



**In the Court of Magistrates (Malta)**  
**as a Court of Court of Criminal Judicature**  
**Magistrate Dr Nadine Sant Lia B.A., LL.M(Kent); LL.D (melit)**

**Comp No: 762/2022**

**The Police**  
**(Inspector Keith Xerri)**

**vs**

**Marko Jerotic Mitrovic**

**Today, the 27th of May 2024**

The Court after having seen the charges proffered against:

**Marko Jerotic-Mitrovic**, 27 years old, son of Zoran and Vesna Mitrovic Jerotic, residing at Wimbildon Crt, Flat 5, Triq il-Mensija, San Giljan, holder of Maltese residence permit number 0284919A, born in Serbia, on 24/03/1995

Charged with having on the 18th December 2022, between the hours of 21:30hrs and 22:00hrs, in St. Rita Steps, Paceville, St. Julian's and/or in these islands:

1. Without the intent to kill or to put the life in manifest jeopardy, caused grievous bodily harm on the person of Sergio Ramirez Lesmes as certified by Dr. Natasha Mifsud med reg. 4604 of Mater Dei Hospital
2. Accuse him further for having on the same date, time, place and circumstances wilfully disturbed the public peace and order.
3. Accuse him further for having on the same date, time, place and circumstances operated as a private guard agency or acted as a private guard or offered his services as such, without a license in accordance with the provisions of Act 389.

The court is humbly requested to provide for the protection of Sergio Ramirez Lesmes from today according to Articles 412C of Chapter 9 of the Laws of Malta

The Court is requested that in case of guilt, provide for the security of Sergio Ramirez Lesmes in terms of Articles 382A, 383, 384, 385 and 412C of Chapter 9 of the Laws of Malta.

The Court is also requested to, in case of guilt, condemn the accused for the payment of costs related to the appointment of experts or architects in the proceedings as contemplated in Article 533 of the Chapter 9 of the Laws of Malta.

Having seen that during the sitting of the 29th Decmber 2022 the accused declared that he is not guilty of the charges proffered against him<sup>1</sup>.

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<sup>1</sup> Folio 5 of the acts of the proceedings

Having seen that The Attorney General on the 7th September 2023 presented the formal accusatory document wherein the accused was charged with the following articles of law<sup>2</sup>:

- Articles 15A, 17, 31, 382A, 383, 384, 385, 412C, 532A, 532B and 533 of the Criminal Code, Chapter 9 of the Laws of Malta;
- Articles 214, 215, 216(1) (a) ii), 216(1) (a) (i), 216(b), 216(d), 218(1)(a) and 218(1)(b) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Article 338(dd) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Article 25(b) of the Private Guards and Community Officers Act, Chapter 389 of the Laws of Malta;

Having seen that during the sitting of the 20<sup>th</sup> September 2023 the Articles of Law for judgment which were sent by the Attorney General were read out, during which sitting the accused declared that he does not object to his case being tried and decided summarily<sup>3</sup>.

Having seen that the Prosecution concluded its evidence during the sitting of the 20<sup>th</sup> September 2023<sup>4</sup>

Having seen that the Defence rested its case during the sitting of the 24<sup>th</sup> October 2023<sup>5</sup>

Having heard the submissions made by the Prosecution and the Defence.

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<sup>2</sup> Folio 213 of the acts of the proceedings

<sup>3</sup> Folio 214 acts of proceedings

<sup>4</sup> Folio 214 acts of proceedings

<sup>5</sup> Folio 215 acts of proceedings

## Having Considered

### Summary of facts of the case

This case concerns an alleged incidence of physical aggression perpetrated by the accused, who was working as a bouncer at Native Bar, against the parte civile, a patron at same bar on evening of the 18th December 2022.

## Having Considered

That reference will be made to the most salient testimonies heard and documents exhibited during these proceedings

The parte civile **Sergio Ramirez** testified during the sitting of the 12<sup>th</sup> January 2023<sup>6</sup>. He explained that on the 18<sup>th</sup> December 2022 there was the World Cup final and he went to watch it at a restaurant in St Julians with his girlfriend Manuela. Afterwards, they moved to Native Bar where they had two drinks – a beer and one shot of tequila. Then they moved to another bar named Kiev and afterwards, at about 21:30hrs, they moved back to Native Bar in the company of another friend called Monica. As he was going in, one of the bouncers asked him to take off his cap and leave it there but he kept walking in as before since no one had raised any issue about the cap. After about 10 seconds, he felt someone pull him back violently. He noticed that it was a bouncer who was tall, bearded and had a right sleeve tattoo. There was another bouncer, a bald man, whom the parte civile identified as the accused, who at that point was just observing but then came very close and punched him in the face, close to the left eye. The parte civile affirmed

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<sup>6</sup> Fol. 37-51 acts of the proceedings

that he had not even spoken to the accused, so he found no reason for that kind of treatment. He then took out his mobile phone and started taking photos of both bouncers. Then he was grabbed from the back and thrown to the ground where he started receiving punches and kicks whilst he was faced down for about 20 seconds. Then he managed to get up and went directly to Mater Dei Hospital. The witness presented the photos which he took on the day and identified the accused therefrom. He complained that as a result of the assault, he suffered two fractures to the face and the left eye was a bit compromised, for which he had to attend follow-up appointments.

**Manuela Licona** testified during the same sitting<sup>7</sup>. She confirmed that she is the parte civile's girlfriend and that on the 18<sup>th</sup> December 2022, they had gone out to watch the World Cup final. After being at other establishments, at about 19:50hrs, they went to Native Bar and had beer and shots of tequila there. After about an hour, they went to another bar but then returned to Native soon after. She, together with other friends Monica and Robert were first to enter and the parte civile followed behind them. A tall, bearded bouncer prevented the parte civile from entering and when they enquired why, another bouncer, who was bald, punched and kicked the parte civile's face. Afterwards, as they moved out of Native Bar towards the street, the same bouncers and a third persons attacked the parte civile once again and she, together with Monica and Robert tried to protect the parte civile as best they could. Once the commotion was broken up, they continued on their way out. The witness recognized the aggressor as the accused and explained

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<sup>7</sup> Fol. 59-66 acts of the proceedings

that immediately after the incident, the parte civile managed to take photographs of both bouncers that were at Native Bar.

**Inspector Keith Xerri**, stationed at St Julians Police Station testified during the same sitting<sup>8</sup>. He presented a series of stills taken from footage from a nearby CCTV camera.

**Robert Arturo Santiago Perez** testified during the same sitting<sup>9</sup>. The witness confirmed that at the relevant time he was at Native Bar in the company of other friends and could see that the parte civile was prevented from entering, which he believes was for no reason. He also noticed that the bouncers, the accused in particular started beating him, specifically punches and kicks. Subsequently, as they were going out, he saw other security guards kicking and punching the parte civile as well.

**Monica Magorda** testified during the same sitting<sup>10</sup>. The witness was present at Native Bar and could see that a security guard with a beard had stopped the parte civile from entering the bar. Then, another security guard whom she described as being a “*bald big man*” who was wearing a Native Bar security shirt, punched the parte civile in the face and kicked him. She recognized the aggressor as being the accused. She stressed the point that accused had not even spoken to the parte civile prior to punching him. Following this, the parte civile managed to take photographs of the security guards with his mobile phone. As they were leaving, the parte civile was attacked once again by both Native Bar security guards and also a third one who was not there before. At this point they were out on Paceville

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<sup>8</sup> Fol. 65-66 acts of the proceedings

<sup>9</sup> Fol. 68-73 acts of the proceedings

<sup>10</sup> Fol. 74-81 acts of the proceedings

steps, which is public area. Witness explained that initially she tried to protect the parte civile and they slipped away at the first available opportunity. She knows that the parte civile went immediately to hospital. Under cross examination, she clarified that the bald bouncer – the accused – went out from inside the bar onto the steps and grabbed the parte civile from the neck. She states that she also got hit whilst trying to protect the parte civile but it was not voluntary as far as she is concerned.

**Louis Buhagiar**, on behalf of Jobsplus Agency, testified during the sitting of the 16<sup>th</sup> February 2023<sup>11</sup>, whereby he presented a copy of the accused's employment history and employment license to work with Kerber Security Limited.

From these documents it results that the defendant was a full time employee of Kerber Security Limited since September 2021.<sup>12</sup>

**PS 1157 Bertley Aquilina** stationed at the Police Licensing Office testified during the same sitting<sup>13</sup>. He explained that on the 18<sup>th</sup> December 2022, the accused was not a holder of a license to act as a private security guard. It was only on the 22<sup>nd</sup> December 2022 that he actually applied for such a license.

**Dr Natasha Mifsud**, emergency doctor, testified during the same sitting<sup>14</sup>. With reference to the medical certificate exhibited at Fol. 19, she confirmed that she had examined the parte civile and had certified him to be suffering from grievous injuries owing to fractures of the right sinus and the nasal bone. She confirmed

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<sup>11</sup> Fol. 102-103 acts of the proceedings

<sup>12</sup> Dok LB1, LB2, pages 104-106 acts of proceedings

<sup>13</sup> Fol. 107-108 acts of the proceedings

<sup>14</sup> Fol. 110-113 acts of the proceedings

that the parte civile was subsequently referred to the ENT department at Mater Dei Hospital for further treatment.

**PC 444 Nicole Pisani** stationed at St Julians Police Station testified during the sitting of the 23<sup>rd</sup> March 2023<sup>15</sup>. She confirmed that on the 19<sup>th</sup> December 2022 at around 13:00hrs she received the report made by the parte civile Sergio Ramirez about the incident under consideration. She has no ulterior involvement in the relative investigations.<sup>16</sup>

**Dr Mykola Katrick** from Mater Dei Hospital Medical Imaging Department testified during the same sitting<sup>17</sup>. He confirmed having examined the parte civile Sergio Ramirez by way of a CT scan of the cranial cavity and facial bones. From this scan it resulted that he was suffering from a fracture in the right sinus, a fracture of the zygomatic arch and a displaced fracture of the right nasal bone<sup>18</sup>. Under cross-examination, he explained that the scan was carried out on the 22<sup>nd</sup> December 2002.

**Inspector Keith Xerri** took the stand again during the sitting of the 23<sup>rd</sup> March 2023<sup>19</sup>. He explained that on the 19<sup>th</sup> December 2022, he was informed of an incident that had happened at Native Bar, Paceville, the night before, concerning a beating by a security officer which resulted in grievous bodily harm. On the 20<sup>th</sup> December 2022 he attended personally at Native Bar to inspect CCTV footages from the relevant time and could confirm that in fact, there was some argument

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<sup>15</sup> Fol. 120-122 acts of the proceedings

<sup>16</sup> Dok NP1, page 123 acts of proceedings

<sup>17</sup> Fol. 129-132 acts of the proceedings

<sup>18</sup> Dok MK1, page 133 acts of proceedings

<sup>19</sup> Fol. 134-138 acts of the proceedings. Inspector Xerri took the stand again during the sitting of the 1<sup>st</sup> June 2023 (Fol. 201-104 acts of the proceedings), during which he confirmed and explained the contents of the documents which had exhibited during his previous testimony.



between two bouncers from the bar and a group of persons. Inspector Xerri further explained that he as informed by the management that the bouncers are outsourced from Kerber Security Limited. Following communication with the employer representative, a certain Stefan Axisa, a list of the persons on duty that night was provided via email. After obtaining identification data from Identity Malta Agency, the witness identified the accused Marko Jerotic Mitrovic and a certain Marko Francuski from the CCTV footage. Following verification with the Police Licensing Office, It resulted that none of these persons holds a license to work as a private security guard. The witness then spoke with the parte civile and other eye-witnesses and proceeded to take their statement on what had happened. On the 21<sup>st</sup> December 2022 a warrant for the arrest of the accused was issued by the duty Magistrate Dr Gabriella Vella. The accused attended voluntarily at St Julians Police Station on the 28<sup>th</sup> December 2022 after having been informed through his girlfriend who also works at Native Bar. Upon arrest, he was given his rights and released a statement under the assistance of Dr Charlon Gouder. He was later arraigned under arrest.

**Dr Mario Scerri**, a medical expert appointed by the Court testified during the sitting of the 25<sup>th</sup> April 2023<sup>20</sup>. He presented his report and further explained that he examined the parte civile Sergio Ramirez on the 28<sup>th</sup> March 2023 and also took note of the CT scans which had been taken, from which he concluded that the parte civile suffered from a fracture of the zygomatic arch as a result of violent blunt trauma. He classified the injuries as grievous per durata, in fact, he noted that the parte civile complained of persisting headaches and nasal congestion.

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<sup>20</sup> Fol. 148-149 acts of the proceedings

**Dr Martin Bajada**, an IT expert appointed by the Court testified during the same sitting<sup>21</sup>. He presented his report and explained that from the CCTV footage provided, he extracted 26 stills.<sup>22</sup>

The parte civile **Sergio Ramirez** took the stand again during the same sitting<sup>23</sup>, whereby with reference to the CCTV footage of the incident which was screened during the sitting, he confirmed that the location showing was Native Bar and that he recognized himself and also the eye-witness Robert Arturo Santiago Perez from the part referred to him. He specifically identified the accused from a frames at 1:1 and 1:3 from the footage.

## **Having Considered**

### **The Statement released by the defendant**

The accused had his statement<sup>24</sup> taken by Inspector Keith Xerri on the 28th December 2022 in the presence of PS 1052 Liam Vella and Dr Charlon Gouder with whom the accused had previously consulted. It results that the accused was given the due caution in terms of law.<sup>25</sup>

In the statement, whilst being generally cooperative and providing information as to the factual background of the case, with reference to questions directly related to the charges under examination, the accused consistently maintained his silence. The accused did however explain that on the evening in question, the parte civile

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<sup>21</sup> Fol. 161-162 acts of the proceedings

<sup>22</sup> Dok MB1, pages 163-184 acts of the proceedings

<sup>23</sup> Fol. 185-197 acts of the proceedings

<sup>24</sup> Fol 20-22 acts of the proceedings

<sup>25</sup> Dok KX7, pages 20-22 acts of proceedings

was under the influence of alcohol and was not abiding by simple instructions given by the security officers such as to take off his cap and face the security camera whilst entering the premises. He also explained that the parte civile uttered highly offensive remarks in relation to the security officers.

## **Having Considered**

### **Declaration by the victim**

The victim had his declaration<sup>26</sup> taken by Inspector Keith Xerri on the 21st December 2022 in the presence of his lawyer Dr Julian Farrugia. In his declaration the victim indicates that he was with two other persons when he entered an establishment. However he was soon appraoched by security who wanted him to remove his cap. In his declaration he makes reference to a security person who was bald. In his declaration the victim states that he didnt see who punched him and he didnt know who punched him. The victim also confirms that he took photos of the aggressors.

This contrasts with his evidene given viva voce where he clearly identified the defendant as being the bald person who punched and kicked him.

## **Having Considered**

### **Declaration by the witnesses present**

The witness Monica Lizeth Mayorga Gamboa had her declaration<sup>27</sup> taken by Inspector Keith Xerri on the 21st December 2022 in the presence of her lawyer Dr Julian Farrugia. In her declaration the witness indicates that she was with the

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<sup>26</sup> Dok KX8, Fol 23-24 acts of the proceedings

<sup>27</sup> Dok KX10, Fol 27 acts of the proceedings

victim when they entered the establishment. However the victim was soon approached by security after the victim started taking photos. In her declaration she makes reference to security personnel who acted as the aggressors. In her declaration the witness states that she didnt see who punched the victim and she didnt know who punched him.

This contrasts with her evidene given viva voce where she clearly identified the defendant as being the bald person who punched and kicked the victim.

The witness Manuela Licon Henao had her declaration<sup>28</sup> taken by Inspector Keith Xerri on the 21st December 2022 in the presence of her lawyer Dr Julian Farrugia. In her declaration the witness indicates that she was with the victim when they entered the establishment. However the victim was soon approached by security who wanted him to remove his cap and the victim started taking photos. In her declaration she makes reference to bodyguards who acted as the aggressors. In her declaration the witness states that she didnt see who punched the victim and she didnt know who punched him.

The witness Robert Arturo Santiago Perez had his declaration<sup>29</sup> taken by Inspector Keith Xerri on the 26th December 2022. In his declaration the witness indicates that he was with the victim when they entered the establishment and then all of a sudden the situation degenerated and security men from the establishment started hitting him in the face and chest.

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<sup>28</sup> Dok KX9, Fol 25-26 acts of the proceedings

<sup>29</sup> Dok KX11, Fol 28 acts of the proceedings

## Having Considered

### Final Oral Submissions

The prosecution and the defence made their oral submissions<sup>30</sup> during the sitting of the 25<sup>th</sup> January 2024. The prosecution and representation for the parte civile stressed that especially in 1:3mins of the CCTV footage, it is clear that the accused was kicking and punching the parte civile whilst on the other hand, the defence contends that this is not true and in actual fact, it is not clear at all from the CCTV whether the accused did in fact hit the parte civile. The defence also drew attention to the explanations given by the accused in his statement given to Inspector Keith Xerri.

## Having Considered

### Legal principles

The prosecution pressed charges against the defendant for having caused injuries against the victim in accordance to article 216 and 218 of the Criminal Code.

The Court makes reference to the case **Police vs Joseph Azzopardi** where the principle which regulates the classification of injuries for the purposes of criminal procedure were established:

*“Il-kwistjoni ta’ jekk offiza hiex wahda hafifa u ta’ importanza zghira, hafifa, gravi jew gravissima hi wahda ta’ fatt u ghalhekk rimessa ghall-gudikant talfatt (fil-kaz ta’ guri, ghalhekk, rimessa f’idejn il-gurati; fil-kaz odjern rimessa f’idejn il-gudikant ta’ l-ewwel grad...). Ma hix, ghalhekk, kwistjoni, li tiddependi neccessarjament jew esklussivament fuq “opinjoni medika”. It-tabib jew tobba jispjegaw x’irriskontraw bhala fatt; u, jekk il-*

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<sup>30</sup> Fol. 217-219 acts of the proceedings

*qorti tippermettilhom, jistghu joffru l-opinjoni tagghom dwar, fost affarijiet ohra, kif setghet giet ikkagunata dik l-offiza, jew ma' xhiex huma kompatibbli s-sintomi li jkunu gew klinikament riskontrati. Ikun jispetta mbaghad ghall-gudikant tal-fatt li, fid-dawl mhux biss ta' dak li jkun xehed it-tabib izda fid-dawl tal-provi kollha, jiddetermina n-natura ta' l-offiza.”<sup>31</sup>*

Furthermore in the case **Il-Pulizija vs Francis Dingli**<sup>32</sup> it was established:

*“... ghall-finijiet tal-artikolu 216 jekk hemmx sfregju jew le hi kwistjoni ta' fatt rimessa ghall-gudikant ... u dan kien perfettament intitolat li jasal ghal konkluzjoni differenti minn dik li wasal ghalha l-espert tal-Qorti.”*

The Court also makes reference to the case **Il-Pulizija vs Fortunato Sultana**<sup>33</sup> where a distinction was made between articles 216 and 218 of the Criminal Code wherein it was explained:

*“Mir-ritratti ezebiti u li ttiehdu ffit hin wara l-incident meritu ta' l-akkuza, jirrizulta bl-aktar mod car li dana Curmi soffra offizi ta' natura gravi fittermini ta' l-Artikolu 216(1)(b) tal-Kodici Kriminali. Skond din id-disposizzjoni, l-offiza fuq il-persuna hi gravi jekk, fost cirkostanzi ohra, iggib sfregju fil-wicc. Il-Ligi ma tirrikjedix li dana l-isfregju jipperdura ghal xi zmien partikolari, sfregju fil-wicc (jew fl-ghonq jew f'wahda mill-idejn) anke ta' ffit granet jibqa' sfregju ghal finijiet ta' l-imsemmija disposizzjoni, il-permanenza ta' l-isfregju hi rilevanti biss meta, abbinata mal-gravita', taghti lok ghal hekk imsejjha “offiza gravissima” skond l-Artikolu 218(1)(b) tal-Kodici Kriminali.”*

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<sup>31</sup> Court of Criminal Appeal, 30<sup>th</sup> July 2004

<sup>32</sup> Decided 12<sup>th</sup> September 1996

<sup>33</sup> Decided 5<sup>th</sup> February 1998

The Court also makes to what was subsequently espoused in the judgment of **Il-Pulizija vs Antonio sive Anthony Randich**<sup>34</sup>,

*“Kif din il-Qorti kellha l-oppportunita` li tirrimarka f’okkazzjonijiet ohra, l-isfregju (‘disfigurement’) fil-wicc (jew fl-ghonq jew fl-id) kontemplat fl-artikolu 216(1)(b) tal-Kodici Kriminali jista’ jkun anke ta’ natura temporanea, bhal, per ezempju, sakemm il-ferita tfiq. Huwa biss fil-kaz tal-hekk imsejjha ‘offiza gravissima’ fl-artikolu 218(1)(b) li l-ligi tirrikjedi l-permanenza (oltre lgravita`) ta’ l-isfregju. Mir-ritratti esibiti din il-Qorti tara li l-ewwel Qorti setghet legalment u ragjonevolment tikkwalifika l-offiza f’wicc Sultana bhala sfregju (ghalkemm mhux gravi u anqas permanenti) peress li dik l-offiza kienet tiddisturba l-armonija tal-lineamenti tal-wicc u kienet tidher minn distanza normali.”*

## **Having Considered**

### **The first and second charges**

From the evidence of the victim Sergio Ramirez it results that the victim was able to identify the defedant as being the person who punched him.

*“..... emm he just like show up and he came like very close to me and I just feel like an unexpected punch and then I step back and I remember like the people I was with like screaming and moving around and that moment I start taking pictures of them.*

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*..... can you describe this person first of all?*

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<sup>34</sup> Decided 2<sup>nd</sup> September 1999

*Yes he was a bald guy*

*Bald guy*

*Yes*

*Can you see him here?*

*Do you recognised him today if you had to see him?*

*Yes. Yes.*

*Could you see him today?*

*Can you turn around and face him to tell us who he is?*

***Yes. He is that one over there.***

***The witness is identifying the defendant***<sup>35</sup>

The victim continues in his evidence to state that the defendant he identified proceeded to punch him *"In the face. In the left eye."*<sup>36</sup>

The witness also produced a photo that he took and which he circled in white.<sup>37</sup> This photo is a clear and recognisable image of the defendant. The witness states that the person in the circled photo and therefore the defendant, is the same person *"who punched me the first moment"*.<sup>38</sup> According to the witness, the defendant is the same person who punched him in the face and subsequently when he was on the floor.

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<sup>35</sup> Page 41 acts of proceedings

<sup>36</sup> Page 42 acts of proceedings

<sup>37</sup> Dok SR1, page 2, Page 53 acts of proceedings.

<sup>38</sup> Page 43 acts of proceedings



In support of the injuries the victim sustained, the witness exhibited CT results taken at Mater Dei hospital on the 19<sup>th</sup> December 2022 at 00.30hrs and therefore in the immediate time period following the incident.<sup>39</sup> The document exhibited is a CT examination of the brain and facial bones. From the scan it resulted that there is fracture on the nose. The victim also presented prescriptions he was given in order to address the nasal fracture. In his testimony the witness confirmed the medical certificate exhibited by Inspector Keith Xerri in his testimony.<sup>40</sup> This certificate bears the date of the 18<sup>th</sup> December 2022 and done at 23.30. The injuries are classified as grievous owing to the fact that there is a commuted fracture through the right maxillary sinus, a fracture of the right zygomatic arch and a fracture of the right nasal bones.

Therefore there is no doubt that in the night in question the victim sustained injuries to his face. As the scan was taken a few hours after the incident the Court is convinced that the medical examinations correlate to the incident that took place that evening and is the subject of the proceedings and this is also corroborated with the initial certificate issued classifying the injuries as grievous.

From the evidence of Manuela Licona it results that that she was able to identify the aggressors as persons working there as bouncers and not as visitors. The witness was also able to clearly identify the defendant as the person who had hit the victim.

*“Can you describe the person that hit Sergio?”*

*Yes. It was big guy and without hair. Bald.*

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<sup>39</sup> Dok SR2, page 56-58 acts of proceedings

<sup>40</sup> Dok KX6, page 19 acts of proceedings

*Can you see him there today?*

*Yes that one.*

*Ok. The witness is identifying the defendant.*

.....

*He just appeared and he just punched Sergio's eye and he kick him and Sergio was just like this he didn't move."<sup>41</sup>*

The witness stated that the defendant had no reason to hit her boyfriend, the victim, since no one had spoken to him.

This was further corroborated by the evidence of Monica Magorda who also clearly identified the defendant as being the aggressor who assaulted the victim but punching him and kicking him inside the establishment. The witness also stated that the defendant attacked the victim once against whilst they were outside of the establishment in question.

The prosecution exhibited a number of still images from the CCTV cameras at the establishment where the incident took place.<sup>42</sup>

In these images there are clear images of the defendant from the back and side of him punching a person in the face. In the images it is also possible to see the defendant not only punching the victim in the person but also raising his right foot in a high kick. In the same images, it is also possible to make out the intervention of a female trying to intervene to stop him from carrying out his assault.

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<sup>41</sup> Page 62 acts of proceedings

<sup>42</sup> Dok KX13, Page 67 acts of proceedings

From the still images resulting in Dr Martin Bajada's report a closer depiction of the scene is available and it clear that one of the persons in the image is the defendant dressed in a black t-shirt with the name of the establishment printed on the back. In these images it is very clear to see the defendant punching and kicking the victim at the bottom of the stairs to the establishment. It is also possible to make out third parties trying to intervene. Furthermore in the scene taking place outside on the steps which are a public area it is possible to make a continued fight taking place involving the victim.

The Court also examined the CCTV footage presented and which was also played out during the sittings of this case. From the CCTV footage it is possible to make out the aggression and the fight that took place between the victim and the defendant.

When the victim was shown this footage in his testimony he clearly pointed to the defendant as one of his aggressors.

From the police report with the reference NPS 8/POL/7166/2022<sup>43</sup> it results that the report was lodged in the same evening that the incident took place. From the report it results that the victim reported that it was one of the bouncers who started punching him since he would not remove his cap.

The prosecution also produced evidence establishing that the defendant was on duty and working on the night of the incident.<sup>44</sup>

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<sup>43</sup> Dok KX5, page 14-18 acts of proceedings

<sup>44</sup> Dok KX14, page 139 acts of proceedings.

The Court having considered the evidence and heard all the witnesses brought forward finds that prosecution did an exhaustive and complete investigation and brought forward the best evidence available to prove its case.

From the evidence it transpires conclusively that the defendant suffered grievous injuries on the night in question. The witnesses clearly identified the defendant as being the person who caused him the facial injuries and this is further corroborated from the still images presented, witness identification of the defendant by other lay witnesses present as well as confirmation that the defendant was working that evening.

From the evidence of Dr. Mario Scerri it results that the victim has sustained grievous injuries. The Court in weighing the evidence with regards to the severity of the injury examined the medical report of Dr Mario Scerri, the medical certificates presented and the evidence of the victim and medical doctors produced. The Court is not convinced that the prosecution has established that the victim suffered injuries to the degree established in article 218 of the Criminal Code and considers the prosecution to have succeeded only to the degree established in accordance to article 216 of the Criminal Code.

Article 218 of the Criminal Code raises the severity of the injury to that of a permanent level and goes a step further from the requirement of a deformity or disfigurement. In this case, the prosecution did not present proof or evidence that the injury sustained by the victim was of a such a nature that the requisites of Article 218 would have been satisfied.

Therefore having examined the facts of the case the Court considers that the prosecution has succeeded to prove its case in accordance to the qualifications of article 216 of the Criminal Code and not article 218.

From the evidence it transpires the principle motive was owing to the fact that the victim refused to remove his cap when requested by the security. One can appreciate the necessity for such a request by security and the victim aggravated the situation by not complying. The Court considers that the prosecution have successfully proven their case and have reached the level required by law that of being beyond reasonable doubt that the defendant caused grievous injuries to Sergio Ramirez Lesmes as well as disturbing the public peace and order.

The Court therefore intends to proceed by finding the defendant guilty of the first and second charges proffered against him for grievously bodily harm in terms of article of 216 and not 218 of the criminal code, Chapter 9 Laws of Malta.

### **Having Considered - the third charge**

With regards to the third charge from the evidence it resulted that the defendant was a full time employee with Kerber Security Limited however at the time of the incident he did not have a licence to act as a security guard and he only applied for a licence in the days following the incident. In fact it was on the 6<sup>th</sup> February 2023 that the defendant received confirmation from the Commissioner of Police that his application has been accepted and he was in a position to collect his license.<sup>45</sup>

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<sup>45</sup> Dok BA1, page 114-116 acts of proceedings

Therefore the Court is convinced that the prosecution has ably proven the third charge and will proceed to find him guilty of it.

## **Having Considered**

### **Punishment**

In considering the punishment to be meted to the defendant the Court took into consideration along with all the facts of the case:

- The criminal record of the accused<sup>46</sup> was exhibited in the acts of the proceedings. The Court notes that said document, which covers the period during which the “subject lived in Malta” does not attest to any criminal convictions whatsoever.
- The defendant was acting in his professional capacity without a license and not in a private capacity.
- The level of injuries and traumas sustained by the victim who was capriciously assaulted owing to a disagreement over whether he should have removed his cap or not.

## **Decide**

Therefore, after having seen Articles 15A, 17, 31, 214, 215, 216(1) (a) (ii)(iii), 216(b)(d), 218(1)(a)(b), 338(dd), 382A, 383, 384, 385, 412C, 532A, 532B and 533 of the Criminal Code, Chapter 9 of the Laws of Malta as well as Article 25(b) of the

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<sup>46</sup> Fol 9 of the acts of the proceedings

Private Guards and Community Officers Act, Chapter 389 of the Laws of Malta, the Court hereby finds Marko Jerotic-Mitrovic **guilty** of all the charges proffered against him and accordingly, condemns him to eighteen (18) months imprisonment which are being suspended for a period of three (3) years in terms of article 28 of Chapter 9 of the Laws of Malta and with regards to the third charge to a fine (*multa*) of four thousand Euros (€4,000).

In terms of article 28A(3) of Chapter 9 of the Laws of Malta, the Court explained to the offender in ordinary language his liability and responsibilities during the operational period of the suspended sentence if he commits an offence punishable with imprisonment.

The Court after having seen article 383 of Chapter 9 of the Laws of Malta and in order to provide for the safety of Sergio Ramirez Lesmes and to ensure the keeping of the public peace places the offender Marko Mitrovic to enter into his recognizance for the sum of two thousand Euros (€2,000) for a period of twelve months from the date of judgment.

The Court having seen article 382A of the Criminal Code issues a restraining order against the defendant in favour of Sergio Ramirez Lesmes which shall remain in force for three years and which shall commence to run from the date of expiration or remission of the punishment.

Furthermore, in view of the fact that experts were appointed in this case, the Court in addition to the punishment orders the defendant to pay the costs incurred in connection to the appointment of experts in terms of Article 533 of Chapter 9 of

the Laws of Malta and pays to the Court Registrar the global sum of €857.93 representing the work of the following experts:

- a. Dr. Martin Bajada in the amount of €548.23<sup>47</sup>;
- b. Dr. Mario Scerri in the amount of €309.70<sup>48</sup>.

**Communication: Registrar of Criminal Court**

**Delivered today the 27<sup>th</sup> May 2024 at the Courts of Justice in Valletta, Malta.**

**Dr. Nadine Sant Lia**

**Magistrate**

**Oriana Deguara**

**Deputy Registrar**

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<sup>47</sup>Page 168 acts of proceedings

<sup>48</sup> Page 160 acts of proceedings