizzjoni taghhom quddiem il-Qorti Istrutturja. **Ma jidhirx ghalhekk illi kien hemm xi nuqqas ta' osservanza ta' dak li jipprova l-artikolu 5(3) tal-Kostituzzjoni, l-artikolu 516 u l-artikolu 534D, hawn fuq iccitat, tal-Kodici Kriminali biex b'hekk dan ma jista' qatt iwassal ghan-nullita' jew inammissibilita' tal-prova li l-akkuzati qed ifitxxu biex ixejjnu**

“..... din il-Qorti taghmel referenza ghal dak li jinghad mill-awtur Karen Reid fit-tieni edizzjoni tal-ktieb taghha *A Practitioner’s Guide to the European Convention on Human Rights*: “The ability to comprehend the proceedings in a criminal trial, guaranteed in Art. 6, para. 3(e), may be seen as another aspect of the importance for an accused to participate effectively in the proceedings. For the right to be effective, the obligation of the authorities is not limited to the provision of an interpreter, but may also extend to a degree of control over the adequacy of the interpretation provided. Issues as to the standard of the interpretation could arise if it could be established as damaging to the accused’s effective participation in the proceedings. Although a failure to complain at the time may be fatal to claims before the Court as generally domestic courts must be given an opportunity to remedy any inadequacy, the onus is nonetheless on the trial judge to treat an accused’s interest with ‘scrupulous care’ and take steps to ensure his ability to participate where problems are drawn to his attention...The requirement for interpretation must, however, be genuine and necessary to the fair conduct of the proceedings. Where an applicant has sufficient understanding of the language of the proceedings, he cannot claim a cultural or political preference for another. Once it is apparent that the applicant requires interpretation assistance, it is unlikely that informal and unprofessional assistance will be sufficient. Article 6, para. 3(e) has been held to cover documentary material and pre-trial matters, but it does not extend to requiring translations of all documents in the proceedings. It is sufficient if the applicant is assisted by interpreters, translations and the help of his lawyers so that he has knowledge of the case which enables him to defend himself, in

*particular by being able to put forward his version of events. If this standard is reached, a failure to provide all the translations an applicant might have wanted is not a problem. An applicant would presumably have to indicate that the untranslated documents were material to his ability to defend himself and that he was refused or not permitted the necessary facilities*³." (sottolinjar tal-Qorti).

During the compilation of evidence, the accused never asked for this document to be translated and he surely did not state that the untranslated document prejudiced his defence because he was refused or not permitted a translation of the document. Therefore, with particular reference to the above, this Court is rejecting the preliminary plea numbered 4a, as brought forward by the accused.

In his preliminary plea numbered 4b, the accused is emphasising that the *proces verbal* should also be removed from the acts of the proceedings because there is no recorded testimony as to the Deputy Registrar who exhibited the *proces verbal*. Here the Court makes reference to the judgment in the names **Ir-Repubblika ta' Malta vs George Degorgio et**⁴ where the Court of Criminal Appeal stated the following:

94. *Il-Qorti tikkunsidra din tal-parti ta' dan l-aggravju bhala wiehed frivolu ghar-raguni illi ghalkemm il-Kapitolu 284 tal-ligijiet ta' Malta fl-artikolu 3 tieghu jiddisponi li l-Qorti tista' tordna l-procedimenti taghha jew xi parti minnhom jkunu registrati b'mezzi elettro-manjetici, jekk isir hekk, ma jfissirx b'daqshekk illi trid issir registrazzjoni ta' dak li jghid kull xhud*

³ **Il-Pulizija vs Andriy Petrovych Pashkov** decided by the Court of Criminal Appeal on the 10th September, 2009.

⁴ Decided by the Criminal Court of Appeal (Superior Jurisdiction) on the 22nd September, 2021.

minn hemm 'l quddiem. L-andament tal-kawza huwa f'idejn il-Qorti u jekk jidrilha illi dak li xehed xhud jista' jkun registrat b'mod li jkun deskritt dak li qal ix-xhud, allura dak il-fatt ma jkunx wiehed censurabbli. Fil-kaz odjern jidher li l-Qorti Istrutturja ghazlet, b'mod Prattiku, li tirregistra dak li qalet id-Deputat Registratur bil-gurament f'linja wahda fil-verbal tal-udjenja. Kwantu l-aggravju msejjes fuq il-fatt li ma saret ebda traskrizzjoni ma jfissirx b'daqshekk illi Susan Fenech qatt ma ddeponiet kif allegat mill-appellanti. Del resto ma hemm xejn x'josta' lill-akkuzati milli jressqu lix-xhud in kontro-ezami dwar dak li xehdet jekk jidrilhom hekk mehtieg u la darba ma kienet infranta l-ebda formalita' essenzjali, ma tistax takkolji din ilpartita' dan l-l-aggravju numru disa';

Ghal dawn il-motivi dawn l-eccezzonijiet (Eccezzonijiet numri 45 u 46) qed jigu michuda.

In view of the above, the preliminary plea numbered 4b is also being rejected by this Court.

Another preliminary plea brought forward by the accused is 4c, whereby he is also stating that the *proces verbal* should be removed from the acts of the proceedings due to the fact that the Inquiring Magistrate did not abide strictly by the requirements contained in Article 550(5) and Article 551(1) of the Criminal Code and this because it does not contain a final paragraph containing the findings of the inquiring magistrate.

Article 550(5) of the Criminal Code stipulates the following:

The procès-verbal shall be deemed to have been regularly drawn up if it contains a short summary of the report, information or complaint, a list of the witnesses heard and evidence collected, and a final paragraph containing the findings of the inquiring magistrate.

Furthermore, Article 551 (1) of the Criminal Code provides the following:

In cases of sudden or violent or suspicious death or of death whereof the cause is unknown, a report thereof shall be made by the Executive Police to a magistrate; the magistrate shall hold an inquest on the body for the purpose of ascertaining the cause of death and shall, for that object, take all such evidence as may be possible for him to procure; after taking all the evidence, the magistrate shall draw up and sign a procès-verbal stating his finding as to the cause of death.

Reference being made to the above Articles of the law, this Court will not delve into the matter whether the *proces verbal* has been regularly drawn up as per Article 550(5) of the Criminal Code and this because it is not within the remit of this Court to decide as such. Even if a *proces verbal* is not regularly drawn up, this does not mean that it should be considered as null, inadmissible and consequently removed from the acts of the proceedings. However, it is then the defence's duty to address the jurors on the probative value and reliability of the same *proces verbal*. Having seen the above, this Court is also rejecting preliminary plea 4c as brought forward by the accused.

In his fifth (5th) preliminary plea, the accused is requesting this Court to consider the witnesses who testified in the *in genere* as inadmissible since the defence never had the opportunity to cross-examine the same. A similar preliminary plea was

tackled by this Court in the judgment in the names Ir-Repubblika ta' Malta vs Andrew Mangion et⁵ where it was stated that:

Illi l-proces verbal redatt mill-Magistrat Inkwerenti, huwa prova fih innifsu li gie esebit in segwitu fl-atti tal-kumpilazzjoni. F'dak l-istadju kien jispetta lid-difiza titlob li jitharrku bhala xhieda sabiex taghmel il-kontro-ezami taghhom f' dak l-istadju tal-istrutturja f'kaz li hasset il-bzonn. Evidentament minn ezami tal-atti ma jirrizultax li dan sar. Illum dawn huma xhieda ndikati mill-prosekuzzjoni, kif ukoll mid-difiza u ghalhekk il-kontro-ezami taghhom jista' xorta jsir filwaqt propizju wara li huma jikkonfermaw it-testimonjanza taghhom.

It does not result from the acts of the proceedings that the defence had asked to cross-examine the witnesses that testified in the *in genere*. These witnesses are now included in both the prosecution's and the defence's list of witnesses and so the cross-examination can still take place at a later stage after they confirm their testimony before the jurors. Moreover, this Court is also rejecting the fifth (5th) preliminary plea brought forward by the accused.

In his sixth (6th) preliminary plea, the accused is asking for the removal from the acts of the expert report drawn up by Mr. Joseph Mallia and this because when the Prosecution made the plea to the Court to elevate fingerprints from the accused for comparison purposes, the defence was never asked about its position and the defence's consent was never minuted. Reference is here made to Article 397 of the Criminal Code which stipulates the following:

⁵ Decided by the Criminal Court on the 8th July 2022.

397. (1) *The court may order the attendance of any witness and the production of any evidence which it may deem necessary, as well as the issue of any summons or warrant of arrest against any other principal or accomplice whom the court may discover. The court may likewise order any inquest, search, experiment, the taking of any sample and any other measure or thing necessary for the fullest investigation of the case.*

(2) *The court may also, under such safeguards as it may consider necessary for the purpose of decency, examine or order to be examined by experts any part of the body of the accused or of the party on whom or with whom the offence is alleged to have been committed, if the court is of opinion that from such examination a proof might result either against or in favour of the accused.*

(3) The court may, moreover, at the request of the Attorney General or the Police, order that any accused person be photographed or measured or that his finger-prints be taken:

Provided that when an accused person, who has not been previously convicted of crime, is acquitted, all photographs (both negatives and prints), finger-print impressions, and records of measurements so taken, shall be destroyed or handed over to the person acquitted.

(4) *The photographs, finger-print impressions and measurements referred to in the last preceding sub-article shall be taken in accordance with such regulations as may from time to time be made by the Minister responsible for justice.*

According to the above-mentioned article, the First Court had every right to order that the accused's fingerprints be taken. Furthermore, expert Joseph Mallia took a copy of the fingerprints and palm prints of the accused during the sitting of the 23rd February, 2021 where the accused was duly assisted by defence lawyer Dr. Joseph Brincat. It is true that the position of the defence in this regard was not minuted, however, this Court is convinced that expert Mallia did not attain the accused's fingerprints and palmprints forcefully, the accused co-operated and adhered to the First Court's order. In view of the above, this Court is also rejecting the sixth (6th) preliminary plea brought forward by the accused.

By means of preliminary plea number seven (7), the accused is requesting the removal from the acts of the translated report of Mr. Vincent Ciliberti presented by Dr. Katya Vassallo since the latter did not declare on oath that she has transcribed the report honestly, faithfully and to the best of her ability.

It can be noted a fol. 664 of the acts of the proceedings that Dr. Katya Vassallo gave evidence on oath and presented Doc KV9, being the translated report of Mr. Vincent Ciliberti, on the 19th November 2020. Even though it is true that Dr. Vassallo did not write that she was declaring on oath that she has transcribed this report honestly, faithfully and to the best of her ability, this is not a sufficient reason for this document to be removed from the acts of the proceedings. However, the defence would still be able to address the jurors on the probative value and reliability of this document. Moreover, this Court is rejecting this plea as brought forward by the accused.

In his eighth (8th) preliminary plea, the accused is registering his objection for Christine Cremona to be brought as a witness since she never testified during the pre-trial stage and that it was a certain Kristy Cremona that testified on the 22nd December, 2020. This Court notes that the Attorney General listed WPC140

Christine Cremona as one of his witnesses to testify during the trial by jury. It results from the acts of this case, more specifically a fol. 1246, that WPC 140 is referred to as Kristy Cremona. Even though, there seems to be a mistake in WPC 140's name in the bill of indictment, there is no doubt that the Attorney General was referring to the same police officer who testified on the 22nd December, 2020. Therefore, in terms of Article 597 of the Criminal Code, this Court is ordering that a correction is made to the bill of indictment, specifically where there is mentioned the name of 'WPC 140 Christine Cremona' which should be replaced with the name 'WPC 140 Kristy Cremona'. Therefore, this Court is rejecting the eighth (8th) preliminary plea brought forward by the accused.

In his ninth (9th) preliminary plea, the accused is requesting the removal from the acts the expert report presented by ballistics experts PC 1525 Patrick Farrugia and PC 1561 Ian Farrugia and this because it refers to a different address than that of where the incident took place. PC 1525 was allowed by the Court to carry out this correction when he testified for the second time before the first Court. This report can be found a fol. 1212 of the acts of the proceedings and the address seems to have been corrected by PC 1525 only. However, this does not mean that this report, marked as Dok PF1, should be removed from the acts of the proceedings. Both police officers are indicated as witnesses who will testify again before the jurors and both witnesses can confirm or unconfirm the address and/or the correction carried out. This is being said without prejudice to the fact that the defence would still be able to address the jurors on the probative value and reliability of this report. In view of the above, this Court is also rejecting the ninth (9th) preliminary plea brought forward by the accused.

In his tenth (10th) preliminary plea, the accused is requesting the removal from the acts of Doc MC1 and Doc NM1 presented on the 23rd March 2021 by Dr. Marisa Cassar and Architect Nicholas Mallia respectively, due to the fact that

such documents are not found in the acts of the proceedings and neither are the transcriptions. The Court here makes reference to fol. 1816 of the acts where it seems that the minutes of another case which is linked to this present case, namely 'Il-Pulizija vs Jesper Gejl Kristiansen', has been inserted. This happened following an application which was filed by the heirs of Christian Pandolfino requesting authorisation from the Court to have returned to them items retrieved by the Scene of Crime Officers and which subsequently were examined by Dr Marisa Cassar. The Attorney General objected to this request on the 19th February, 2021 since it transpired that Dr. Marisa Cassar still needed to carry out the necessary tasks relative to the items mentioned in the concerned application in the case of 'The Republic of Malta vs Jesper Gejl Kristiansen'. The abovementioned minutes are dated the 23rd March, 2021 and it seems that on the day Dr Marisa Cassar gave evidence on oath and presented a report marked Doc. MCY1 and Architect Nicholas Mallia also gave evidence on oath and presented Doc NM1. Following the sitting of the 23rd March, 2021 against Jesper Gejl Kristiansen, the First Court authorized the request brought forward by the heirs of Christian Pandolfino in the proceedings against the accused and this on the 30th March, 2021. The mention of Dr Marisa Cassar's testimony, Doc MCY1, Architect Nicholas Mallia's testimony and Doc NM1 in the minutes of the 23rd March, 2021 a fol. 1816, do not refer to the testimonies and documents presented before the First Court against the accused but against Jesper Gejl Kristiansen. In fact, in the proceedings against the accused, Architect Nicholas Mallia testified on the 19th November, 2020 a fol 728 et seq of the acts of the proceedings and Dr Marisa Cassar testified on the 22nd December, 2020 fol 945 et seq of the acts of the proceedings. In view of the above, this Court is also rejecting the tenth (10th) preliminary plea brought forward by the accused.

In his eleventh (11th) preliminary plea, the accused is asking this Court for the removal from the acts of the two reports made by Mr Francesco Zampa and this

because the report presented on the 14th May, 2021 states that Mr Zampa was nominated by means of a decree on the 30th April 2021 by the inquiring Magistrate when from the acts of the proceedings it transpires that he was nominated in the minutes dated 11th May 2021. Moreover, when the witness accessed Hall 25 for the gold to be analysed, he did so in the presence of a representative of the Attorney General and a representative of the *parte civile* but not in the presence of the accused. Furthermore, the decree extending his nomination for him to re-testify and re-qualify his report presented on the 12th August, 2021 is not in the acts of the proceedings.

The accused is right when stating that Mr Zampa was nominated by the First Court on the 11th May, 2021 as can be seen from fol. 1849 of the acts of the proceedings. In the minutes of the session dated 11th May, 2021, the following was stated: *'The Court is appointing Francesco Zampa to examine all the exhibits which are mentioned in the application by the heirs and to present a report with his evaluation'*. However, this does not mean that this report, marked as Dok FZ1, should be removed from the acts of the proceedings for this reason. Mr Zampa is indicated as a witness by both the prosecution and the defence and has to testify once again before the jurors. Furthermore, the defence would be able to address the jurors on the probative value and reliability of this report.

Mr Zampa presented his first report on the 14th May, 2021 where a fol. 1908 it is stated that he examined the gold on the 11th May, 2021 in Hall 25 in the presence of Dr Marie Claire Ellul representing the *parte civile* and Dr Karl Muscat, representing the Attorney General. According to the abovementioned minutes of the 11th May, 2021, the First Court did not order Mr Zampa to examine the gold in the presence of the parties and Mr Zampa could have valued it in their absence. However, since a lawyer from the Attorney General's office and the *parte civile*'s lawyer was present, it would have been better if the accused was also present for

the valuation. Having said this, the fact that the latter was not present for the valuation does not mean that the report/s should be removed from the acts of the proceedings for this reason.

The accused also argues that Mr Zampa's decree extending his nomination for him to re-testify and re-qualify his report presented on the 12th August, 2021 is not in the acts of the proceedings. Mr Zampa testified again on the 12th August, 2021 and was asked the following question by the prosecution: *'Mr Zampa, you were requested to present the value of the jewellery you examined in August two thousand twenty (2020). Are you in a position to provide us with this information please?.'* The incident surrounding this case took place in August 2020, and Mr Zampa was asked to present the value of the jewellery he examined when it was allegedly stolen from the victims. However, it does not transpire from the acts of the proceedings that his task was extended by means of a decree to re-testify, re-qualify and present another report. Therefore, Mr Zampa was not legally authorized to present another report and this because his nomination was limited to present *'a report with his evaluation'*. This was done on the 14th May, 2021 and following that the Court should have extended his nomination to present another report with another valuation. For these reasons, the Court is rejecting the accused's preliminary plea regarding the removal of Mr Zampa's first report presented on the 14th May, 2021 and marked Dok FZ1 a fol. 1907 et seq. but accedes partially to the same preliminary plea by ordering the removal of the second report presented by Mr Zampa on the 12th August, 2021 and marked Dok FZX1 a fol. 1947 et seq. of the acts of the proceedings.

Consequently, for the above-mentioned reasons, this Court is rejecting preliminary pleas number two (2), three (3), four (4), five (5), six (6), seven (7), nine (9) and ten (10) in their totality. The Court is also rejecting the first (1) preliminary plea brought forward by the accused but orders a correction in both

the first (1st) and third (3rd) counts of the bill of indictment and therefore the name of 'Daniel Muka' should be replaced with the name of 'Viktor Dragomanski'. Furthermore, the Court is also rejecting the eighth (8th) preliminary plea brought forward by the accused but orders a correction to the bill of indictment and therefore where there is mentioned 'WPC 140 Christine Cremona' should be replaced with the name 'WPC 140 Kristy Cremona'. The Court is also partially rejecting the accused's eleventh (11th) preliminary plea regarding the removal of Mr. Zampa's first report presented on the 14th May, 2021 and marked Dok FZ1 a fol. 1907 et seq. of the acts of the proceedings, but accedes to it partially by ordering the removal of the second report presented by Mr. Zampa on the 12th August, 2021 and marked Dok FZX1 a fol. 1947 et seq. of the acts of the proceedings.

(ft) Consuelo-Pilar Scerri Herrera
Judge

True copy of the original

Nadia Ciappara
Deputy Registrar