



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

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

*Criminal Inquiry No.: 112/2021*

**The Police  
(Inspector Frankie Sammut)**

**-vs-**

**Shane Kayde Rowe, bearer of Maltese residence permit number 71698A**

Today, the 1<sup>st</sup> day of March 2023

The Court,

Having seen the charges brought against the defendant **Shane Kayde Rowe** for having:<sup>1</sup>

On the 3<sup>rd</sup> of August 2020, at around 09:30am whilst in the vicinity of the petrol station at the Malta International Airport, Luqa, without the intent to kill or to put the life of another person in manifest jeopardy, caused harm to the body or health of another person, Mario Spiteri (ID 405870M), or caused such other person a mental derangement in that it caused a permanent functional debility of any organ of the body, or of any permanent defect in any part of the physical structure of the body, or any permanent mental infirmity.

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<sup>1</sup> Fol.17

The Court was requested to provide for the safety of the injured person, Mario Spiteri (ID 405879M), for the keeping of the public peace and for the purpose of protecting the injured person from harassment or other conduct which will cause a fear of violence, to issue a protection order against the person charged in terms of Article 412C of the Criminal Code under those conditions the Court deem appropriate.

Having seen the note by the Attorney General indicating the Articles of Law in terms of Article 370(3)(a) of Chapter 9 of the Laws of Malta, dated the 2<sup>nd</sup> of December, 2021, namely:<sup>2</sup>

- Articles 214, 215, 216(1)(a)(b)(d) and 218(1)(a) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Articles 382A, 383, 384, 385, 386 and 412C of the Criminal Code, Chapter 9 of the Laws of Malta;
- Articles 15A, 532A, 532B and 533 of the Criminal Code, Chapter 9 of the Laws of Malta.

Having heard the defendant declare that he does not object to the case being tried summarily by this Court.

Having heard witnesses.

Having seen all the acts and documents exhibited.

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

Considers,

The injured party **Mario Spiteri** recounted how, as he was heading to work on the 3<sup>rd</sup> of August 2020, around 9:00-9:15am, he stopped for fuel at the petrol station in Skyparks, Luqa. When he entered the fuel station, there was another car in front of his which was blocking access to the station thereby making him unable to drive and park next to the fuel pump. While Spiteri was waiting for the car in front of him to drive off, the driver in the car which was behind his starting hooting the horn “*quite violently or abruptly or aggressively....bip, bip, bip, bip*”.<sup>3</sup> He ignored the honking and waited for the car in front of his to clear the road. When it drove off he parked next to the fuel pump “*And as soon as I parked*

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<sup>2</sup> Fol. 102

<sup>3</sup> Fol.21

*my car to take the fuel, the defendant stopped and as soon as I parked my car to take the fuel, the defendant stopped near me and he started doing hand gestures, I am not saying that he did any bad hand gestures, ..... I saw someone waiving his hands. And I said in Maltese "Xi ġralu dan! Raqad mikxuf!" and that is it. and he started hooting again and drove like, I mean għaqqad ir-roti, he spun the wheels, I mean not in racing way but in a very aggressive mood"<sup>4</sup>.*

Spiteri then recounts his next move which, the Court finds somewhat unwarranted given that he walked towards the defendant to seek an explanation as to why he had made gestures towards him moments earlier.<sup>5</sup>

The court firmly believes that Spiteri wanted to confront Rowe, given that by the latter's account, Rowe had gestured at him and had been honking his horn clearly to get his attention. Even Rowe's reaction - as recounted by Spiteri - "***Do not touch my car! Step aside! Do not touch my vehicle!***", manifests that **the knock on the window was no gentle tap** as Spiteri contends. Moreover, when testifying eleven months following the incident, Spiteri's use of words clearly underscores his lingering anger and irritation at Rowe's attitude that day; he states that he knocked or tapped on Rowe's window to see "*why all this drama.*"<sup>6</sup> It was Spiteri who had just determined that Rowe "*raqad mikxuf*" and, in his view, had driven past him in an aggressive manner "*għaqqad ir-roti*". Thus, it begs logic and common sense to believe that Spiteri should have decided to **resurrect the matter** once Rowe had driven off.

Again, even though Spiteri asserts that he started to walk back to his car, the court finds no plausible explanation for what he testifies as having followed; namely that he chose to insult Rowe even though he had no idea what he was saying!

In fact in Spiteri's words: "*And he got out of the car with his mask, mumbling something, and he said something about my driving ..... I do not know whether I called him "stupid" or "idiot". The word stupid or idiot I called him multiple times, I mean the only thing that I could say was "stupid" or "idiot". And I said "do not be an idiot! Because I could not drive my car. What did you want me to do?!" blah, blah, blah. And then he said something else and I said, "Idiot, idiot idiot!" and then he came with this classic phrase, "You are calling me stupid because of my skin colour!" or "idiot," I do not know which word I used.....I called him "stupid" or "idiot" multiple times, multiple times like.... and then he started moving towards me, again .... But he said, "come on, hit me, come on, hit me!" and he was advancing, little I knew, because to be honest with you I am under oath and I do not want to lie, he was not aggressive, he was*

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<sup>4</sup> Fol.21

<sup>5</sup> Fol.76

<sup>6</sup> Fol.22

*very calm and collected, like this, wearing his mask, ....very authoritative, [The Court: Authoritative, standing up with his arms together downwards.] yes, but he was not aggressive. .... And he was saying this, "come on, hit me! Come on, hit me! Come on, hit me!" and I was doing hand gestures, it is my way of just, I mean shutting him off basically. .... And all of a sudden .... the petrol station has this six inch platform, he climbed over it and he was [telling] e, "come on, hit me! Come on, hit me! Come on, hit me! Come on hit me!" and what I did was this, "I hit you, ok." Just to be honest with you to make fun of it because this was stupid. ....I touched him, ....., giving the Visa to the fuel attendant, obviously not looking at him, as soon as I was turning I saw the shadow and the word I use, he knocked me out of my senses, literally. I mean I saw like a black thing, my ears were ringing and I fell on the .... subsequently he broke my jaw from both sides. It was not just a little punch. And to be honest with you I mean I am a fifty year old man, I am not the skinniest guy on earth, and I can take a punch I think, I never did, but it was so hard, I mean like I got knocked out of my senses literally..."<sup>7</sup>*

Spiteri explains that he still suffers pain on the left lower jaw notwithstanding several surgical interventions he underwent due to the fracture he suffered. The discomfort persists and he had plates introduced to repair the nerve damage suffered because of the altercation. Numbness of the lower lip also developed making normal eating habits not a mere discomfort but a painful experience.<sup>8</sup>

### The injuries

**Dr. David Mifsud**<sup>9</sup>, a Court-appointed expert, after examining Spiteri and the records dealing with the interventions he underwent, testified that *"The diagnosis was two fractures of the mandible, the mandible is the lower jaw. There was a fracture on the right side involving the angle of the mandible and the corner. .... during the healing time, the patient lost one tooth, which was in the line of the fracture, and unfortunately, although the fractures did heal, the patient still has an altered sensation around the lower left lip. What does this mean? It means the nerve is responding, however it is giving this patient a kind of numbness."* Dr. Mifsud adds that there was **debility** although not a paralysis, *"In other words the patient can open more than three centimetres, with some discomfort. And according to the law this does not qualify as a disability, that is normal mouth opening"*.<sup>10</sup> Finally Dr Mifsud makes mention of the fact that the loss of one pre-molar accounts to 1.5%.debility.<sup>11</sup>

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<sup>7</sup> Fol.22-25

<sup>8</sup> Fol.25-28

<sup>9</sup> Dok.DM a fol.57 et seq

<sup>10</sup> Fol.53-54

<sup>11</sup> Fol.54

The Court expert states that the injuries took well over thirty days to heal and, given that the injury was sustained to the face, these are classified as being of a grievous nature. Mifsud also found that the injuries were compatible with excessive trauma to the facial skeleton and although the fracture sites have healed, the scar will not heal, and there was no improvement to the altered sensation which Spiteri now suffers from.<sup>12</sup>

**PC18 Mark Falzon** who arrived on scene together with RPC3150, noted that Spiteri was spewing blood as he spoke. Rowe was accompanied to the police station where his statement was taken.<sup>13</sup> **RPC3150 Luciano Bezzina** added that, *a tempo vergine*, Spiteri informed him that he was knocked out after suffering three to four punches to the face as he was getting his vehicle refuelled.<sup>14</sup> Rowe had been honking behind him as he stopped at the pump and when he overtook him, insults were traded.

The following declaration made by none other than Spiteri speaks volumes. Spiteri explained to the constable that when both he and Rowe were out of their vehicles, Rowe had reacted by stating that Spiteri could say all he wanted as long as he doesn't touch him, at which point **Spiteri poked him** on his shoulder which in turn led to Rowe punching him between three to four times.<sup>15</sup>

Consequently, Spiteri's initial version given to the police gives a clear picture as to how events played out; a version which was tweaked when testifying *viva voce*. It was Spiteri's conduct which led to this needless and senseless altercation:

*"The Court: This is what Mario Spiteri is telling you Rowe said.*

*The witness: Yes.*

*The Court: And what did Mario Spiteri tell you Rowe said?*

*The witness: Rowe told Mario Spiteri, he told him, "Listen, you **tell me what you like, but do not touch me.**" Mario Spiteri poked him on his shoulder and that is when he got, he said, beaten, punched three, four times."<sup>16</sup>*

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<sup>12</sup> Fol.55

<sup>13</sup> Fol.29

<sup>14</sup> Fol.39

<sup>15</sup> Fol.39

<sup>16</sup> Fol.3

**Inspector Frankie Sammut** exhibited a copy of the footage<sup>17</sup> handed over to him by the petrol station management, namely Ms. Elaine Pizzuto<sup>18</sup> who confirmed this when testifying.<sup>19</sup>

In the **Current Incident Report**,<sup>20</sup> confirmed on oath by **PC1486 Gordon Portelli**,<sup>21</sup> it is reported that when the police arrived on site and took the versions of the parties involved in the altercation, they noted that Spiteri, the injured party, was bleeding at the mouth. Mario Spiteri was driving a SsangYong while Rowe was driving a Nissan.

The report mentions that Rowe stated that he was waiting his turn to enter the petrol station sited at the Malta International Airport, the car being driven in front of him stopped at the first fuel pump which was closest to him. He sounded his horn so that the car moves to the next pump thus allowing him to get served from too, namely from the pump the car had stopped at. When he saw that the car in front of him remained stationary, he drove past it and parked by the next pump. When he was taking his money the driver of the said car (Spiteri) walked up to his car and **“punched”** the window at the driver’s side causing him to alight from his vehicle and demand an explanation. However, Rowe then proceeded to the cash area to pay. A few moments later the same man came up to him and **told him how he was going to beat him up “and at that moment I felt threatened”**. Racial comments were uttered and insults traded: *“I specifically told him to say whatever he wants but not to touch me because he was already invading my personal space. After for whatever reason he poked me on my shoulder and at that moment I defended myself as I felt being threatened and **punched him two or three times in his face**”*. The gas attendant managed to keep them separated until the police arrived.<sup>22</sup>

On his part Spiteri stated that as he was entering the petrol station, the vehicle in front of him was reversing and he stopped behind it, waiting for it to drive off. At the same time a vehicle behind him was sounding the horn continuously. Spiteri continued that he parked next to the closest fuel pump and the driver of the car being driven behind him, drove past him and parked next to the fuel pump further down. *“Jiena insilt mill-karrozza tieghi u mort fejn il-karrozza tieghu sabiex nispjegalu ghalxiex jien kont wieqaf u ghalhekk tektiktlu mat-tieqa tax-xufier”*. *Dak il-hin hwa beda jghajjat ‘Don’t touch my car’*”. He moved back and walked back to his car to get the card to pay for the fuel. The driver was insulting him

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<sup>17</sup> Dok.FS and Dok.FSCD a fol.34-35

<sup>18</sup> Fol.31

<sup>19</sup> Fol.77

<sup>20</sup> Fol.5 et seq

<sup>21</sup> Fol.96

<sup>22</sup> Fol.6

calling him “*fucker*” and he replied that he was behaving like an “*a\*\*\*\*le*” as he tried to explain to him why he had not driven further down. It was at that time that the defendant used the words ‘black’ and he got annoyed that the racial card was being played by Rowe. Spiteri added that as he went to pay the defendant “*tela it-targa tal-pompa tal-petrol u beda jghidli ‘Come on touch me’*”. At that point he touched him on his shoulder with one finger and at that gesture the defendant punched him and he fell to the ground.<sup>23</sup>

In the **statement**<sup>24</sup> released by the defendant to the Police, Rowe explained that as he was heading down to enter the fuel station located at the Malta International Airport, there were two cars in front of him. Thinking that both cars stopped, Rowe honked his horn. A couple of seconds the first car drove away while the second one, driven by Spiteri, parked next to the first and closest fuel pump. Rowe honked the horn once again hoping that Spiteri would drive to the second fuel pump further down thus making space for him to park next to the first fuel pump. When Spiteri did not drive on, Rowe stated that he drove around Spiteri’s car and parked next to the second fuel pump further down: “*While I was looking for my money I heard a very **loud and frightened sound as he slapped on the driver side window***”. He got out of his car and confronted him “*His response was why I was blowing the horn for and **threatened me that he will punch me in the face or he wanted to fuck me up and also told me that he will cause me bodily harm***. At this point I didn’t want to argue with him and went back to my car”. Rowe continues explaining that when he got out of the car to go and pay, Spiteri was still behind his vehicle insulting him using abusive language and threatening to injure him.

He describes how “*He told me ‘what you think I’m scared of you because you’re Black?’ I told him why you are bring up my race for? He told me ‘because you all think you are important?’*. At this point I told him say what you want but don’t touch me. I was trying to avoid this guy and kept my distance from him...While I was standing near the [cash] register of the petrol station he came there and kept going with verbal insults and threats. At this point I told him to say whatever he want just to keep his hands off me. He told me ‘What you are going to do if I touch you?’ he took **his two index fingers and struck me on my shoulder**. At this point after all the verbal abuse and threatening I felt frightened when **he struck me with his fingers and I struck him in the face I think three times**.” He finishes off his statement by reiterating that after the verbal and physical assault, he felt his life was in danger and he acted in self-defence.<sup>25</sup>

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<sup>23</sup> Fol.7

<sup>24</sup> Fol.8 et seq

<sup>25</sup> Fol.9

The fact that the defendant has no qualms in stating that he delivered not merely one blow but several, shows that he is being honest in his testimony and does not attempt to detract any detail which admittedly, may be construed against him.

The defendant **Shane Kayde Rowe** chose to testify and began by explaining that having stopped to refuel his vehicle, he noted that there were two vehicles in front of his car which were stationary, thus leaving his car in the middle of the road thus blocking access of other cars to drive by. After waiting for a couple of seconds he honked his horn. The first car drove away thus clearing the path for the second car to drive off and park next to the fuel pump. Yet although there were two freed-up fuel pumps located next to each other, the driver of the vehicle in front of his car decided to park at the closest available fuel pump, thus causing him to remain in the middle of the road. Consequently, he sounded his horn again in a bid to alert the said driver to drive to the second pump so he could enter the station and refuel at the first available pump. The said driver took no heed and remained parked at the first fuel pump, thereby forcing Rowe to reverse, drive around said vehicle and park next to the second and farthest fuel pump.<sup>26</sup>

The defendant continued to explain that, when he had parked his car and had reached out to get his wallet, he heard *"a very loud, very frightening like thump, like somebody had slapped the glass of my window, like very very very hard, very aggressively"*<sup>27</sup>. Looking over his shoulder, he could see Spiteri standing next to his (Rowe's) car. At this point he got out of his car and asked Spiteri to explain why he had slapped at his window. Rowe adds, *"And instantly these threats began, he told me, ... he told me, "You are my fucking problem! Why are you fucking blowing my horn at me for?! You want me to punch you in your fucking face!" Completely taken off guard ..... I went back into my car. I continued to try and grab my things, but I also wanted to wait for Mr Spiteri to kind of leave. He stood there for another couple of seconds yelling at me through the window of my car, but it was still up. He then walked off to go back to his car, so I waited for him to pass my car .....I just did not want to engage in any kind of altercation or anything. I knew... he was very aggressive in his stance and in his nature. So I knew he was a bit frantic. And I just wanted to get my petrol and be on my way, to be honest. I got out of the car to walk over to the booth to pay for the petrol. As I came out of the car, Mr Spiteri saw me come out of the car and came charging back over to where I was at. Again I asked him like, "What is your problem?!" He told me, "You are my fucking problem! I am not scared of you!" ... .. He said, "I am not scared of you because you are black." More shocked and like baffled by what is coming at me, I told him, "What has that got to do with anything?" He said, "I am not scared of you because you are black. You guys think you are so special*

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<sup>26</sup> Fol.112

<sup>27</sup> Fol.113



*which your black lives matter.” At this point I knew that I definitely did not want to be anywhere near this situation. He had already pretty much hit my vehicle, threatened me with violence and now he is making reference to my skin.”<sup>28</sup>*

It is to be underlined that there is total consistency in what Rowe stated *a tempo vergine*, both in his statement and to the police who arrived on the scene, and when he testifies *viva voce*. At no point is he caught out on any divergence in his accounts, a fact which attests to the veracity and genuineness of his testimony.

Rowe continues that upon seeing Spiteri’s conduct, he walked over to the paying booth knowing that there would be people there coupled to the fact that the area was covered by cctv cameras; moreover, he didn’t want to remain a sitting duck for Spiteri to have a go at him/his car once more.<sup>29</sup> Spiteri kept going to his car and returning to insult him.

Rowe, whose version is corroborated by the footage, explains: “I just told him, “Listen, say what you want but **just do not put your hands on me, do not touch me!**” I even told him this before when he mentioned black lives matter and [“]I am not scared of you because you are black [“]. I told him, “Listen, say what you want, **I am not scared of your racism but just do not touch me!**” While I was over there standing by the booth he came over again and I told him again, “Speak all the things you want to speak but **do not put your hands on me.**” **And that is when Mr Spiteri he took his hand and he shoved me in the shoulder on my left side.”<sup>30</sup> Perceiving this altercation as having escalated to a physical assault, Rowe admits punching Spiteri twice or three times.**

It is in the following details which Rowe can provide in his testimony, details which also draw upon facts which Spiteri mentions, which continue to give credibility to Rowe’s version of events. In fact, the defendant details the conversation which led up to Spiteri making physical contact with Rowe and the ensuing punches Rowe dealt Spiteri. He explains that as he was **standing with his hands by his side** – also confirmed by the footage exhibited – Spiteri had come over and was continuing insulting him causing **Rowe to warn him not to touch him (Rowe)**.

Spiteri’s reaction was that he jabbed him in the shoulder with his index and middle finger and reacted with the words ““There, what you are going to do now!” .... He shouted at me and he told me, “What are you going to do now?!” And at this moment, as I said, everything escalated from the car to the verbal threats to the reference to my skin colour, and now the physical hit. And I just jabbed ... .. so I just

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<sup>28</sup> Fol.113-114

<sup>29</sup> Fol.114

<sup>30</sup> Ibid.

*kind of push over my left hand and I struck him with my right hand. Again, I may have hit him a third time, it all went a bit fast, and Mr Spiteri fell to the ground, and I stood in like a defensive posture with my hands [The Court: clenched, hands held protecting the face are, the chin area.]". Rowe continues that it was at this point that the pump attendant intervened and walked him to his car. Spiteri had got up and persisted in going back and forth between his car and Rowe's acting aggressively and using his mobile phone. Rowe requested the pump attendant to serve him in haste so that he could go and make a report at the Airport police station but was informed that the police had already been called.<sup>31</sup> Rowe declares that his reaction was an instantaneous one since the threat of violence had been present all along and after being jabbed he acted to protect himself.<sup>32</sup> He did so by **pushing Spiteri away with his left hand whilst he struck him with his right.** Seeing that Spiteri fell to the ground he **immediately stopped** "my hand in a defensive posture and I remember saying , I said 'do not touch me, do not touch me!'"<sup>33</sup>*

### The CCTV Footage.

The footage exhibited by witness Pizzuto was thoroughly reviewed by the Court and proved pivotal to determine which of the two versions, presented by the parties in these proceedings, the Court should rely on and give credibility to.

At this point the Court must make mention of the fact that as can be attested from the footage various were the eyewitnesses to this incident, not least the fuel attendants. Yet the prosecution failed to call these witnesses when article 346(1) of the Criminal Code obliges it "to collect evidence, whether against or in favour of the person suspected of having committed that offence".

### **Pump 2 : 08-03-2020**

**09:21:58:** Rowe can be seen walking towards a fuel pump, seemingly talking to someone.

**09:23:14:** Rowe can be seen walking away from the fuel pump with a person in front of him. He turns back and speaks to someone.

**09:25:05:** Rowe can be seen standing next to a white vehicle.

**09:32:41:** the Police arrive on scene.

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<sup>31</sup> Fol.115

<sup>32</sup> Fol.116

<sup>33</sup> Fol.117

### **Pump 3 : 08-03-2020**

**09:21:38:** Spiteri is next to the Rowe's car arguing with him.

**09:25:01:** Spiteri approaches Rowe's car whilst holding his mobile phone in a manner which leads one to conclude that he was taking a video or photos of the defendant's car and/or number plates.

**09:27:21:** Rowe holds the phone against his ear while Spiteri is again noted using his mobile phone to capture images of the defendant.

**09:28:02:** Once again Spiteri walks over to Rowe's vehicle and speaks to the fuel attendant.

**09:36:08:** Rowe stands behind a car with his hands in his pockets.

**09:41:34:** Rowe is spoken to by the police.

### **Pump 6: 08-03-2020**

**09:20:52:** A Korando can be seen pulling into the petrol station. Driving behind it is a Nissan Qashqai. As soon as the Korando enters the petrol station, the Nissan stops behind it and after a few seconds, the Nissan Qashqai reverses and drives through the middle of the station.

In this footage Spiteri can be seen walking in and out of the footage.

**09:032:01:** A police officer is seen approaching the victim and talks to him.

### **Pump 7 : 08-03-2020**

**09:20:57:** A Korando parks next to a fuel pump.

**09:21:14:** A Nissan Qashqai drives through the middle of the station, between a white car on the left and a Korando on the right.

**09:21:22:** Spiteri gets out of his car and can be seen **rushing forward in the direction taken by the Nissan Qashqai.**

**09:21:50:** **Spiteri** can be seen walking back towards his car however he turns back and can be seen arguing with someone. After some seconds one notes Rowe and Spiteri arguing.

Spiteri heads back to his car, opens the car door, gets something out of his car, and goes around his vehicle, presumably next to where the car fuel tank is located. After a few seconds, Spiteri goes back and opens his car from the driver's side and is seen once again arguing and gesticulating. In the meantime, the defendant can be seen walking next to the fuel attendant booth, looking at Spiteri.

**09:23:04:** Spiteri walks to the fuel attendant's booth and can still be seen arguing and gesticulating. He even leans back making fun of Rowe (09:23:38)

**09:23:57: Spiteri can be seen lifting his hand in the direction of the defendant.**

**Instantaneously** Rowe punches Spiteri four times and Spiteri falls to the floor. The defendant then remains in a **defensive position (boxing stance)**.

Spiteri immediately gets up and momentarily heads to his car. Spiteri walks back in the direction of the defendant, seemingly holding a mobile phone in his hands. He walks back to his car but returns, walking towards Rowe. After returning to his vehicle, Spiteri again (for the third time) walks in the direction of the defendant.

Throughout one notes the fuel attendant attempting to **restrain Spiteri, not Rowe** who waits calmly further off. This continues to contradict Spiteri's version that he was knocked out of his senses but proves that his aggressiveness persisted.

**09:32:47:** the Police arrive on scene.

Indeed, whilst footage from Pump 7 shows the punch up arriving at **09:23:58**, Spiteri was seconds later back on his feet, still argumentative. Thus, the footage shows that Rowe hit Spiteri at 9:23:58, **immediately** and **instantaneously** upon being assaulted by Spiteri.

Considers further,

Given that as stated above the prosecution failed to call any of the various eyewitnesses, the court is faced with two conflicting versions regarding that which led to Spiteri being knocked down by Rowe.

It remains uncontested however that it was Spiteri who, for no justifiable reason, decided to **initiate** the confrontation with Rowe when he hit on his window. Nor is it uncontested that it was again Spiteri who decided to

**physically assault Rowe**, even though possibly in a light manner by poking and shoving him on his shoulder.

The fact that one is faced with conflicting versions has been the subject of many a court judgement which judgements expounded on the teachings which a Court ought to be guided by in determining whether to rely, partly or wholly, on one version more than another, or indeed, on neither.

The Court of Criminal Appeal held the following:<sup>34</sup>

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

Considers further,

Mention must at this point be made of the fact that the Court finds Spiteri’s account an unreliable one at best. It is rife with statements which in the context of the incident, even as recounted by Spiteri himself, make no sense at all.

For instance, whilst Spiteri wants the Court to believe that he only walked over to Rowe’s vehicle out of concern and curiosity so as to see why he was beeping his horn, the footage leaves little room for speculation as to why Rowe was truly trying to get Spiteri’s attention. Thus, it is readily obvious that Spiteri initially approached Rowe **to confront him** when he had no reason to seek any explanation from a driver who was minding his own business, so much so that Rowe was still in his vehicle. Rowe’s version that Spiteri was being abusive and insulting towards him, garners more credibility and is supported by the footage which shows that it was Spiteri who keeps walking towards Rowe and continues arguing with him instead of getting served and moving on.

Spiteri’s account borders on the ludicrous when he expects the court to believe that he simply touched Rowe “*to make fun of it because this was stupid*”<sup>35</sup> since he was being invited to do so by Rowe himself – he declares Rowe was telling him “*Come on, hit me! Hit me, hit me, hit me!*”<sup>36</sup>

Again, it is interesting how Spiteri describes Rowe’s reaction after “*tektiktlu mal-hgiega*”. Besides noting once more that the events as they unfolded did not call for any tap on Rowe’s window but, should Spiteri truly and meaningfully have

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<sup>34</sup> **Il-Pulizija vs Graham Charles Ducker**; Decided on the 19<sup>th</sup> May, 1997

<sup>35</sup> Fol.24

<sup>36</sup> Fol.23

wanted to talk to Rowe, he could have simply done so without touching the vehicle, Rowe's reaction – as described by Spiteri himself – was **not one which ensues a "gentle tap"**<sup>37</sup> **but is a reaction to a more sinister act, indeed an act of aggression "Do not touch my car! Step aside! Do not touch my vehicle"**.<sup>38</sup>

The Court could not ignore the fact that Spiteri finds difficulty being coherent in his testimony and wanders off at a tangent giving superfluous details,<sup>39</sup> often adding colour to an account which betrays the traumatic experience of a person who is supposed to have been a victim of a gratuitous and unprovoked assault by someone he had previously described as simply "*authorative....but he was not aggressive*"<sup>40</sup>.

Nor could the Court not give considerable weight to the fact that Spiteri again **omits to mention** that even after suffering the blows, he was undeterred from attempting to confront Rowe once more. In fact when testifying Spiteri gives the impression that after being knocked out, the incident end there and then, so much so that he states "*he knocked me out of my senses, literally. I mean I saw like a black thing, my ears were ringing and I fell on the floor I think....when I woke up. I do not know how much time I spent on the floor....I got knocked out of my senses literally*".<sup>41</sup>

The mere fact that Spiteri wants the Court to believe that at any point in time he lay motionless on the ground, "*I woke up*", is betrayed by the footage. *A tempo vergine* he also attempts to give the impression that he was knocked out senseless "*Jien waqqajt mal-art u b'hekk ma kontx naf x'inhu jigri*".<sup>42</sup> From the footage it immediately appears how Spiteri is back on his feet in a split second<sup>43</sup>, encountering no difficulty in walking up and down towards the defendant<sup>44</sup> and using his phone to capture images of Rowe, who – as Rowe himself stated for his protection – remained standing by the paying booth<sup>45</sup>, the place he correctly deemed was covered by cctv cameras and in the public gaze.

This is clearly captured by Camera 7 which already shows Rowe standing passively by the paying booth at 09:22 whilst Spiteri keeps walking towards

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<sup>37</sup> Fol.21

<sup>38</sup> Fol.22

<sup>39</sup> Fol.21 regarding problems with his Revolut card; Fol. 22 mentioning "*all the colours of the rainbow*"; "*blah, blah, blah*"

<sup>40</sup> Fol.23

<sup>41</sup> Fol.24-25

<sup>42</sup> Fol.7

<sup>43</sup> Camera 6 shows him already walking in and out of the camera's view at 09:24 when Rowe punched him seconds before at 09:23:59

<sup>44</sup> Camera at pump 6 at 09:24 onwards

<sup>45</sup> Camera 2 over Pump 2 at 09:21:57.

him, moves away only to return moment later (09:22). In fact, one cannot miss his jeering and taunting behaviour at 09:22:47 where he is seen leaning forwards and backwards, jeering and laughing in Rowe's direction (09:23:38-09:23:44). Then the camera on pump 6 again shows Spiteri gesticulating with both hands in the air whilst swinging his waist left to right, addressing Rowe (09:22:46). Throughout however, Rowe remains steadfast at the booth, occasionally also taking a couple of steps backwards in what appears to be **a bid to avoid confrontation**.

Even following the incident Rowe remains composed; passively looking in Spiteri's direction awaiting the Police's arrival, just as he testifies.<sup>46</sup> In contrast to Spiteri, Rowe does not lose composure as manifested by his calm demeanour when talking to police whom he waited for, at some distance from Spiteri.<sup>47</sup>

Considers further,

In conclusion, the cctv footage exhibited, particularly that taken from Camera 7, corroborates to the letter the defendant's version of events as it captures the incident as it unfolded. It confirms the aggressive demeanour of Spiteri and how it was Spiteri who had initiated physical contact with Rowe, not merely when he jabbed him using his index and middle fingers, but when he saw fit to walk over to the defendant's car and confront Rowe. His boldness is borne by the fact that, after being punched to the ground, he is not discouraged from persisting in seeking to confront Rowe time and time again as Rowe remains standing inactively by the paying booth.

After hitting Spiteri to the ground, the footage shows Rowe protecting himself. In doing so, Rowe demonstrates that, as he testified, he truly believed he needed to protect himself from any further assault.

Consequently, it now remains to be seen whether Rowe's conduct was legally justifiable or excusable.

Reference is being made to the judgement by the Court of Criminal Appeal in **Il-Pulizija vs Clint Zammit** wherein the doctrine of self-defence was examined *funditus*:<sup>48</sup>

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<sup>46</sup> Camera 2 at 09:24 onwards; Pump 3 (camera 3) 09:36:19.

<sup>47</sup> Pump 3 footage, camera 3

<sup>48</sup> Per Hon. Mdme Justice Dr. Edwina Grima; Decided 20<sup>th</sup> March, 2019; Appeal Number 223/2014. Vide also by the same Court as presided **Il-Pulizija vs Zachary Vella**; Appeal No. 46/2017; Decided 3<sup>rd</sup> May, 2019

**“46. Illi it-tlett elementi ta’ dritt li huma dottrinalment mehtiega sabiex tigi applikat dina l-iskriminanti ghad-delitt tal-omicidju jew tal-offiza fuq il-persuna, huma illi l-minaccja jew l-aggressjoni affaccjata trid tkun wahda gravi, ingusta u inevitabli u wkoll illi r-reazzjoni trid tkun wahda proporzjonata ghal din il-minaccja/aggressjoni kif hekk ikkwalifikata :-**

**"Id-dritt ghall-legittima difesa jitwieled u huwa konsegwenza naturali mid-dritt fundamentali ta' kull bniedem li jiprotegi lilu nnifsu minn xi aggressjoni jew dannu anke bl-uzu ta' forza. Izda il-ligi timponi certi kundizzjonijiet biex din l-eccezzjoni tigi milqugha. Cioe' t-theddid ta' xi aggressjoni jew dannu jew perikolu irid ikun ingust, gravi w inevitabli. Id-difiza trid tkun saret biex jigu evitati konsegwenzi li jekk jaffettwaw ruhhom jikkagunaw hsara irreparabli lid-difensur jigifieri hsara jew offizi fil-hajja, gisem u/jew partijiet tal-gisem tad-difensur. L-imputat difensur irid jipprova li dak li ghamel, ghamlu stante li fl-istat psikologiku li kien jinsab fih f'dak il-mument biex jevita xi perikolu li ma setghax jigi evitat b'xi mod iehor. Jigifieri il-perikolu ghandu jkun attwali, istantaneju u assolut u ma jridx ikun xi perikolu anticipat. Il-perikolu ghandu jkun attwali jigifieri ta' dak il-hin u mhux xi theddida ta' perikolu li tkun saret hinijiet qabel ghax dan jista jaghti lok biss ghal provokazzjoni u mhux difesa legittima. Il-perikolu irid ikun assolut cioe' li f'dak il-mument li qed jsehh ma setghax jigi evitat b'xi mod iehor.<sup>49</sup>"**

**47. Illi l-Artikolu 223 tal-Kodici Kriminali ighid hekk dwar din l-iskriminanti:**

**Ma hemmx reat meta l-omicidju jew l-offiza fuq il-persuna huma ordnati jew permessi mill-ligi jew mill-awtorita` legittima, jew mehtiega mill-bzonn attwali tad-difiza legittima ta' wiehed innifsu jew ta' haddiehor.**

**48. Illi d-decizjoni ta` spiss iccitata fejn saret esposizzjoni legali ta' din l-iskriminanti hija **Repubblika ta` Malta vs Domenic Briffa** deciza minn din il-Qorti diversament komposta fis-16 ta` Ottubru 2003 fejn inghad hekk :-**

**“Sabiex wiehed jista' jitkellem fuq legittima difiza li twassal ghall-gustifikazzjoni jew non-imputabilita` (a differenza ta' semplici skuzanti - art. 227(d)), iridu jikkonkorru, kif diga` nghad, l-elementi kollha li dottrinalment huma meqjusa necessarji, cioe` l-bzonn li l-minaccja tkun gravi, tkun ingusta, tkun inevitabli u fuq kollox li r-reazzjoni tkun proporzjonata ghall-minaccja jew ghall-aggressjoni.**

**Dwar l-element ta' l-inevitabilita` il-Professor Sir Anthony Mamo, fin-noti tieghu "Lectures in Criminal Law, Part I", ighid hekk (pagna 104):**

**"The accused must prove that the act was done by him to avoid an evil which could not otherwise be avoided. In other words the danger must be sudden, actual and absolute. For if the danger was anticipated with certainty, a man will not be justified who has rashly braved such danger and placed himself in the necessity of having either to suffer death or grievous injury or to inflict it. In the second place the danger must be actual: if it had already passed, it may, at best, amount to provocation or, at worst, to cold-blooded revenge, and not to legitimate defence; if it was merely apprehended, then other steps might have been taken to avoid it. Thirdly, the danger threatened must be absolute, that is, such that, at the moment it could not be averted by other means."**

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<sup>49</sup> Qorti tal-Appell Kriminali 20 ta' Jannar, 1995, fl-ismijiet '**Il-Pulizija vs Joseph Psaila**'



Dwar il-kwistjoni ta' l-inevitabilita` tal-perikolu jew minaccja, din il-Qorti, diversament komposta, fis-sentenza tat-23 ta' Gunju, 1978 fl-ismijiet Ir-Repubblika ta' Malta v. Frangisku Fenech, wara li accennat ghall-kontroversja klassika bejn dawk li jghidu li jekk l-aggredit seta' jahrab kien tenut li jaghmel hekk u dawk li jghidu li l-aggredit ma ghandu qatt jirtira, komplet hekk:

"Din il-Qorti hi tal-fehma li llum ma tistax izjed taccetta bhala proposizzjoni assoluta illi (barra, naturalment, mill-kaz tal-"*commodus discessus*") jekk l-aggredit seta' jevita l-hsara, allura kien tenut jahrab u illi jekk ma jahrabx ma jistax minhabba f'hekk jinvoka din l-iskriminanti; izda fl-istess hin ma tahsibx li tista' taghti salvakondott ghall-ispavalderija zejda. Dawn huma l-limiti gusti tal-kwistjoni u pjuttost milli tifformalizza proposizzjoni rigida applikabbli ghall-kazijiet kollha, din il-Qorti tippreferixxi li l-kwistjoni tigi risolta kaz b'kaz, u fuq l-iskorta tal-principji salutari li jiggovernaw dan il-kaz klinikament tipiku ta' gustifikazzjoni."

Din il-Qorti, kif issa komposta, tazzarda zzid li l-mod kif il-kwistjoni ta' l-inevitabilita` tal-perikolu jew minaccja ghandha tigi affrontata hu li wiehed jistaqsi: l-agent (ossia l-aggredit) seta', tenut kont tac-cirkostanzi kollha, ragjonevolment jevita dak il-perikolu jew dik il-minaccja? Jekk il-buon sens jiddetta li l-agent seta', billi jaghmel manuvra jew pass f'direzzjoni jew ohra, jew anke billi semplicement ma jiccaqlaqx, facilment jevita l-periklu jew minaccja li kien qed jara fil-konfront tieghu, allura, jekk ma jaghmilx hekk jigi nieqes l-element tal-inevitabilita` tal-perikolu jew minaccja. Jekk, pero`, mill-banda l-ohra, tenut kont tac-cirkostanzi kollha, il-buon sens jiddetta li l-agent ma kellu jaghmel xejn minn dan jew, anzi, kellu jibqa' ghaddej fit-triq li twasslu aktar qrib dak il-perikolu jew dik il-minaccja, allura b'daqshekk ma jigix nieqes l-element ta' l-inevitabilita`<sup>50</sup>."

Mela l-agent irid ikun qed jirreagixxi (ghall-aggressjoni jew minaccja minnu ga` percepita bhala ingusta u gravi) proprju biex ma jhallix il-hsara mhedda ssehh. Jigifieri s-sitwazzjoni trid tkun wahda fejn l-aggressjoni jew minaccja x'aktarx issir wahda verament inevitabbli, u mhux semplicement prezunta li hi inevitabbli. A propozitu tar-rekwizit ta' l-attwalita`, il-gurista Taljan Francesco Antolisei jghid hekk:

"Il codice Zanardelli parlava di pericolo 'imminente', dando luogo a molte incertezze. Con la nuova formula [pericolo attuale] si e` voluto porre in rilievo che la situazione pericolosa deve esistere nel momento del fatto. Pericolo attuale e` pericolo presente. Pertanto, un pericolo meramente futuro, e cioe` la probabilita` che in seguito si verifichi una situazione pericolosa non basta; e se ne comprende la ragione, giacche` in tale caso l'agredito ha la possibilita` di invocare efficacemente la protezione dello Stato"

49. Illi *r-ratio legis* wara l-istitut tal-legittima difiza huwa d-dritt ghal awto-tutela ta' persuna jew tal-gheziez taghha, b`tali mod illi qtil isir gustifikat. Dan isehh meta persuna tkun sabet ruhha wicc imb`wicc ma` agressjoni ngusta tant illi ma tkunx tista' tirrikorri ghal mezzi ohra biex tahrab minn jew tevita dak il-periklu jew inkella li tirrikorri lejn l-Istat sabiex iharisha mill-periklu. Tispicca ghalhekk kostretta tuza mezzi hija stess biex thares lilha innifisha minn dak il-periklu li jkun attwali, gravi u inevitabbli. Id-dritt penali Taljan fil-fatt isemmi bhala zewg rekwiziti ghall-awto-tutela dik tan-necessita` u tal-kostrizzjoni :-

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<sup>50</sup> Deciza mill-Qorti tal-Appell (Sede Inferjuri), preseduta mill-Imhallfin Vincent Degaetano, Joseph A. Filletti u David Scicluna u deciza fis-16 ta' Ottubru, 2003.

**“La necessità di difendersi e la costrizione sono due elementi diversi ma tuttavia connessi. Necessità di difendersi significa che la reazione deve essere difensiva, e quindi non aggressiva, nel senso che deve essere un’azione che si contrappone ad un’altra azione uguale e contraria, o perlomeno analoga.**

**La costrizione implica che la legittima difesa non possa essere invocata tutte le volte che il soggetto aggredito aveva altre modalità di difesa (ad esempio quando poteva sottrarsi al pericolo con la fuga, oppure chiamando un agente nelle vicinanze). Il soggetto infatti deve essere costretto, cioè trovarsi in una situazione implicante impossibilità di scelta. Si ha costrizione quando il soggetto subisce l’alternativa tra il reagire o tollerare l’attacco esterno senza esserne l’artefice. Ciò si verifica quando tale alternativa non è causata o accettata dall’aggredito o quando egli non possa sottrarsi senza pregiudizio. Non è, pertanto configurabile la costrizione se il soggetto agente abbia agito non per scopo difensivo, ma per risentimento o ritorsione (Sez. 1, n. 3200 del 18 febbraio 2000) o in un contesto di sfida reciproca (Sez. 5, n. 7635 del 16 novembre 2006; Sez. 1, n. 365 del 24 settembre 1999). La legittima difesa non è neppure invocabile da parte di colui che accetti una sfida o si ponga volontariamente in una situazione di pericolo dalla quale è prevedibile o ragionevole attendersi che derivi la necessità di difendersi dall’altrui aggressione.<sup>51”</sup>**

**50. Jekk allura l-aggreddit ikollu l-ghazla fil-mument tal-agressjoni u cioe’ jekk ikun possibbli ghalih li jevita dak il-perikolu jew ikun jista’ jfittex l-ghajjnuna mill-awtoritajiet u jonqos milli jaghmel dan, izda jaffaccja l-periklu huwa stess, allura jigi nieqes il-kuncett tal-awto-difeza.**

**51. Fil-fatt id-dritt penali Taljan jippresupponi zewg rekwiziti ghall-applikazzjoni ta` din l-iskriminanti :-**

**L’accertamento della legittimità va infatti operato in due momenti differenti, il primo avendo riguardo all’offesa e al pericolo da questa generato, il secondo avendo riguardo invece alla difesa vera e propria.**

**La legge richiede in primo luogo che si agisca per difendere un diritto contro un’offesa ingiusta. Il significato di questo punto è sufficientemente chiaro e univoco da non richiedere specificazioni.**

**Secondo e ultimo requisito per potersi legittimamente difendere è che il pericolo causato dall’offesa sia attuale, escludendo così tutti i casi in cui questo sia già esaurito o debba ancora verificarsi.<sup>52</sup>**

**52. Sabiex l-att difensjonali jkun ġustifikat, l-att ta’ aggressjoni jrid jkun ta’ ċertu portata u ta’ periklu u jrid jammonta għal reat vjolenti jew li jseħħ f’tali ċirkostanzi li jqajjmu biża raġjonevoli tal-periklu tal-ħajja jew tas-sigurta` personali ta’ dak li jkun jew ħaddieħor. Dan għandu jkun determinat minn min hu imsejjah biex jiggudika billi jigi applikat it-test soggettiv li jfisser illi l-gudikant irid jidhol fiż-**

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<sup>51</sup> <http://www.altalex.com/documents/news/2017/07/03/legittima-difesa-o-licenza-di-uccidere>

<sup>52</sup> <http://www.altalex.com/documents/news/2017/07/03/legittima-difesa-o-licenza-di-uccidere>

żarbun tal-gudikabbli skont il-każ sabiex igharrbel il-hsibijiet u l-emozzjonijiet tieghu fil-mument illi huwa jkun ġie rinfaccjat bil-periklu.<sup>53</sup> [emphasis by this Court]

It has been shown that once Rowe had warded off Spiteri, albeit after hitting him, once Spiteri had fallen to the ground and thus was no longer perceived as a threat, Rowe stopped in his tracks. Thus, such a reaction is deemed by the Court as being **proportional** given that he was taken back and surprised by Spiteri's frenzied reaction to the simple beeping of a horn!

Given that his reaction was a proportionate one, this Court does not need to consider further the defence contemplated by Article 227 read together with article 230 of the Criminal Code.

The Court deems that in the circumstances Spiteri's conduct could very well have been perceived by Rowe as one which led him to reasonably fear that, at the very least, his personal security was threatened. Article 223 of the Code does not necessitate that one fears for his life; fearing that there exists a threat to one's safety and security justifies the application of that provision.

Undoubtedly, and only after considering the resulting facts, the Court finds that Spiteri's actions were grave, unjust and inevitable. There is no doubt as to how unjust his behaviour was spurred on by the beeping of a horn. The gravity of that behaviour also emanates from considerations as to the frivolity of the whole incident perpetrated by Spiteri himself on no less than two occasions when he acted in a physical manner; first hitting Rowe's car and secondly by placing his hands on him! It is the Court's finding that faced with this scenario, wherein Spiteri's actions cannot, by any stretch of the imagination, be said to be those of a reasonable, law-abiding person, understandably could have led Rowe to deem that he was dealing with a person whose actions could not have been foreseen or imagined to regress to such depths.

The Court also finds that the danger - as perceived by Rowe - was **sudden, actual and absolute**; in fact, after throwing Spiteri to the ground, Rowe still sensed the need to continue to defend himself as the footage shows him immediately and promptly taking up a defensive posture. Indeed, he was proven right to do so as Spiteri, undiscouraged by the blows suffered, made no indication of retreating and to the contrary kept up the *ante* in approaching time and time again Rowe whilst still in heated argument.

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<sup>53</sup> App. Sup - **Ir-Repubblika ta' Malta vs Mariano Gixti** deciza 03/10/2018

The circumstances in this case are similar to those which imbued the Court's reasoning in the judgement **Il-Pulizija vs Alan Harmworth**:<sup>54</sup>

Hawnhekk il-Qorti taghmel referenza ghas-sentenza moghtija mill-Qorti tal-Appell Kriminali nhar l-ghoxrin (20) ta' Jannar, 1995 fil-kawza fl-ismijiet Il-Pulizija v Joseph Psaila fejn dik il-Qorti riteniet is-segwenti:

*"Id-dritt ghal-legittima difesa jitwieled u huwa konsegwenza naturali mid-dritt fundamentali ta' kull bniedem li jipprotegi lilu nnifsu minn xi aggressjoni jew dannu anke bl-uzu ta' forza. Izda il-ligi timponi certi kundizzjonijiet biex din l-eccezzjoni tigi milqugha. Cioe' t-theddid ta' xi aggressjoni jew dannu jew perikolu irid ikun ingust, gravi w inevitabbli. Id-difiza trid tkun saret biex jigu evitati konsegwenzi li jekk jaffettwaw ruhhom jikkagunaw hsara irreparabbli lid-difensur jigifieri hsara jew offizi fil-hajja, gisem u/jew partijiet tal-gisem tad-difensur. L-imputat difensur irid jipprova li dak li ghamel, ghamlu stante li fl-istat psikologiku li kien jinsab fih f'dak il-mument biex jevita xi perikolu li ma setghax jigi evitat b'xi mod iehor. Jigifieri il-perikolu ghandu jkun attwali, istantaneju u assolut u ma jridx ikun xi perikolu anticipat. Il-perikolu ghandu ikun attwali jigifieri ta' dak il-hin u mhux xi theddida ta' perikolu li tkun saret hinijiet qabel ghax dan jista' jaghti lok biss ghal provokazzjoni u mhux difesa legittima. Il-perikolu irid ikun assolut cioe li f'dak il-mument li qed jsehh ma setghax jigi evitat b'xi mod iehor."*

Izda hawnhekk ghandu jigi applikat it-test soggettiv kif diversi awturi u sentenzi tal-Qorti dejjem specifkaw u mhux bizzzejjed li wiehed jghid x'seta' ghamel jew x'messu ghamel id-difensur (imputat) qabel ma ha l-azzjoni in difesa b'uzu ta' l-azzjoni. Fil-fatt kif jghid il-Professor Mamo fin-Noti tieghu:

*"The danger against which the accused reacted should be viewed not necessarily as it was in truth and in fact, but rather as the accused saw it at the time."*

Wiehed ghalhekk irid ipoggi lilu nnifsu fil-posizzjoni w stat mentali w psikologiku tal-imputat difensur meta agixxa b'dak il-mod fic-cirkostanzi, kif seta' hassu dak il-hin u mument cioe' jekk kienx imbezzgha u /jew panikuz.

Fl-ahhar nett biex l-imputat ikun jista' jigi gustifikat ghal kollox, fid-Difesa Legittima, huwa m'ghandux jaddotta metodi li huma in excess jew minaccja ta' perikolu. Izda anke hawn u partikolarment fil-kaz in ezami, ghandu wkoll jigi kkunsidrat sew l-istat mentali tal-vittma tal-aggressjoni jew minaccja ta' perikolu, cioe' l-imputat. Rinfaccjat b'perikolu serju w imminent - kif haseb hu f'dak il-mument - wiehed ma jstax jippretendi li kellu jzomm il-kalma w fil-fatt il-ligi stess f'cirkostanzi bhal dawn taccetta miskalkolazzjonijiet u errors of judgment. Il-ligi fil-fatt tipprovdi li l-ebda piena ma tigi inflitta f'kazijiet anke fejn bniedem jeccedi l-ligi f'kaz li jkun necessarju li jiddefendi lilu nnifsu u/jew terzi, fejn tali excess ikun dovut ghal perikolu imminenti li hu jsib ruhu rinfaccjat bih jew minhabba bizgha jew twerwir (fear or fright).

F'dan il-kaz l-imputat agixxa sabiex jiddefendi lilu nnifsu mill-aggressjoni inaspettata tal-kwerelant. Jirrizulta li kien il-kwerelant stess li mar u avvicina lill-imputat waqt li dan kien sejjer 'l hemm bil-vettura tieghu u jidher anke mill-istatura tal-istess kwerelant, kif murija fir-ritratti esebiti, li bhala statura huwa ferm ikbar minn dik tal-imputat. Il-Qorti hija konvinta li dak li ghamel l-imputat ghamlu sabiex jiddefendi lilu nnifsu mill-aggressjoni zejda tal-vittma.

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<sup>54</sup> Per Onor. Magistrate Dottor Consuelo Scerri Herrera, Decided 12 ta' Jannar, 2016.

Il-Prosekuzzjoni donna fit-trattazzjoni taghha qalet li l-imputat messu telaq 'l hemm meta ra l-kundizzjoni tal-vittma, w cioe' li d-diskussjoni ta' bejniethom kienet qed tishon, u li ma kellux ghalfejn jidhol f'din il-kwistjoni peress li seta' telaq 'l hemm bil-kwiet billi jsuq minn fuq il-post. Ma' dan pero' l-Qorti ma taqbilx, in linea ma' dak li jghid l-awtur Carrara fil-ktieb tieghu Programma Speciale, meta jghid:

*"I piedi per correre sono fatti per I conigli."*

Il-Qorti taghmel referenza ghal Gurista Taljan Giuseppe Maggione ghal ktieb tieghu Principio di diritto Penali, Vol 1, pg 183 fejn jghid:

*"l'agredito non e' tenuto a fuggire non gia perche' non puo imparsi la vigliaccheria, ma perche' e' suo dovere lottare per il diritto a reagire al delitto."*

Illi ghalhekk jirrizulta proprju l-kaz klassiku ta' Legittima Difesa fid-dawl ta' dak li gie enuncjat aktar 'il fuq. M'hemmx dubju li c-cirkostanzi kif zviluppaw, graw f'hakka t'ghajn, tant u b'mod li kkrejaw f'mohh limputat, bizgha w paniku w oppressjoni ta' perikolu tali li lahaq stat fejn haseb li jekk ma jiddefendix lilu nnifsu kien ser jifga. M'hemmx dubju li f'dan il-kaz il-periklu attwali gie kkrejat mill-allegat vittma u mhux mill-imputat li ddefenda ruhu minn din l-aggressjoni tant serja. Illi ghalhekk din il-linja difensjonali qed tigi milqugha

These learned considerations also permeate the Court's findings when applied to the resulting facts of this case.

Consequently it has been established to the Courts satisfaction that Rowe acted in self-defence after having been subjected to various instances of unprovoked verbal abuse and racial slurs which were uncalled for given that Rowe had merely honked his horn several times. This is coupled to the fact that by Spiteri's account Rowe had made "*hand gestures, I am not saying that he did any bad hand gestures, ..... I saw someone waiving his hands*"<sup>55</sup> - a daily occurrence which any motorist can attest to. God forbid such minor encounters give a person a licence to act in a manner similar to how Spiteri reacted.

In addition, Rowe had experienced the not so "gentle" **knock on his vehicle's window with the incident culminating not merely in verbal and racial insults but physical contact** which Spiteri needlessly proceeded to engage in. Spiteri's conduct undoubtedly conditioned Rowe's frame of mind and served as a backdrop for the physical altercation which soon followed.

This physical contact prompted by Spiteri, preceded a series of aggressive remarks and actions on his part, and impelled Rowe to act in a manner which the Court finds is tantamount to Rowe's lawful self-defence and imposed by actual necessity.

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<sup>55</sup> Fol.21

In view of the foregoing the defendant is being acquitted of all of charges.

**Dr. Donatella M. Frendo Dimech**  
**Magistrate**