



MALTA

**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE
MAGISTRATE DR. GABRIELLA VELLA**

Case No. 629/2021

**The Police
(Inspector Christina Delia)**

Vs

Steffan Debattista

Today, 18th June 2024

The Court,

Considered the charges brought against **Steffan Debattista**, son of Godfrey and Michelle Ann neè Pearson, born in Pietà and holder of Maltese Identity Card Number 218192M, of having on the 15th August 2021, between noon and one in the afternoon (12:00hrs and 13:00hrs) in Triq il-Knisja, San Pawl il-Baħar:

1. Without intention to kill or to put the life of any person in manifest jeopardy, caused grievous bodily harm on the person of Francis Bonello as certified by Dr. Nicholas Schembri Wilson, Reg. No. 6406, of Mater Dei Hospital;
2. Uttered towards Francis Bonello insults or threats not otherwise provided for in this Code, or if being provoked, carried his insult beyond the limit warranted by the provocation;

Considered the requests by the Prosecution for the Court: (i) to provide for the safety of Francis Bonello by applying the provisions of Section 412C of Chapter 9 of the Laws of Malta; (ii) in case of guilt, to apply the provisions of Section 382A of Chapter 9 of the Laws of Malta; and (iii) in case of guilt, sentence Steffan Debattista to the payment of the costs incurred in connection with the employment in the proceedings of any expert or referee in accordance with Section 533 of Chapter 9 of the Laws of Malta;

Considered the documents submitted by the Prosecution marked as Doc. “CD1” to Doc. “CD4” at folio 5 to 18 of the records of the proceedings and Doc. “CD5” and Doc. “CD6” at folio 25 and 26 of the records of the proceedings;

Heard the accused plead that he is not guilty of the charges brought against him¹;

Considered the Protection Order in terms of Section 412C of Chapter 9 of the Laws of Malta, issued against the accused in favour of Francis Bonello dated 7th October 2021²;

Heard testimony given by PS419 Anton Buttigieg³, Francis Bonello⁴ and Emanuel Grixti⁵ during the sitting held on the 7th October 2021, and considered the documents submitted by PS419 Anton Buttigieg marked as Doc. “AB1”⁶ and Doc. “AB2” at folio 33 to 40 of the records of the proceedings, heard testimony given by Tiziana Debono during the sitting held on the 1st December 2021⁷ and heard testimony given by Naomi Debattista⁸, the Technical Expert John Sacco⁹ and Sandra Maria Chandler¹⁰ during the sitting held on the 24th January 2022 and considered the Report by the Technical Expert John Sacco marked as Doc. “JS” at folio 85 to 100 of the records of the proceedings, heard testimony given by Dr. Nicholas Schembri Wilson¹¹ and Inspector Christina Delia¹² during the sitting held on the 23rd February 2022, and heard testimony given by the accused during the sitting held on the 14th November 2022¹³;

Considered the Note by the Attorney General dated 22nd March 2022¹⁴, by virtue of which he sent the accused to be tried by the Court of Magistrates (Malta) as a Court of Criminal Judicature for an offence or offences under the provisions of:

- Sections 17, 382A, 412C, 533, 214, 215 and 216 of the Criminal Code, Chapter 9 of the Laws of Malta;
- Sections 17, 382A, 412C, 533, 339(1)(e) and 341 of the Criminal Code, Chapter 9 of the Laws of Malta;

¹ Folio 24 of the records of the proceedings.

² Folio 55 of the records of the proceedings.

³ Folio 27 to 32 of the records of the proceedings.

⁴ Folio 41 to 47 of the records of the proceedings.

⁵ Folio 48 to 54 of the records of the proceedings.

⁶ Exhibit Number KA390/2021.

⁷ Folio 70 to 75 of the records of the proceedings.

⁸ Folio 80 to 84 of the records of the proceedings.

⁹ Folio 84 of the records of the proceedings.

¹⁰ Folio 101 to 103 of the records of the proceedings.

¹¹ Folio 107 and 108 of the records of the proceedings.

¹² Folio 109 to 111 of the records of the proceedings.

¹³ Folio 122 and 123 of the records of the proceedings.

¹⁴ Folio 113 of the records of the proceedings.

Considered that during the sitting held on the 17th May 2022¹⁵, the Prosecution declared that it had no further evidence to submit and the accused declared that he has no objection to his case being dealt with summarily; the Sections of the Law indicated in the Note by the Attorney General dated 22nd March 2022, were read out;

Heard final oral submissions by the Prosecution and Defence Counsel;

Considered all the records of the proceedings;

Considered:

The accused is being charged of having on the 15th August 2021, between 12:00hrs and 13:00hrs, in Triq il-Knisja, San Pawl il-Baħar: (1) without intention to kill or to put the life of any person in manifest jeopardy, caused grievous bodily harm on the person of Francis Bonello as certified by Dr. Nicholas Schembri Wilson, Reg. No. 6406, of Mater Dei Hospital; (2) uttered towards Francis Bonello insults or threats not otherwise provided for in this Code, or if being provoked, carried his insult beyond the limit warranted by the provocation.

The accused declared that he is not guilty of the charges brought against him.

By virtue of a Note dated 22nd March 2022¹⁶, the Attorney General sent the accused to be tried by this Court for an offence or offences under the provisions of:

- Sections 17, 382A, 412C, 533, 214, 215 and 216 of the Criminal Code, Chapter 9 of the Laws of Malta;
- Sections 17, 382A, 412C, 533, 339(1)(e) and 341 of the Criminal Code, Chapter 9 of the Laws of Malta.

Evidence submitted during the course of the proceedings:

PS419 Anton Buttigieg¹⁷ testified that on the 15th August 2021 at around 1:00p.m., the Police were informed that there was a fight near the Gillieru Hotel. Upon receiving this information he reported to the indicated site and found that the fight had already broken up since the persons concerned had been separated. One of the persons involved in the fight, a certain Francis Bonello, had an injury on his nose and blood stains. Bonello handed over a shifton to him, alleging that it had been used during the fight by the other party, that is by the accused.

PS419 Anton Buttigieg further testified that at that point he instructed the accused and his girlfriend *to go to Qawra Police Station so we can make a report and I instructed Francis Bonello to go and seek medical attention. At the Qawra Police*

¹⁵ Folio 118 of the records of the proceedings.

¹⁶ Folio 113 of the records of the proceedings.

¹⁷ Testimony given during the sitting held on the 7th October 2021, folio 27 to 32 of the records of the proceedings.

station I informed Steffan Debattista about his rights, that he can remain silent unless he wishes to do, that whatever he says we can use as proof in Court and also that he has the right to consult with his lawyer for the time not more than one hour, either by telephone or face to face. He refused the right to consult with his lawyer. When I was going to start asking him questions, Steffan informed the Police that he suffered from injuries and he needed to see a doctor. So at that time, I instructed two police officers to escort Steffan to Mosta Health Centre where over there he was examined by Dr. Julian Grima who certified him that he was suffering from slight injuries. When Steffan was at the Mosta Health Centre, I spoke to his girlfriend Naomi Deguara who stated that earlier in the morning they went to walk the dog in the area of the Gillieru and when they returned back they found that someone had blocked their car. Then Steffan went asking people to find out who was the owner of the car so he can remove the car and then a man arrived and aggressively he started arguing with him. She stated that the driver of the other vehicle exited with a glass bottle and tried to attack Steffan with the glass bottle where they started a fight. In some time, Steffan fell to the floor and then the other man approached them and both of them continued beating him up. Then some other people approached them and separated them. Later Steffan arrived at the Qawra Police Station and he was again informed about his rights and when he was asked about the incident, he stated that early in the morning, together with his girlfriend, they went to walk their dog and they parked near the Gillieru Hotel in Triq il-Knisja, San Pawl il-Baħar. Then when they returned for their car they found out that another vehicle had blocked them. Then he started searching for the owner of the car and then two men approached him, one of them with the glass bottle and they attacked him. Then they stopped fighting and the driver drove very close to him and grabbed an iron bar and started hitting his car. Then he admitted that he grabbed the shifton and started waving the shifton in their faces just to defend himself.

PS419 further stated that on the 16th of August at about 9:00p.m., I spoke to Francis Bonello where he stated that he parked his vehicle behind the suspect's vehicle and at one point an unknown woman went and informed them that someone needed to exit from the parking. He together with his friend went to remove the car and Steffan started insulting them in English. When Emanuel was driving his vehicle, the other one, referring to Steffan, told him "F'oxx kemm għandek" and then he went close to him and attacked him with a set of keys on his nose. That time, the other one started bleeding and was full of blood. At that time he punched him back. Then Emanuel went to separate them, Steffan went in his car, grabbed a shifton and started hitting him in his head with the shifton. Then he entered his vehicle and tried to drive into his direction. Then he admitted that he found an iron bar and tried to defend himself with it. He also stated that when they were fighting, Steffan bit him in his hand and sometime after the Police arrived. I spoke to Emanuel Grixti, the other party, where he confirmed his friend's, Emanuel's version. Inspector Delia was informed about this and further investigations were carried out from her end. Under cross-examination PS419 Anton Buttigieg declared that charges regarding this incident were also issued against Francis Bonello and Emanuel Grixti.

He also exhibited the shifton that was handed over to him on the date of the incident - Doc. "AB1" bearing Exhibit Number KA390/2021 - and the report regarding this particular incident marked as Doc. "AB2" at folio 33 to 40 of the records of the proceedings.

Inspector Christina Delia¹⁸ testified that on the 15th August 2021, I was stationed at Mosta Police Station. On that day I had been informed by PS419 Anton Buttigieg that an argument had taken place in St. Paul's Bay, Church Street, in the vicinities of Gillieru area. I had been informed that the argument had taken place between three parties and the argument occurred due to the fact that a vehicle had blocked another vehicle which was parked in the vicinities. He had informed me that the parties involved were Mr. Francis Bonello, holder of ID Card 58270(M), the other party was Emanuel Grixti, holder of ID Card 455765(M), and Mr. Steffan Debattista as well, holder of ID Card 218192(M). He had informed me that all the parties needed medical assistance and they had been instructed to report to the medical health centre to seek medical assistance. He informed me that on site he had found Mr. Francis Bonello who had visible injuries, facial injuries and in fact he even had blood over his face. He also informed me that whilst he was on site he had been handed over a red coloured shifton which was allegedly used during the argument and he informed me that this was used to hit Mr. Francis Bonello. From my end I had instructed that Mr. Steffan Debattista also seeks medical assistance in view of the fact that he had complained that he also suffered from slight injuries. Later on I had been informed that Mr. Francis Bonello had been certified to be suffering from grievous injuries as certified by Dr. Schembri Wilson. On the 21st August 2021, I had instructed Mr. Steffan Debattista to call at my office in order to be interrogated by the undersigned and in fact, he reported at my office together with his legal advisor Dr. Rachel Tua and in fact the interrogation had been conducted in the presence of Dr. Tua. During the interrogation, Mr. Debattista stated that the incident had taken place after he and his girlfriend had been in St. Paul's Bay, their vehicle was parked and they went to use the vehicle. As soon as they approached the vehicle they noticed that their vehicle had been blocked by another vehicle which had been parked illegally and he then started calling out the registration plate of the vehicle to see to whom it belongs. He stated that after some time calling this registration plate, two male persons approached him and he told them that he had been calling for 20 minutes and that if it had been an emergency, he couldn't have gone out due to the fact that they had blocked his vehicle. He stated that one of the drivers went to the vehicle and got into the vehicle to move the car while the other one at that point started swearing at him and pushed him away as well. He stated that when this happened he got scared and then all of a sudden he saw the other guy who was the driver coming out of the vehicle and also approaching him and he alleged that both of them started hitting him including the one who was in the vehicle, hitting him with a beer Heineken glass bottle, he specifically stated. From his end, Mr. Debattista, who I also recognise here in Court stated that he had only acted in self defence and he was not sure if he ever had hit any of the other parties. He stated that he then went into the vehicle and at one point he grabbed the red shifton to defend himself.

¹⁸ Testimony given during the sitting held on the 23rd February 2022, folio 109 to 111 of the records of the proceedings.

He stated that the other parties had even beat him and put him down to the ground and at one point then the argument stopped and soon afterwards the police came on site. Mr. Debattista also provided a recording, not a CCTV footage but a recording, which was taken from a mobile phone of another person who then handed over to Mr. Debattista which in fact I presented earlier during the sittings. Then from my end, we called also on site again at Gillieru to check whether there were any other CCTV cameras in the area which could assist but the only one that was available did not picture the area where the incident happened because it was focused on the entrance of the building. From my end then I proceeded to issue the charges against Mr. Debattista, while the charges against Mr. Francis Bonello and Mr. Emanuel Grixti were issued by PS419 and they are being heard before another Court.

Francis Bonello¹⁹ testified that on a particular occasion, about a month before being summoned to testify in these proceedings, he went to the beach as usual in the Gillieru area, where he also usually parks his car. He explained that if someone is not parked properly in that area, horns are normally hooted and cars are moved however, on this particular occasion a person speaking in English was shouting and getting angry. A lady who was close by asked him and his family if their car was parked in the area and he and Emanuel Grixti went up to street level to check if they were blocking anyone. When he told this person who was angry that it is usual for people parked in that area to hoot their horn if they are blocked, this same person started swearing at him. Bonello further testified that *għidtlu “agħti naqra cans ha jsuqlek, ma ġara xejn b’daqshekk” u kellu tfajla miegħu bdejt ngħidilha u ma bdiex tagħti kas u l-ħin kollu ngħidlu u ngħidlu. Imbagħad offendieni bil-Malti, imbagħad tani straight ġo wiċċi u għidt mhux se nibqa’ biha, ergajt tajtu lura, waqafna, imbagħad ġie Emanuel iferragħna x’ħin waqafna jigiġifieri u ergajna ried isuq ġo fija u sibt qisu pipe rqiq jien ma nafx x’kien u mort biex niddefedni ruħi peress li kien se jsuq ġo fija, ħareġ kellu biċċa għodda u tani ġo rasi biha.* He stated that the exhibit marked as Doc. “AB1” was the tool he made reference to during his testimony.

Francis Bonello further stated that the person who attacked him punched him in the face with a set of keys and at that point *kif hu tani daqqa u jiena mort biex nagħih oħra biex niddefendi ruħi għax jiena mhux se naqla’ biss, ħareġ Emanuel iferragħna u qisha imbagħad waqfet il-biċċa. Gidimni wkoll lili mbagħad. ... fidejja.* Bonello however could not identify with certainty that the accused was the person who allegedly attacked him during the incident he testified about.

Emanuel Grixti²⁰ testified that the incident forming the merits of these proceedings happened on the 15th August 2021 near Gillieru in St. Paul’s Bay. He also stated that the other person involved in the altercation with him and Francis Bonello was the accused. He claimed that the accused was very angry and shouting at them and when he went to move his car, which was blocking the accused’s car,

¹⁹ Testimony given during the sitting held on the 7th October 2021, folio 41 to 47 of the records of the proceedings.

²⁰ Testimony given during the sitting held on the 7th October 2021, folio 48 to 54 of the records of the proceedings.

the accused attacked Francis Bonello by punching him in the face. When he saw what happened he got out of the car to intervene, where he hit the accused on his back. At that point the accused allegedly got into his car and Francis Bonello went to attack him and hit his car (that is the accused's car) with a metal rod. At that point the Police turned up and everything quietened down.

Under cross-examination Emanuel Grixti confirmed that when he got out of the car he had an empty beer bottle in his hand but denied hitting the accused with it. He clarified that prior to getting into his car he didn't have any beer bottles in his hand but when he got out of the car he held this bottle in his hand.

The accused²¹ testified that during the summer of 2021, he and his girlfriend *came down to take the dog for a walk to find that the car was locked in by a small blue car, I tried to locate the owner of the vehicle for around 20 minutes, I didn't find who it was until two men approached me, one of the people got inside the car to reverse the car out of the way and the other guy came towards me and I told him "if it had been an emergency situation, somebody could have lost a life". At this, he pushed me away and told me "If you don't like it go back to your own country" and then he swore. At this, the driver of the vehicle then came towards me with a glass Heineken bottle shouting "Ejja liba" and began to hit me over the head repeatedly while shouting and the next thing that I can remember was that I was on the floor, the scuffle kind of broke up and the guy with the Heineken bottle when back to his car to reverse out of the way as there were people looking by this time and I believe that someone had phoned the police and they shouted that during the scuffle. So at this, I went to go towards my vehicle to go to the police station to make a report. During this time, as I was getting inside my car, the guy who had pushed me in the beginning, came running towards the car with a metal bar which I believe to be the hydraulic thing that keeps the boot open of a car, trying to break through the window, breaking the car, we've got photographic evidence of the vehicle itself, my girlfriend was in the passenger seat and my dog was in the back and he was trying to break the window. Then as I looked down I saw that there was a wrench. I picked up the wrench and I began to shake it like this. At this, basically the Police have come down the road and somebody was shouting "The Police, the Police". So I put the wrench on the floor and then the Police arrived to assist the situation. The accused further added that I believe that I hit one of the guys when I was on the floor just swinging and defending for my life basically. They were both attacking me, they were both on top of me, my girlfriend was running around crying and screaming and my dog, I don't even know what happened to my dog, as it was a real vicious attack and I was genuinely scared.*

Naomi Deguara²² essentially confirmed the version of events as given by the accused. She confirmed that on the day in question their car, which was parked near the Gillieru Hotel, was blocked by another car. After about twenty minutes with them trying to locate the owner of the car, two men come up to them and when they

²¹ Testimony given during the sitting held on the 14th November 2022, folio 122 and 123 of the records of the proceedings.

²² Testimony given during the sitting held on the 24th January 2022, folio 80 to 83 of the records of the proceedings.

rebuked them for not leaving at least a contact number so that they could be contacted to come and move the car, one of them told the accused *jekk ma jogħgħbox mur lura pajjżek*. At that point the accused asked him to repeat it in English and when this man repeated what he said in English, he started swearing at them and he pushed the accused. When they were going to leave, the other man, who was in the car blocking theirs, came out of the car with a glass bottle in his hand, which she believes to have been a Heineken beer bottle, and he went towards the accused and started hitting him with the bottle. At that point the accused ended up on the floor with these two men attacking him, while she was crying and asking them to stop because they were hurting him. When the accused managed to get up from the floor she told him to leave and they got in their car. At that point one of the two men came up to their car with a metal bar and started hitting the car and trying to get in through the window. Eventually the Police showed up.

Under cross-examination, Naomi Deguara stated that when the accused was being attacked he didn't have anything in his hands because when he was pushed to the floor he dropped what he was holding. Neither did he have anything in his hands when he was attacked by the man holding the Heineken bottle.

Tiziana Debono²³ who was present on the day of the fight between the accused, Francis Bonello and Emanuel Grixti, testified that *aħna bħal dejjem inkun hemmhekk* (that is in the Gillieru Hotel area) *weekends, u fdaqqa u l-ħin f'din il-gurnata, giet persuna minn fuq u bdiet tgħajjat għajjat qisu mhux normali u bdejna ngħidu "X'għara?". Imbagħad bl-aċċent tiegħu qal numru imma ma konniex ċerti jew le, imma kien ta' karozza u kien hemm familja hdejna u qalu "karozza blu" u kien hemm familja oħra n-naħa l-oħra u jien għidtilhom "għandkom għal li jista' jkun xi karozza blu b'dan in-number plate?". ... Qabdu ċ-ċwieviet u telgħu jiġru dak il-ħin mill-ewwel. Imbagħad bdejt nisma' għajjat u storbju u tlajt niċċekkja l-karozza tiegħi ma jmorrux jolqtuħieli jew hekk u kif tlajt jien kien hemm żewġt irġiel jiġġieldu fejn wieħed minnhom kellu għodda qisu spanner jew ma nafx x'kienet u beda jagħtih biha lill-ieħor u fdaqqa u l-ħin taret u giet hdejja. Jien gbartha u żammejtha fidejja imbagħad bdejt nibza' għax missejtha b'idi. Imbagħad ġew il-Pulizija, le mhux il-Pulizija, kien hemm dan ir-raġel u staqsejtu jekk hux tiegħu wara li kkalmaw l-affarijiet u qalli "le" u żammejtha. According to Tiziana Debono the person who was using this tool was the owner of the white car and could have possibly been the accused. One of the men involved in the fight, according to her the one who got hit, took this tool from her and kept it himself.*

She further testified that *imbagħad il-għlieda kkalmat, imbagħad kienet qisha ħa terġa' taqbad u kif qed indur ħa ninzel isfel jiena, kien hemm tal-karozza bajda beda jsuq għal fuq l-ieħor imma imbagħad ma rajt xejn iktar għax inżilt l-isfel jiena għax kelli t-tifla telgħat warajja dak il-ħin u nżilna. Under cross-examination Tiziana Debono claimed that she didn't see two men hitting another one, all she saw were two men fighting with each other, with one of them, the owner of the white car, attacking the other with the tool she referred to in her examination in chief.*

²³ Testimony given during the sitting held on the 1st December 2021, folio 70 to 74 of the records of the proceedings.

Sandra Maria Chandler²⁴ another person who witnessed the fight between the accused, Francis Bonello and Emanuel Grixti, testified that *I was going up the stairs from the beach front to meet some friends but before they got there I saw 2 men, one man was pushing this man away while the other one was sitting in the car. ... Then the other gentleman got out of the car with a glass bottle and started to hit that gentleman with the glass bottle.* Sandra Maria Chandler clarified that when she said that a man was pushed, she was referring to the accused who got pushed. At that point the two men were shouting at each other. She further stated that *they got him (that is the accused) between a van and a car on the floor and one was punching him and one was hitting him with the bottle. ... The gentleman managed to get up from the floor and go to his car and then one of the men went back to his car and got a metal bar out of it and went to that gentleman's car and tried hitting him through the window with a metal bar. ... Through the window of his car, yes. ... I turned around for a few minutes, I probably missed something and then I saw the gentleman get out of his car and just stand by his car and then the police came.* She also stated that she didn't see anything in the accused's hands.

The **Technical Expert John Sacco** submitted his Report on the 24th January 2022, Doc. "JS" at folio 85 to 100 of the records of the proceedings. After examining Doc. "CD6" exhibited by the Prosecution, which consisted of an MP4 video about six seconds long, the Technical Expert John Sacco considered the following: *l-esponent stabilixxa illi Dok. CD6 jikkontjeni filmat MP4 ta' sitt sekondi li fih ukoll jinstemgħu hsejjes u xi kliem. X'aktarx il-filmat ittiehed minn telefon mobajl u jidher is-segwenti: Żewġ persuni mqabbdin ma' xulxin, qed jiġġieldu. It-tnejn li huma libsin flokk, wieħed minnhom liebes beritta u nuċċali tax-xemx ukoll. Tidher ukoll it-tielet persuna iżda din m'għandhiex flokk u liebsa shorts twil bi strixxi. Din tidher taħtaf lill-persuna bil-berritta u nuċċali tax-xemx minn wara u tagħtiha daqqiet b'idejha. Hin minnhom iż-żewġ persuni tal-flokk jaqaw ma' l-art u l-persuna l-oħra tinzel għal-irkubtejha b'dahrha lejn min kien qed jieħu l-filmat u tkompli tagħti b'idejha. Persuna oħra b'dublett abjad li kienet qed tħares lejhom, tmur hdejjhom u tmiss dahar il-persuna li qiegħdha għal-irkubtejha. Fil-filmat jinstemgħu persuni jagħjtu iżda l-għajjat ma jiftehimx. Lejn l-aħħar tal-filmat jinstema' vuċi jgħid "ejja liba, ejja". Il-persuni jidhru jiġġieldu bejn żewġ vetturi ipparkjati viċin tal-baħar, waħda tat-tip 'pick-up' ta' kulur skur bin-numru ta' registrazzjoni BCL-065 u oħra ta' daqs żgħir b'kulur ċar u numru ta' registrazzjoni JAH-175.*

Dr. Nicholas Schembri Wilson²⁵ examined Francis Bonello and issued a medical certificate regarding the injuries he had. He confirmed the medical certificate exhibited at folio 25 of the records of the proceedings and stated that the injuries sustained by Bonello were *a superficial laceration wound over the left side of his head, a 1cm laceration over his nasal bridge which was sutured before he came to emergency and there was swelling over the nasal bridge. There was also a*

²⁴ Testimony given during the sitting held on the 24th January 2022, folio 101 to 103 of the records of the proceedings.

²⁵ Testimony given during the sitting held on the 23rd February 2022, folio 107 and 108 of the records of the proceedings.

bite mark on the anterior aspect of his left forearm. ... CT report ... showed nasal bones fracture.

Charges brought against the accused:

The first charge brought against the accused - as already observed, the Prosecution is charging the accused of having, on the 15th August 2021, between 12:00p.m. and 1:00p.m., in Triq il-Knisja, San Pawl il-Baħar, caused voluntary grievous bodily harm to Francis Bonello. The accused denies this charge and claims that although a fight did break out between him and Bonello, and shortly after Emanuel Grixti got involved too, any reaction on his part was in self defence since he was being attacked by Francis Bonello and Emanuel Grixti.

The plea of self-defence is regulated by Sections 223 and 224 of Chapter 9 of the Laws of Malta, which provisions of the Law provide that: *No offence is committed when a homicide or a bodily harm is ordered or permitted by law or by a lawful authority, or is imposed by actual necessity either in lawful self-defence or in the lawful defence of another person* - Section 223. *Cases of actual necessity of lawful defence shall include the following: (a) where the homicide or bodily harm is committed in the act of repelling, during the night-time, the scaling or breaking of enclosures, walls, or the entrance doors of any house or inhabited apartment, or of the appurtenances thereof having a direct or an indirect communication with such house or apartment; (b) where the homicide or bodily harm is committed in the act of defence against any person committing theft or plunder, with violence, or attempting to commit such theft or plunder; (c) where the homicide or bodily harm is imposed by the actual necessity of the defence of one's own chastity or of the chastity of another person* - Section 224.

Our Courts have on various occasions pronounced themselves as to which circumstances and facts lead to a successful plea of self defence. For example in the judgement in the names **Il-Pulizija v. Paul Falzon et**, delivered by this Court, differently presided, on the 24th October 2012, the Court observed that *f'sentenza mogħtija mill-Qorti ta' l-Appelli Kriminali fl-ismijiet Il-Pulizija v. Joseph Psaila, deċiża fl-20 ta' Jannar 1995, ingħad: "Sabiex id-difiza tal-legittima difiza tiġi invokata b'suċċess, il-liġi timponi ċerti kundizzjonijiet. Cioè theddid ta' xi aggressjoni jew dannu jrid ikun ingiust, gravi u inevitabbli. Id-difiza trid tkun saret biex jiġu evitati konsegwenzi li jekk jaffettwaw ruħhom jikkagunaw ħsara irreparabbli kif ukoll biex jiġi evitat perikolu li ma setax jiġi evitat b'xi mod ieħor. Jiġifieri l-periklu għandu jkun attwali, istantanju w assolut u ma jridx ikun xi perikolu antiċipat, għax dan jista' jagħti lok biss għall-provokazzjoni u mhux difiza legittima". Dwar l-element ta' l-inevitabilità, il-Professur Sir Anthony Mamo, fin-noti tiegħu "Lectures in Criminal Law, Part I", iġid hekk (paġna 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". *Illi wkoll fis-sentenza Ir-Repubblika ta' Malta v. Domenic Briffa (Appell Kriminali Superjuri deciza 16/10/2003) jinghad:* "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 ta-cirkostanzi kollha, ragjonevolment jevita dak il-perikolu jew dik il-minaccja? Jekk il-buon sens jiddetta li l-agent seta', billi jaghamel manuvra jew pass f'direzzjoni jew oħra, jew anke billi semplicement ma jiccaqlaqx, facilment jevita l-periklu jew minaccja li kien qed jara fil-konfront tieghu, allura, jekk ma jaghamilx hekk jigi nieqes l-element ta' l-inevitabilita tal-perikolu jew minaccja. Jekk pero, mill-banda l-oħra, tenut kont ta-cirkostanzi kollha, il-buon sens jiddetta li l-agent ma kellu jaghamel 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".

In the judgement in the names **Il-Pulizija v. Tony Curmi et**, delivered by this Court, differently presided, on the 27th June 2017, the Court observed that: *Illi kif inhuwa ben sapat, il-gustifikazzjoni ghal-legittima difesa tirrizulta meta persuna tilqa' b'forza l-vjolenza jew aggressivita ta' persuna oħra diretta lejha jew lejn terzi, kontra liema persuna hekk aggredita l-agir tad-difensur imputat huwa dirett. Fil-legittima difesa trid tkun inholqot sitwazzjoni ta' perikolu, dannu, theddida u/jew minaccja ta' l-istess, bl-agir tal-aggressur u mhux da parti tad-difensur, sitwazzjoni ikkreata unikament mhux minn min jadotta dik it-tip ta' difiza, izda minn min qed juri jew jimmanifestaw dak il-perikolu jew theddid jew dannu attwali kif jispjega Antolisei - "occorre in fine che l'aggressione abbia creato per il diritto preso di mira un pericolo attuale". Fil-Manuale di Diritto Penale Generale, insibu li "pericolo attuale è il pericolo presente.". ... Jigi rilevat li id-dritt ghal-legittima difesa jitwieled u huwa conseguenza naturali mid-dritt fondamentali ta' kull bniedem li jipprotegi lilu nnifsu minn xi aggressjoni jew dannu anke bl-użu tal-forza. Izda il-ligi timponi certi kondizzjonijiet biex din l-eccezzjoni tigi milqugha. Cioè t-theddid ta' xi aggressjoni jew dannu jew perikoldu jrid ikun ingust, gravi u inevitabli. Id-difiza trid tkun saret biex jigu evitati conseguenze li jekk jeffettwaw ruhhom jikkagunaw hsara rreparabbli lid-difensur, jigifieri hsara jew offiza lill-hajja, gisem u/jew partijiet tal-gisem tad-difensur. L-imputat difensur irid jipprova li dak li hu ghamel, ghamlu stante li fl-istat psikologiku li kien jinsab fih fdak il-mument, biex jevita xi perikoli li ma setghux jigu evitati b'mod ieħor. Jigifieri l-perikolu ghandu jkun attwali, istantaneju u assolut u ma jridx ikun xi perikolu anticipat. Il-perikolu ghandu jkun attwali, ta' dak il-hin, u mhux xi theddida ta' perikolu li tkun saret hinijiet qabel ghax dan jista' jaghti lok ghal provokazzjoni u mhux difesa legittima. Il-perikolu jrid ikun assolut, cioè li fdak il-mument li kien qed isehh ma setax jigi evitat b'xi mod ieħor. Izda hawnhekk ghandu jigi applikat it-test oggettiv kif diversi awturi u sentenzi tal-Qorti dejjem specifkaw, u mhx bizzejjed li wiehed jghid x'seta' ghamel jew x'messu ghamel jew x'messu ghamel id-difensur (imputat) qabel ma ha l-azzjoni in difesa bl-użu tal-forza. Fil-fatt kif jghid il-Professur Mamo fin-noti*

tiegħu: “the danger against which the accused reacts should be viewed not necessarily as it was in truth and in fact, but rather as the accused saw it at the time”. Wieħed għalhekk irid ipogġi lilu nnifsu fiċ-ċirkostanzi kif ħassu dak il-ħin u mument cioè imbeżża’ u l-ħsieb tiegħu li ser jiġi aggredit; [F]id-difesa legittima, huwa m’għandux jadotta metodi li huma in eċċess jew minaċċja ta’ perikolu. Izda anke hawn ... għandu wkoll jiġi kkunsidrat sew l-istat mentali tal-vittma ta’ l-aggressjoni jew minaċċja ta’ perikolu, cioè l-imputat. Rinfacċjat b’perikolu serju u imminenti kif ħaseb hu f’dak il-mument, wieħed ma jistax jippretendi li kellu jżomm il-kalma u fil-fatt il-liġi stess f’ċirkostanzi bħal dawn taċċetta miskalkolazzjonijiet u errors of judgement”.

When the facts of this case are considered in the light of the above-mentioned principles, the Court is of the opinion that the plea of self defence raised by the accused is justified and merits to be upheld.

The alleged victim Francis Bonello and Emanuel Grixti both tried to give the impression that it was the accused who attacked them, in particular Francis Bonello, and that his attack was largely unprovoked on their part. In spite of their testimony, the MP4 recording submitted by Inspector Christina Delia as Doc. “CD6”, portrays a different truth. From the video it clearly transpires that the accused was being attacked by Francis Bonello and Emanuel Grixti and not vice versa. At first the accused was pushed by Francis Bonello who threw him to the ground and then Emanuel Grixti joined Bonello and, when the accused was on the ground they continued attacking him and beating him. Not only did Bonello and Grixti attack the accused but Emanuel Grixti, as acknowledged by him, had a beer bottle in his hand. Even though Grixti tried down-playing the reason why he had this beer bottle in his hand, the Court deems that, bearing in mind that it was an empty bottle in his car which he brought it out with him when he saw Bonello and the accused in a scuffle, there is only one reason why he brought the beer bottle out with him, and that is to attack and beat up the accused, as confirmed by Sandra Maria Chandler who said that one of the men attacking the accused was beating him with a beer bottle. These actions on the part of Francis Bonello and Emanuel Grixti as directed against the accused created, for the said accused, *dannu ingiust, gravi u inevitabli*, which naturally solicited a reaction on his part to avoid being beaten up badly and ending up seriously hurt.

The contents of Doc. “CD6” have been confirmed by the above-mentioned Sandra Maria Chandler who in her testimony essentially recounted what can be seen in the video. She too confirms that it was the accused who was attacked by the two men, that is by Francis Bonello and Emanuel Grixti, and not that he was attacking them as alleged by them.

In reality the MP4 video - Doc. “CD6” - and the testimony by Sandra Maria Chandler, corroborate the version of events as given by the accused and his girlfriend Naomi Buhagiar. The accused does not deny that he got into a fight with Francis Bonello and Emanuel Grixti, neither did he deny that he hit Francis Bonello and also bit him, but he stresses that he did this only as a reaction to the unjustified,

serious and inevitable aggression on their part, to defend himself from their beatings.

Even though the injuries sustained by Francis Bonello have been classified as grievous, the Court deems that these must be put into perspective in order to determine whether the reaction by the accused was, in the circumstances, proportionate or not. From the medical certificate marked as Doc. “CD5” exhibited at folio 25 of the records of the proceedings and from the testimony given by Dr. Nicholas Schembri Wilson²⁶, it transpires that that Francis Bonello suffered *a superficial laceration wound over the left side of his head, a 1cm laceration over his nasal bridge which was sutured before he came to emergency and there was swelling over the nasal bridge. There was also a bite mark on the anterior aspect of his left forearm. ... CT report ... showed nasal bones fracture.* The Court however deems that when one considers that the accused was being attacked and beaten up by two men whilst he was on the floor, his reaction and the injuries he caused to Bonello cannot be considered to be disproportionate to the aggression he himself was being subjected to.

Francis Bonello alleges that the accused hit him on the head with a tool which has been referred to as a shifton throughout the proceedings, and which has been exhibited as Doc. “AB” by PS419 Anton Buttigieg. The accused does not deny that at a certain point during the altercation with Francis Bonello and Emanuel Grixti he took hold of a tool - which he refers to as a wrench - and was swinging it in their direction however, he denies hitting Bonello with it.

Upon close examination of the tool in question the Court cannot but point out that it is not smeared or stained with any blood, something which in its opinion is somewhat strange if the version of events as given by Bonello is to be believed. Bonello claims that he was smeared in blood and alleges that the accused hit him repeatedly on the head with the tool in question. In this scenario the Court finds it highly unlikely that this tool did not get smeared with any blood at all. The Court deems that this fact, that is that the tool in question is not smeared or stained with blood, gives credence to the version of events given by the accused, that is that whilst he did hold it in his hands to ward off Bonello and Grixti who were attacking him, he did not at any time hit Bonello with it.

Even though Tiziana Debono testified that she saw a person, according to her the owner of the white car and whom she believes to be the accused, using a tool and hitting another man with it, the Court cannot but point out that her testimony is somewhat sketchy and very economical with the truth. Even though she gives an account of what she claims to have seen in so far as the tool is concerned, unbelievably and quite strangely she doesn't seem to have seen anything else of what was clearly going during the incident at issue.

In view of all the above the Court deems that it clearly transpires that the accused acted in self defence against an unjustified, serious and inevitable aggression by

²⁶ Testimony given during the sitting held on the 23rd February 2022, folio 107 and 108 of the records of the proceedings.

Francis Bonello and Emanuel Grixti and therefore cannot be found guilty of having caused the said Francis Bonello voluntary grievous bodily harm.

The second charge brought against the accused - the accused is also being charged of having on the same day, at the same time and in the same locality uttered towards Francis Bonello insults or threats not otherwise provided for in this Code, or if being provoked, carried his insult beyond the limit warranted by the provocation.

The Court points out that in criminal proceedings the onus of proof lies squarely with the Prosecution who must prove the accused's guilt for the charge levelled against him, beyond reasonable doubt. As observed by the Court of Criminal Appeal in the judgement in the names **Il-Pulizija v. Carmel Attard**, delivered on the 23rd May 2023, *huwa prinċipju bażiku pprattikat mill-Qrati tagħna fil-proċediment kriminali, li sabiex l-imputat jiġi dikjarat ħati, l-akkuża dedotta, għandha tiġi ppruvata oltre kull dubbju dettat mir-raġuni. F'dan ir-rigward issir referenza għas-sentenza mogħtija mill-Qorti ta' l-Appell Kriminali (5 ta' Diċembru 1997) fil-kawża fl-ismijiet "Il-Pulizija v. Peter Ebejer" fejn il-Qorti ta' l-Appell Kriminali fakkret li l-grad ta' prova li trid tilħaq il-Prosekuzzjoni hu dak il-grad li ma jhalli ebda dubbju dettat mir-raġuni u mhux xi grad ta' prova li ma jhalli ebda ombra ta' dubbju. Id-dubbji ombra ma jistgħux jitqiesu bħala dubbji dettati mir-raġuni. Fi kliem ieħor, dak li l-ġudikant irid jasal għalih hu, li wara li jqis iċ-ċirkostanzi u l-provi kollha, u b'applikazzjoni tal-buon sens tiegħu, ikun moralment konvint minn dak il-fatt li trid tipprova l-Prosekuzzjoni. Fil-fatt dik il-Qorti ċċitat l-ispejgazzjoni mogħtija minn Lord Denning fil-każ Miller v Minister of Pension - 1974 - ALL Er 372 tal-espressjoni 'proof beyond a reasonable doubt.'* "Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence. 'of course it is possible but not in the least probable', the case is proved beyond reasonable doubt, but nothing shall of that will suffice."

From evidence submitted by the Prosecution there isn't proof beyond reasonable doubt that the accused uttered insults and/or threats towards Francis Bonello. Even though Francis Bonello claimed that the accused insulted him in Maltese, he did not say what this alleged insult was and the Court must also bear in mind that Bonello, and Emanuel Grixti, weren't altogether truthful in their testimony and they tried putting the blame for the fight which broke out on the 15th August 2021 on the accused when, from evidence submitted, it transpires that they were the main perpetrators of this fight. Therefore their testimony regarding alleged acts by the accused has to be taken with caution. Apart from this none of the other witnesses, namely Naomi Buhagiar, Tiziana Debono and Sandra Marie Chandler, testified that they heard the accused utter insults and/or threats towards Francis Bonello.

Even though from the MP4 video exhibited as Doc. "CD6" insults can be heard, also as pointed out by the Technical Expert John Sacco, it cannot be determined who uttered these insults, least of all if they were uttered by the accused.

The Court deems that the Prosecution did not prove the accused's guilt for the second charge brought against him, beyond reasonable doubt and therefore the accused cannot be found guilty of said charge.

Decide:

In view of the above the Court concludes and decides that on the 15th August 2021, between 12:00hrs and 13:00hrs, in Triq il-Knisja, San Pawl il-Baħar, the accused acted in self defence against the unjustified, serious and inevitable aggression by Francis Bonello and Emanuel Grixti directed towards him and therefore does not find him guilty of the first charge brought against him and discharges him from the same. Also, in view of the fact that the Prosecution did not prove the accused's guilt for the second charge brought against him, beyond reasonable doubt, it does not find the accused guilty of the second charge brought against him and discharges him from said charge as well.

MAGISTRATE

DEPUTY REGISTRAR