



**MALTA**

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

**Case No. 497/2021**

**The Police  
(Inspector Audrey Micallef)**

**Vs**

**Wayne Daniel Neve**

**Today, 27<sup>th</sup> September 2024**

**The Court,**

Having considered the charges brought against **Wayne Daniel Neve**, son of William Frederick Neve and Sheila neè Deybra, born in Ascot, United Kingdom on the 10<sup>th</sup> April 1986, residing at 46A, Triq il-Langasa, Imqabba, and holder of Identity Card Number 0198035A, of having on the 12<sup>th</sup> July 2021, between 17:45hrs and 18:15hrs in Imqabba:

1. Without the intent to kill or to put the life of his brother-in-law Marc Christopher Smith Egan in manifest jeopardy, voluntarily caused bodily harm or ill health causing an offence of grievous nature as certified by Dr. Mark Grech Sciberras, Med. Reg. No. 4593, from Mater Dei Hospital;
2. Attempted to use force with intent to insult, annoy or hurt his brother-in-law Marc Christopher Smith Egan;

Having considered the requests by the Prosecution for the Court: (i) to provide for the safety of Marc Christopher Smith Egan and his family or for the keeping of the public peace, in addition to or in lieu of the punishment applicable for the offence, require Wayne Daniel Neve to enter into his own recognisance in a sum of money fixed by the Court in terms of Section 383 *et seq* of Chapter 9 of the Laws of Malta; (ii) in case of a conviction, besides imposing the punishment in terms of the Law, to order Wayne Daniel Neve to incur payment of costs in the employment of Experts, as provided for in Section 533 of Chapter 9 of the Laws of Malta;

Having considered the documents submitted by the Prosecution marked Doc. "A" to Doc. "D" at folio 5 to 13 of the records of the proceedings;

Having heard the accused declare that he is not guilty of the charges brought against him<sup>1</sup>;

Having heard testimony given by Inspector Audrey Micallef during the sitting held on the 23<sup>rd</sup> September 2021<sup>2</sup> and having considered the documents submitted by her marked as Doc. “AM1” to Doc. “AM4” a folio 22 to 30 of the records of the proceedings, having heard testimony given by Marc Christopher Smith Egan during the sittings held on the 23<sup>rd</sup> September 2021<sup>3</sup> and on the 19<sup>th</sup> May 2022<sup>4</sup>, and having considered documents marked as Doc. “YA1” and Doc. “YA2” at folio 98 and 99 of the records of the proceedings, having heard testimony given by PS2223 Charlene Calleja during the sitting held on the 6<sup>th</sup> October 2021<sup>5</sup> and testimony given by Ramona Galea during the sittings held on the 6<sup>th</sup> October 2021<sup>6</sup> and 4<sup>th</sup> July 2022<sup>7</sup>, having heard testimony given by Dr. Mark Grech Sciberras<sup>8</sup> and PC575 Mark Tonna<sup>9</sup> during the sitting held on the 1<sup>st</sup> December 2021, having heard testimony given by Ivan Curmi, on behalf of Identity Malta, during the sitting held on the 31<sup>st</sup> January 2022<sup>10</sup> and considered the documents submitted by him marked Doc. “IC” at folio 71 to 77 of the records of the proceedings, having heard testimony given by Stefania Scicluna on behalf of the Registrar Criminal Courts and Tribunals during the sitting held on the 21<sup>st</sup> November 2022<sup>11</sup> and having considered the judgement in the names “The Police v. Marc Christopher Smith Egan” delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 16<sup>th</sup> September 2022 marked as Doc. “GVX” at folio 118 to 124 of the records of the proceedings;

Having considered the Decree dated 29<sup>th</sup> November 2022<sup>12</sup> by virtue of which the Court ordered that the transcript of the testimony given by Debbie Smith Egan during the sitting held on the 4<sup>th</sup> October 2022, be removed from the records of the proceedings;

Having considered the Note by the Attorney General dated 23<sup>rd</sup> February 2022<sup>13</sup>, 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 214, 215 and 216(1)(d) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Section 339(1)(d) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Sections 382A, 383, 384, 385, 386, 412C and 412D of the Criminal Code, Chapter 9 of the Laws of Malta; and
- Sections 17, 532A, 532B and 533 of the Criminal Code, Chapter 9 of the Laws of Malta;

Having heard the Prosecution declare, during the sitting held on the 10<sup>th</sup> March 2022, that it has no further evidence to put forth in these proceedings and having heard the accused

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<sup>1</sup> Folio 18 of the records of the proceedings.

<sup>2</sup> Folio 19 to 21 of the records of the proceedings.

<sup>3</sup> Folio 31 to 37 of the records of the proceedings.

<sup>4</sup> Folio 83 to 97 of the records of the proceedings.

<sup>5</sup> Folio 40 and 41 of the records of the proceedings.

<sup>6</sup> Folio 42 to 46 of the records of the proceedings.

<sup>7</sup> Folio 101 to 110 of the records of the proceedings.

<sup>8</sup> Folio 51 to 54 of the records of the proceedings.

<sup>9</sup> Folio 55 to 57 of the records of the proceedings.

<sup>10</sup> Folio 70 of the records of the proceedings.

<sup>11</sup> Folio 117 of the records of the proceedings.

<sup>12</sup> Folio 126 of the records of the proceedings.

<sup>13</sup> Folio 79 of the records of the proceedings.

declare 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 23<sup>rd</sup> March 2022, were read out<sup>14</sup>;

Having heard final oral submissions by the Prosecution and Defence Counsel;

Having considered all the records of the proceedings;

### **Considers:**

The accused is being charged with having on the 12<sup>th</sup> July 2021, between 17:45hrs and 18:15hrs in Imqabba: (1) Without the intent to kill or to put the life of his brother-in-law Marc Christopher Smith Egan in manifest jeopardy, voluntarily caused bodily harm or ill health causing an offence of grievous nature as certified by Dr. Mark Grech Sciberras, Med. Reg. No. 4593, from Mater Dei Hospital; (2) Attempted to use force with intent to insult, annoy or hurt his brother-in-law Marc Christopher Smith Egan.

He declared that he is not guilty of the charges brought against him

By means of a Note dated 23<sup>rd</sup> February 2022<sup>15</sup>, the Attorney General sent the accused to be tried by this Court for an offence or offences under the provisions of:

- Sections 214, 215 and 216(1)(d) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Section 339(1)(d) of the Criminal Code, Chapter 9 of the Laws of Malta;
- Sections 382A, 383, 384, 385, 386, 412C and 412D of the Criminal Code, Chapter 9 of the Laws of Malta; and
- Sections 17, 532A, 532B and 533 of the Criminal Code, Chapter 9 of the Laws of Malta.

### **Evidence:**

**Inspector Audrey Micallef**<sup>16</sup> testified that on the 13<sup>th</sup> July 2021, she was informed that Marc Christopher Smith Egan lodged a report against Wayne Daniel Neve alleging that he (that is Marc Christopher Smith Egan) had suffered grievous injuries as certified by a medical certificate he had in his possession. Inspector Micallef carried out preliminary investigations for an CCTV cameras in the area of the alleged incident, but no footage was obtained since the cameras of the premises where the incident allegedly occurred were damaged and hadn't been repaired. Inspector Micallef also sent for Wayne Daniel Neve so that he could give his statement regarding the alleged incident and in this regard she testified that *Wayne was cooperative while releasing his statement with me and of course he told me his version of events, in fact I can confirm the charges were also issued against Mr. Marc Smith for allegations that Mr. Marc on that day went to enquire about some Government vouchers since in the past he used to live with Wayne and since he didn't receive them, Marc thought of going to Wayne's residence in order to ask for these vouchers. Wayne stated that he has a daughter with some special needs and of course he had to be looking after her and he didn't open immediately but Marc kept insisting and banging on the door, he also insulted Wayne about telling him some insulting and threatening words including that he threatened even to kill his dog which was the residence outside. Apparently when Wayne decided to open the door a scuffle arose and one is saying that he was pushed and the other is saying that he fell down during this*

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<sup>14</sup> Folio 80 of the records of the proceedings.

<sup>15</sup> Folio 79 of the records of the proceedings.

<sup>16</sup> Testimony given during the sitting held on the 23<sup>rd</sup> September 2021, folio 19 to 21 of the records of the proceedings.

*alleged scuffle. Of course, I had a medical certificate stating grievous injuries and of course I had to proceed but I declare that charges against Marc were issued also from our end.*

Inspector Audrey Micallef submitted an email addressed to her indicating that no CCTV cameras relevant to the alleged incident were available - Doc. "AM1" at folio 22 of the records of the proceedings, a declaration by the accused renouncing to his right to consult a lawyer before giving his statement to the Executive Police - Doc. "AM2" at folio 23 of the records of the proceedings, the audio-visual statement given by the accused to the Executive Police - Doc. "AM3" at folio 24 of the records of the proceedings and the Police Incident Report - Doc. "AM4" at folio 25 to 30 of the records of the proceedings.

From the said Police Incident Report, it transpires that Marc Christopher Smith Egan claimed that *there was a time where he used to reside with his sister and her husband Wayne Daniel at 14, Ir-Razzett, Triq il-Langasa, Sqaq Nru.2, Mqabba, where he resided with them for one year but in 2019 he left mentioned residence where he also started in rehab and explained that now he is residing at "Jerome" Flat 1, Triq Patri Pelagju Mifsud, Zebbug, with his friends. Marc stated that after he stopped residing with his sister and with her husband Wayne, their relationship changed for a good one to a bad for the reason that his sister was controlling him and he couldn't handle it. Marc explained that since he did not receive the government vouchers yet in his new residence in Zebbug, he wanted to check with his sister if he received them in his old address in Mqabba, where he stated that about four days ago he also texted his sister to ask her about the vouchers where she told him that he did not receive them yet but he stated that he does not trust his sister so yesterday the 12/07/2021 he went directly in Mqabba together with his friend namely Galea Ramona - I.D. Card: 0110884M and her husband to check with his own eyes. Marc Christopher explained that he arrived in Mqabba with Ramona and her husband at about 18:00hrs where they went to knock at his sister new address which is 46, Triq il-Langasa, Mqabba, but no one answered so he continued to knock and noticed through the window that inside there were his nieces that were sitting on the sofa watching tv so he continued knocking and could hear the dogs bark. Marc stated that after a while he and Ramona decided to try and check if his sister was at the old residence where they used to live so they just went around the corner and after knocking on the main door and on the side door it showed that there was no one inside. Marc Christopher explained that then they decided to go back to the vehicle to leave but they decided to try to knock on door 46 again and that's when his brother-in-law opened the door and came out from inside the residence to mentioned street and told him "What are you fucking doing" and also assaulted him physically by grabbing him from his shoulder and he fell on the floor and all his weight went on the shoulder and then Marc got up and asked him "What are you doing" and then Wayne tried to assault him again but this time Marc head locked him with one arm but Wayne got out and while Marc was still on the floor Wayne punched him in his face. Marc stated that Ramona's husband pulled him back and they started to shout to each other and insulted each other with the word "cunt".*

**PS2223 Charlene Calleja**<sup>17</sup> confirmed that on the 13<sup>th</sup> July 2021 a report was lodged by Marc Christopher Smith Egan against the accused for injuries sustained by him as could be seen by her since he had a broken arm and as evidenced by a medical certificate in his possession which classified the injuries as grievous. She also confirmed the version of events as given by Marc Christopher Smith Egan when he lodged his report.

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<sup>17</sup> Testimony given during the sitting held on the 6<sup>th</sup> October 2021, folio 40 and 41 of the records of the proceedings.

**PC575 Mark Tonna**<sup>18</sup> stated that he spoke to Ramona Galea<sup>19</sup> with regard to the alleged incident which occurred on the 12<sup>th</sup> July 2021 and that *she told us that some day prior the accident, that she had texted Mark's sister asking her if she had received his government vouchers. Mark's sister who was called Debbie had a daughter who was going to keep the vouchers of herself since Mark does not need them. She recounted to us how on the date of the incident which was on the 12<sup>th</sup> July 2021 also, Mark had asked her and her husband if they could take him to Mqabba which eventually they did but she did not know exactly the location in Mqabba, the precise address where it was. When they arrived there she told us that they started knocking on the door but no one had opened to them. She even told us that she could visually see three children who were inside and there was a dog barking. She told us that after a while she had texted Mark's sister Debbie telling her that they were there but she said that Debbie had replied to her that she is at work and that her husband is at home. Her husband was named Wayne. Because no one opened the door, all of them together, all three together had gone to an address within some walking distance away from the place they were, where Mark, his sister and the rest used to live before but the same, they knocked on the door and no one answered. Eventually, they had turned back to the first address where they were knocking for the first time and after they knocked again, eventually Wayne had opened the door. The witness had told us that Mark and Wayne started verbally arguing in English which she doesn't recall what was said and that Wayne had physically assaulted Mark, he started beating him were the precise words. She said that she and a passer by had stopped these two people from keeping on fighting. Eventually, Wayne had said something to Mark which Mark tried to go for Wayne but he was again held. She said that Mark had told Wayne that he had just come for the vouchers and that was all. Eventually, Mark started complaining that he had a pain in his arm, I don't remember which arm it was and he was taken to Mater Dei Hospital where later on it resulted that he had broken an arm. Finally, she also told us that on the day of the incident, Mark was not under the influence of alcohol.*

**Marc Christopher Smith Egan**<sup>20</sup> testified that he was assaulted by the accused for no valid reason since he only went to the accused's house to enquire about Government vouchers due to him. Smith Egan testified that *I went to the house for the government vouchers, I knocked on the window, I see the kids in the window, I waved at the kids and I knew someone was in the house so I went and knocked on the door, no one was answering so I went to the old address, ten seconds down the road and knocked on their door in Mqabba, no one answered there, they have got CCTV as well and then from there, on the way back was Ramona and I knocked on the door again and then he came out like a mad man and there he assaulted me.* Here Marc Christopher Smith Egan is referring to the accused, who is also his brother-in-law. He further testified that *I went there and then he runs out of the house, he started swearing "You aren't fucking welcome around here", I was with who I live with, Ramona Galea ... She's the witness, I live with her and her husband. ... There was nothing into me that I was not welcome around there otherwise I wouldn't have gone with who I live with, he doesn't make sense. I didn't go there to fight, I went there to pick up government vouchers, that's all. ... things were said between us, I was shouting at him, he was shouting at me and then he locked himself in [the witness later corrects himself and states that the accused locked himself out of] the house and the kids were in the house and then he starts shouting at Ramona my friend saying I'm sleeping with and then later on, because I went with her husband, Ramona and her husband who I live with, we all went together to pick the government vouchers up and*

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<sup>18</sup> Testimony given during the sitting held on the 1<sup>st</sup> December 2021, folio 55 to 57 of the records of the proceedings.

<sup>19</sup> And not Romina as indicated in the transcript of the testimony given by PC575 Mark Tonna.

<sup>20</sup> Testimony given during the sitting held on the 23<sup>rd</sup> September 2021, folio 31 to 37 of the records of the proceedings.

*then he states that I'm sleeping with his wife right in front of her husband. Then I started shouting, he is shouting and then I said "You're not right Wayne" and then he assaulted me. ... we were shouting from the start, he came out of the house like a mad man, a crazy man, I didn't deserve to have my shoulder broken for no reason. I went there for government vouchers and that's it. ... We were shouting at each other in front of the house, there were other people that lived around there, I said "You're fuckin' wrong" we were swearing and then he did a rugby tackle on me and as I went down, because this arm's damaged because I had a motorbike accident here, and I can't have my full support on this arm so I went down straight on the shoulder and I fractured my shoulder. ... After that I rolled up and then I got him in a headlock and then he got me on the floor again.*

Following this scuffle Marc Christopher Smith Egan left the place of the incident together with Ramona Galea and, together with her and her husband, he went to Mater Dei Hospital. The following day he lodged the report against the accused.

Under cross-examination Marc Christopher Smith Egan stated that he used to live with his sister and the accused but after eight months he was kicked out by them. He claimed that *I was living in a washroom, I was paying rent and I wasn't allowed to do anything. So they got to a stage where they had enough of me and they wanted me out.* Even though Smith Egan claimed that his relationship with his sister was good, her further stated that she is a controlling person and that *if she doesn't like something, that's the way it is. My mother can't even go and see kids, there are things like this going on.* He also added that this situation is also due to the accused, *how can I speak to my sister when Wayne's there? It doesn't make sense. If this is going on and you're taking someone to Court, it doesn't make sense for me to talk to my sister when she's not going to talk to me anyway.* He further stated that at the time of the incident *I had no problem with Debbie or Wayne at that time, there was no problem at all. I went to the house solely for vouchers and that's all.* Upon being asked by the Court *but you just said that you had to leave her house or rather they kicked you out because of the problems that there were between you. Were there or weren't there problems?* Marc Christopher Smith Egan replied *No, we fixed the problems. We talked online and all that and Ramona as well. To be fair, Ramona used to speak to them and we used to go to their house once every 5 months. My old ID card is addressed there so that's the only reason why I went for the vouchers.*

Being asked who witnessed the altercation between him and the accused, Marc Christopher Smith Egan at first stated that there were Ramona, her husband and a passer by but then he said that Carmphil Galea, Ramona's husband, probably heard rather than saw the altercation, however he couldn't be sure of this. Being asked how the accused locked himself out of the house, Smith Egan replied *he ran out of the house and assaulted me and the door obviously banged.* He further stated that *I rolled over on my right side because I knew that my left shoulder was damaged. Then I got back up, I got Wayne in a headlock and then he pushed me to the floor and he punched me in the face. That's what it says in my testimony.*

Under re-examination Smith Egan said that *Carmphil was still in the car and then I think that he heard the shouting later on and then he came out of the car.* He also stated that the shouting with the accused started after the altercation had already happened - *yes it had already taken place. There was no need for me to shout. I didn't go there to fight. I went there for documents that are mine.*

**Ramona Galea**<sup>21</sup> confirmed that on the 12<sup>th</sup> July 2021 she accompanied Marc Christopher Smith Egan to his sister's residence in order to verify whether his Government vouchers had been sent there. She testified that they went to Imqabba and *we started knocking on the door and at first no one opened and after we heard the dog barking and from the window we saw one of the daughters of his sister and the daughter of Wayne and Debbie. After we continued knocking and after no one opened, we went to the landlord that used to have the place from her before and no one opened the door and we went back knocking on the door, we continued knocking and we saw the three girls of Wayne and Debbie after. Then when we were leaving, Wayne came out running and he put Marc down on the floor. ... because he ran out of his house and he pushed him on the floor. ... I witnessed that when Wayne left Marc, Marc noticed that he couldn't move his shoulder and he couldn't get up properly from the floor. ... when Marc got up from the floor how he could, Wayne and Marc they said something in English but I don't understand everything, I don't know actually what they said but they said something to each other.*

Ramona Galea claimed that when the accused opened the door of his house he looked angry and asked why this was so, she replied *I think because me and Marc we continued knocking and he was angry because we continued knocking.* She claimed that *he was angry and he ran out of the house pushing Marc on the floor. ... He came out of his house running, to explain myself, like a tiger and he pushed him. ... It wasn't a normal push. ... When Wayne put Marc on the floor, Wayne went on Marc and he continued fighting with him. ... And then I was there and I told them "Stop, stop. Don't continue fighting" and there is the CCTV camera. ... Then Marc got up from the floor how he could and they said something in English to each other but I didn't understand what they said because I don't understand all English and we went back to my husband's car because my husband took us to Mqabba and he stayed in the car.*

Upon being asked if her husband stayed in the car during the whole time, she replied in the affirmative.

Under cross-examination, Ramona Galea once again claimed that when she and Marc Christopher Smith Egan were going back to the car, the accused *ran out and pushed Marc on the floor. ... I tried to pull Wayne away from Marc so that they will stop fighting but Marc didn't fight. Wayne started kicking Marc.* With regard to her husband Ramona Galea at first said that he didn't hear the altercation and shouting going on but when he heard her shouting "Stop, stop" he got out of the car but stayed in the corner of the road. Ramona Galea insisted that the accused came out of his house and pushed Marc onto the road but she doesn't know how he managed to get back into the house.

**Dr. Mark Grech Sciberras**<sup>22</sup> confirmed that the medical certificate at folio 7 of the records of the proceedings was issued by him with regard to Marc Christopher Smith Egan on the 12<sup>th</sup> July 2021 at 11:30p.m. Dr. Grech Sciberras testified that *with regard to the injuries, there was a displaced fracture of the distal third of the left clavicle and this was confirmed by shoulder Xray as well as a CT Scan.* In so far as concerns medication or further appointments, he stated that *from my end, what I can tell you is what I prescribed was analgesia which are painkillers which were to be taken by the patient as necessary. Then again, from my end, that was the only apart from applying a cuff and collar to help stabilise the shoulder but from our end, from an emergency point of view, that was*

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<sup>21</sup> Testimony given during the sitting held on the 6<sup>th</sup> October 2021, folio 42 to 46 of the records of the proceedings.

<sup>22</sup> Testimony given during the sitting held on the 1st December 2021, folio 51 to 54 of the proceedings.

*mainly the treatment that was required for the patient at the time.* He confirmed that he classified the injuries as grievous and under cross examination he stated that *with regard to any injuries, apart from what I stated on this report, I did not see any. ... What he stated was what I have on my medical notes and this was the main complaint on the day. So we investigated that and we found this type of injury.* In so far as concerns medications, asked for how long these were prescribed, he stated *to be honest I'm not sure but generally we give between 5 and 7 days and then they will be re-assessed by either a GP or if they have any further specialist clinics at Mater Dei Hospital where they can be prescribed any further medication.*

In relation to the incident forming the merits of these proceedings the **accused** in his statement to the Executive Police - which audio-visual statement has been viewed and heard by this Court<sup>23</sup> - stated that the incident happened on the 12<sup>th</sup> July 2021 at around 5:45p.m. Prior to the incident he received a number of calls from Ramona's mobile and imaging that they were from Marc Christopher Smith Egan he didn't reply. Shortly after he also received a message from Carmphil Galea, who is Ramona Galea's husband, asking him about some vouchers and he told him to ask his wife Debbie about them. Some ten minutes later Marc Christopher Smith Egan and Ramona Galea turned up outside his property banging on the door. The accused stated that has three small children he wanted to move them towards the back of the house so as to protect them and since the older daughter is in a wheelchair this took some time. Meanwhile the banging on the door continued and Marc Christopher Smith Egan was swearing and insulting the accused from outside and he also threatened him that he would stab his dog.

At that point the accused opened the door of his house asking Marc Christopher Smith Egan what was going on and Marc ran at him and caught him in a head lock with his left arm. Ramona Galea was trying to push Marc Christopher Smith Egan away from the door and the accused pushed the Marc out of the doorway and closed the door. At that point he shouted at them that Ramona should tell her husband what was going on since she was having an affair with Marc, but the accused also said that he shouldn't have said that because it was not really his place to do so. The swearing continued outside and Marc Christopher Smith Egan spent another four to five minutes pacing outside the house screaming and swearing. The accused stated that at the time his wife Debbie was not at home since she was at work.

The accused denied punching Marc Christopher Smith Egan in the face and he doesn't know how he ended up on the floor because the front door of the house was closed. He also stated that he cannot be sure if Marc Christopher Smith Egan was drunk on the day and he wasn't close enough to him to be able to smell any alcohol in his breath. The accused denied ever using the word "cunt" and surely didn't call Marc Christopher Smith Egan that. It was Marc Christopher Smith Egan who used this word with reference to his sister Debbie Smith Egan, since he was verbally abusive towards her.

Upon being informed about the injuries sustained by Marc Christopher Smith Egan, that is that he had a broken arm and should have undergone surgery, the accused stated that he didn't know that Marc had sustained any injuries and didn't know anything about this. He couldn't explain how Marc broke his arm, he could only assume that he fell on his own. When he pushed him out of the doorway, because he was trying to break into his property, Marc didn't fall and also Ramona Galea was pulling him back at the time. Being confronted with the fact that the version of events given by Marc Christopher Smith Egan and Ramona

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<sup>23</sup> Doc. "AM3" at folio 24 of the records of the proceedings.



Galea were the same, where they both claimed that he attacked Marc, the accused replied that this wasn't true. Being asked whether he thinks they are lying about him, the accused replied in the affirmative and said that he thinks they are doing so because of what he said to them about their affair. The accused said that on the day of the incident he was not injured even though Marc Christopher Smith Egan tried to get him in a headlock.

The accused explained that he wasn't answering Marc's calls and didn't want to open when he was banging on the door because two weeks prior to the incident Marc Christopher Smith Egan was messaging Debbie and insulting her, so she blocked him.

### **Charges brought against the accused:**

Prior to considering the individual charges brought against the accused, the Court wants to reiterate at this point that in criminal proceedings the onus of proof lies on the Prosecution who must prove beyond reasonable doubt that the accused is guilty of the charges brought against him.

The Court makes reference to that observed by the Court of Criminal Appeal in the judgement in the names **Ir-Repubblika ta' Malta v. Eleno sive Lino Bezzina** delivered on the 24<sup>th</sup> April 2003: *il-grad ta' prova li trid tilhaq il-Prosekuzzjoni, sakemm ma jkunx hemm speċifikat mod ieħor fil-liġi, huwa tal-ħtija lil hinn minn kull dubju dettat mir-raġuni. Fil-kamp kriminali huwa l-oneru tal-Prosekuzzjoni li tipprova l-akkuża tagħha kontra l-akkużat "beyond reasonable doubt", kif ġie deċiż fil-kawża "Pulizija v. Bugeja" tas-26 ta' Marzu 1987. Illi min-naħa l-oħra d-difiza, msaħħa bil-presunzjoni ta' l-innoċenza ta' l-akkużat, tista' tibbaża u/jew tipprova il-każ tagħha anke fuq bilanċ ta' probabbiltà, jiġifieri jekk huwa probabbli li seta' ġara dak li ġie rrakkuntat mill-akkużat kif korroborat miċ-ċirkostanzi jew le. Illi dan ifisser li l-Prosekuzzjoni għandha l-obbligu li tipprova l-ħtija ta' l-akkużat oltre kull dubju dettat mir-raġuni u f'każ li jkun hemm xi dubju raġonevoli, il-Prosekuzzjoni tiġi kunsidrata li ma ppruvatx il-każ tagħha ta' ħtija u għalhekk il-Qorti hija obbligata li tillibera. Illi l-Onorabbli Qorti ta' l-Appell Kriminali (Sede Inferjuri) fil-kawża fl-ismijiet "Pulizija v. Peter Ebejer" deċiża fil-5 ta' Dicembru 1997, qalet illi "Ta' min ifakkar hawnhekk il-grad ta' prova li trid tilhaq il-Prosekuzzjoni hu dak il-grad li ma jhalli ebda dubju dettat mir-raġuni u mhux xi grad ta' prova li ma jhalli ebda ombra ta' dubju. Id-dubbji ombra ma jistgħux jitqiesu bħala dubbji dettati mir-raġuni. Fi kliem ieħor dak li l-ġudikant irid jaasal 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. Għamlet sew infatti l-ewwel Qorti li ċċitat b'approvazzjoni l-ispjegazzjoni mogħtija minn Lord Denning fil-każ "Miller v. Minister of Pensions" [1974] 3 All E.R. 372, ta' l-espressjoni "proof beyond 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 short of that will suffice" (373-374).*

By virtue of the **first charge** brought against him, the accused is being charged of having on the 12<sup>th</sup> July 2021, between 17:45hrs and 18:15hrs in Imqabba: Without the intent to kill or to put the life of his brother-in-law Marc Christopher Smith Egan in manifest jeopardy, voluntarily caused bodily harm or ill health causing an offence of grievous nature as certified by Dr. Mark Grech Sciberras, Med. Reg. No. 4593, from Mater Dei Hospital.

Essentially the accused is being charged with the crime of voluntary grievous bodily harm in terms of - as indicated by the Attorney General in his Note dated 23<sup>rd</sup> February 2022<sup>24</sup> - Sections 214, 215 and 216(1)(d) of Chapter 9 of the Laws of Malta.

After considering the evidence put forth by the Prosecution, the Court is not at all convinced, morally and factually, that the accused assaulted Marc Christopher Smith Egan with the consequence that he fell to the floor and broke his arm. The Court is not convinced about this for the reason that Marc Christopher Smith Egan, the alleged victim, and Ramona Galea, the eye witness, were not consistent in their versions of events and they both alleged a manner of assault, that is that the accused punched Smith Egan in the face and also kicked him whilst he was on the floor, which is not reflected in the injuries sustained by Smith Egan.

When Marc Christopher Smith Egan filed his report against the accused he initially stated he went to the accused's residence because he did not trust his sister - who is the wife of the accused - that they hadn't received his Government vouchers and so he went to their residence to check for himself. He also claimed that the accused opened the door and assaulted him right away. It was only once he was knocked down that a verbal altercation started off between them and then the accused assaulted him a second time, at which point he (that is the accused) punched him in the face. He further claimed that it was Ramona Galea's husband who pulled the accused away from him. When filing the said report Marc Christopher Smith Egan stated that his relations with his sister were bad because of her alleged controlling behaviour towards him.

When he testified before the Court, Marc Christopher Smith Egan gave a version of events which was somewhat different in the finer details to the version initially given to the Police, which finer details however are, in the Court's opinion, of the utmost importance in so far as concerns veracity of that being alleged and credibility of the witness.

During his examination in chief Smith Egan reiterated his allegation that the accused assaulted him but this time he claims that when the accused opened the door at first they started shouting at each other and it was only after some time that the accused allegedly assaulted him. At no point during his examination in chief does he mention being punched in the face by the accused. Under cross-examination, he once again varied the finer details of his version of events and again alleged that the accused ran out of this house and assaulted him and pushed him to the ground. When he managed to get up, the accused assaulted him again and punched him in the face. Contrary to what he stated to the Police upon filing his report, being asked about his relationship with his sister, Smith Egan claimed that he had a good relationship with her because even though he claimed that she and the accused kicked him out of their residence after some eight months of living with them, they had sorted out any differences between them.

In her version of events to the Police, Ramona Galea said that she had texted Debbie Smith Egan about her brother's Government vouchers and Debbie's reply was that she was going to keep them since her older daughter needed them. Being informed about this she together with her husband and Marc Christopher Smith Egan, went to Debbie's and the accused's residence in Imqabba for these vouchers. When the accused eventually opened the door of his residence, after she and Smith Egan had been knocking on the door and window for quite some time, he started arguing with Smith Egan, but she couldn't recall

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<sup>24</sup> Folio 79 of the records of the proceedings.

what was said, and then he assaulted Smith Egan. PC575 Mark Tonna testified that her exact words were *he started beating him*.

When she testified before the Court, Ramona Galea gave the impression of an unprovoked assault on Marc Christopher Smith Egan by the accused, which assault happened when they were about to leave and go back to her husband's car. She didn't mention anything about the accused and Smith Egan shouting at each other, she merely claimed that after the assault they said something to each other but she didn't understand what they said because she doesn't understand English very well. She claimed that when Marc was on the floor the accused continued fighting him. Throughout this whole incident her husband remained in the car.

Under cross-examination she further claimed that it was only the accused who was fighting Marc, whilst the latter did not fight back and the accused was kicking him as well.

These discrepancies, as stated above, directly impinge on the credibility of the witnesses and the veracity of their allegations.

Marc Christopher Smith Egan's credibility is put into question right away when during his testimony before the Court he tried to give the impression that he had a good relationship with his sister, thus making the accused's reaction towards him on the day of the incident even more serious and inexplicable. In spite of what he said in his testimony, when he filed his report with the Police on the 13<sup>th</sup> July 2021, that is the day after the incident, he clearly reported that he had a bad relationship with his sister because she was allegedly controlling towards him and he went to her residence specifically because he didn't trust her reply about his Government vouchers and went there to check for himself. It is very clear that on the day Marc Christopher Smith Egan was very frustrated at the situation, so much so that he repeatedly banged on the door of the residence of the accused and continued knocking and banging until the accused finally opened the door to see what he wanted.

The description of the alleged assault too puts into question Smith Egan's credibility and the credibility of Ramona Galea. They both gave the impression of a savage assault by the accused to the detriment of Marc Christopher Smith Egan. Ramona Galea told the police that the accused beat Smith Egan and even described him in her testimony as coming out for him like a tiger. Marc Christopher Smith Egan claimed that the accused assaulted him, throwing him to the ground and punched him too, whilst Galea stated that the accused assaulted Smith Egan and kicked him whilst he was on the floor.

In spite of these allegations, Dr. Mark Grech Sciberras did not find any signs of an assault consisting of punches to the face or kicking. Even though he did find that the Marc Christopher Smith Egan had a *displaced fracture of the distal third of the left clavicle and this was confirmed by shoulder Xray as well as a CT Scan*, asked about other injuries - which the Court would have expected in view of the way Smith Egan and Galea described the alleged assault - Dr. Grech Sciberras replied *with regards to any injuries, apart from what I stated on this report, I did not see any. ... What he stated was what I have on my medical notes and this was the main complaint on the day. So we investigated that and we found this type of injury*.

In view of all these inconsistencies the Court cannot, in all conscience, come to the conclusion that the accused assaulted Marc Christopher Smith Egan in the way he (that is Smith Egan) and Ramona Galea alleged.

Even though Marc Christopher Smith Egan was on the 12<sup>th</sup> July 2021 certified by Dr. Mark Grech Sciberras with having a broken arm and even though the accused in his statement to the Executive Police did say that when Smith Egan tried to forcefully enter into his property, he pushed him from the doorway so that he could close the door of his residence, these two facts together do not necessarily lead to the conclusion that the accused is indeed guilty of causing voluntary grievous bodily harm to Marc Christopher Smith Egan.

With regard to the offence of voluntary bodily harm, Professor Anthony Mamo opines that *to constitute the crime of wilful bodily harm, the injury must have been caused intentionally. But the intention required is merely the ‘animus nocendi’, the generic intent to cause harm, without requiring necessarily an actual intention to do the particular kind of bodily harm which, in fact, ensues. In other words, it is not essential that the intention was to produce the full degree of harm that has actually been inflicted. ... the word ‘intention’ in law has a much wider meaning than in philosophy, or indeed in ordinary use. It covers all consequences whatever which the doer of an act foresees as likely to result from it, whether he does the act with actual desire of producing them, or only in recklessness as to whether they ensue or not. Therefore, in the case of bodily harm, if the intent of the doer is to injure, he will answer for the harm actually caused, in application of the principle ‘dolus indeterminatus determinatur ab exitu’*<sup>25</sup>.

As already observed further up in this judgement, the Court is not at all convinced, both morally and factually, that the accused assaulted Marc Christopher Smith Egan and intentionally caused him bodily harm. It is more inclined to believe that the accused, faced with Smith Egan’s persistent and insistent behaviour and him trying to force himself into his home, pushed him out of the doorway not to injure him but to close the door and thus preserve the security of his home and of the three minors who were inside the house at that time. The Court is thus of the opinion that the Prosecution did not manage to prove a generic intent on the part of the accused to cause voluntary bodily harm to Marc Christopher Smith Egan, least of all bodily harm of a grievous nature, and it therefore failed to prove that the accused is guilty of the first charge brought against him.

In view of this conclusion the Court cannot find the accused guilty of the first charge brought against him and must therefore acquit him from the same.

By virtue of the **second charge** brought against him, the accused is being charged with having on the 12<sup>th</sup> July 2021, between 17:45hrs and 18:15hrs in Imqabba: Attempted to use force with intent to insult, annoy or hurt his brother-in-law Marc Christopher Smith Egan.

The accused is being charged with the contravention contemplated in Section 339(1)(d) of Chapter 9 of the Laws of Malta, as also indicated by the Attorney General in his Note dated 23<sup>rd</sup> February 2022<sup>26</sup>.

In so far as concerns this offence reference is made to the judgement in the names **Il-Pulizija v. John Bonnici**, delivered by the Court of Criminal Appeal on the 3<sup>rd</sup> February 2016, wherein the Court observed that: *L-artikolu 339(1)(d) tal-Kodiċi Kriminali jipprovdi li huwa ħati ta’ kontravvenzjoni kull min “iħebb kontra persuna sabiex jinġurja, idejjaq jew jagħmel ħsara lil din il-persuna jew lil ħaddieħor, kemm-il darba l-fatt ma jkunx jaqa’ taħt xi disposizzjoni oħra ta’ dan il-Kodiċi”.* *Fl-Appell Kriminali Il-Pulizija v. Joseph*

<sup>25</sup> Notes on Criminal Law, Volum II pagna 275. All emphasis in bold by the Court.

<sup>26</sup> Folio 79 of the records of the proceedings.

*Pace deċiż fid-9 ta' Mejju 1997 intqal: "Din il-kontravvenzjoni kontra l-persuna sseħħ meta persuna tħebb kontra persuna oħra sabiex tingurja, iddejjaq jew taghmel ħsara lil dik il-persuna l-oħra jew lil ħaddiehor<sup>27</sup>, kemm-il darba l-fatt ma jkunx jaqa' taħt xi disposizzjoni oħra tal-Kodiċi Kriminali. Biex persuna tħebb kontra persuna oħra ma hemmx għalfejn li effettivament ikun hemm kuntatt fiżiku; biżżejjed li jkun hemm il-potenzjalità ta' tali kuntatt permezz tal-manifestazzjoni ta' forza fiżika indirizzata lejn dik il-persuna oħra. Forsi t-test Inġliż ta' din il-kontravvenzjoni jiddeskrivi aħjar il-kunċett ta' tħebb': '... attempts to use force against any person with intent to insult, annoy or hurt such person or others ...'. Jekk ikun hemm kuntatt fiżiku multo magis wieħed jista' jgħid li wieħed tħebb għal persuna oħra, sakemm il-fatt ma jammontax għal xi reat ieħor jew reat aktar gravi". Fis-sentenza fl-ismijiet Il-Pulizija vs Omisses ġie enfasizzat illi: 'Sabiex din l-akkuża tirriżulta ma hemmx bżonn li l-akkużat jikkaguna feriti iżda anke is-sempliċi attentat ta' kaġunar ta' ferita jammontaw għal dan ir-reat.'*

When the facts of this case are considered in the light of the elements which constitute this offence, it is clear that the Prosecution, in this instance as well, did not manage to prove that the accused is indeed guilty of the second charge brought against him. From evidence submitted by the Prosecution the Court reiterates that the accused did not use force on or against Marc Christopher Smith Egan with the intent to insult, annoy or hurt him but he merely reacted at Smith Egan's aggressive attempt to enter into his home where at the time, as already pointed out above, there were three minor children. Once there clearly was no intent on the part of the accused to insult, annoy or hurt Marc Christopher Smith Egan, then he surely cannot be found guilty of this second charge brought against him and must be acquitted from it too.

### **Decide:**

In view of the above considerations, the Court deems that the Prosecution failed to prove beyond reasonable doubt that the accused is guilty of the charges brought against him, and therefore it finds the accused not guilty of the charges so brought against him and acquits him from said charges.

**MAGISTRATE**

**DEPUTY REGISTRAR**

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<sup>27</sup> Underlining by this Court.