



Court of Magistrates (Gozo)
AS A COURT OF CRIMINAL JUDICATURE
Magistrate Dr. Jean Paul Grech B.A., LL.D
M.Juris (Int. Law), Adv. Trib. Eccl. Melit

JUDGEMENT

Today, Tuesday, the twenty-second (22nd) of October 2024

Case Number 459/2022

The Police

(Inspector Josef Gauci)

vs

John Richard Fullalove

The Court

Having seen the charges filed against **John Richard Fullalove**, son of James and Jeannette born in Preston, United Kingdom on the thirty-first (31st) August 1963 and residing at “Dar is-Satar”, Triq it-Tigrija, Nadur, Gozo holder of Maltese identity card number 0048030(A) for having on

the fourth (4th) November 2022 at around nine o'clock in the morning (09:00hrs), in Triq it-Tigrija, Nadur, Gozo:

(1) reviled, threatened or caused bodily harm to Transport Malta Enforcement Officers EO 08 Antoine Grech and EO 03 George Mercieca, persons charged with a public duty, while in the act of discharging their duty or because of them having discharged such duty, or with intent to intimidate or unduly influence them in the discharge of such duty;¹

(2) and also in the same date, time, place and circumstances, assaulted or resisted by violence or active force, Transport Malta Enforcement Officers EO 08 Antoine Grech and EO 03 George Mercieca, persons lawfully charged with a public duty when in the execution of the law or of lawful order, issued by a competent authority;²

(3) and also in the same date, time, place and circumstances, without intent to kill or to put the life of any person in manifest jeopardy, caused harm of slight nature to the body, on the person of EO 08 Antoine Grech, as certified by Dr. Josette Rapa MD of Gozo General Hospital;³

¹ Article 95 of Chapter 9.

² Article 96 of Chapter 9.

³ Articles 214 and 221 of Chapter 9.

(4) and also in the same date, time, place and circumstances, without intent to kill or to put the life of any person in manifest jeopardy, caused harm of slight nature to the body, on the person of EO 03 George Mercieca, as certified by Dr. Rowena Zrinzo MD of Gozo General Hospital;⁴

(5) and also in the same date, time, place and circumstances, wilfully committed any spoil, damage or injury to or upon any movable or immovable property, to vehicle of make Peugeot with registration number AQZ544, property of Christian Borg of Princess Garage, which damage exceeds two thousand and five hundred euros (€2500);⁵

(6) and also in the same date, time, place and circumstances, wilfully disturbed the public good order or the public peace;⁶

(7) and also with having on the same date, time, place and circumstances, without inflicting any wound or blow, threatened, with stones or other hard substances, or throws the same, or had taken up any other weapon against EO 08 Antoine Grech and EO 03 George Mercieca;⁷

⁴ Articles 214 and 221 of Chapter 9.

⁵ Article 325(1)(a) of Chapter 9.

⁶ Article 338(dd) of Chapter 9.

⁷ Article 339(1)(b) of Chapter 9.

(8) and also with having on the same date, time, place and circumstances, attempted to use force against any person, namely EO 08 Antoine Grech and EO 03 George Mercieca, with intent to insult, annoy or hurt such persons and/or others;⁸

In case of a finding of guilt, the court was kindly requested, if it deems expedient, in order to provide for the safety of Transport Malta Enforcement Officers EO 08 Antoine Grech and EO 03 George Mercieca, for the keeping of the public peace, in addition to, or in lieu of the punishment applicable to the offence, require the offender to enter into his own recognizance in a sum of money to be fixed by court, and this in terms of article 383 of Chapter 9 of the Laws of Malta.

The Court was also kindly requested, for the purpose of providing for the safety of the injured parties, to issue a Protection Order under 412C of Chapter 9 of the Laws of Malta.

Having seen that the Attorney General gave her consent in terms of Section 370(4) of Chapter 9 of Laws of Malta for this case to be dealt with summarily;⁹

Having seen that the accused did not object for this case to be dealt with summarily;¹⁰

⁸ Article 339(1)(d) of Chapter 9.

⁹ Doc. "JG6" – Fol. 33.

¹⁰Fol 32.

Having seen that the case was assigned to this Court as presided following an order dated nineteenth (19th) day of February 2024 issued by the Chief Justice in terms of Article 11(3) of Chapter 12 of the Laws of Malta and Article 520 of Chapter 9 of the Laws of Malta;

Having seen the minutes of the sitting of the ninth (9th) April 2024, wherein the Prosecution and the Defence exempted the Court from the need of hearing again the evidence already tendered and from resubmitting the documents filed till that date;

Having seen the minutes of the sitting of the first (1st) of December 2022 wherein the accused pleaded guilty to the fifth (5th) charge whilst declaring that he was not guilty of all the other charges brought against him;

Having seen that during the pendency of these proceedings the accused did not withdraw his guilty plea as regards the fifth (5th) charge;

Having seen all the evidence brought forward by the Prosecution;

Having seen all the documents exhibited and all acts of the proceedings;

Having heard final submissions;

Having seen the Court minute of the eighth (8th) of October 2024 wherein the case was put off for judgment for today;

Considers;

That the Court will start first by summarising the evidence which has been tendered in these proceedings.

Inspector Josef Gauci¹¹ explained that on the 4th November 2022 PS 674 Spiteri informed him of an incident which had taken place in Triq it-Tigrija Nadur Gozo. PS 674 Spiteri reported that Transport Malta enforcement officers Antoine Grech and George Mercieca were involved in an incident with the accused over an unlicensed vehicle. When the officers went to speak to the accused, he allegedly set the officers' vehicle on fire using a spray can and lighter, damaging the front seats and central console, with the damage estimated at €5,742.89. The accused also reportedly sprayed fire at the officers' faces. Gauci ordered the accused's arrest and informed the duty magistrate. He also arranged for the damages to be photographed and any CCTV footage available to be retrieved. The officers were treated for slight injuries at the Gozo General Hospital.

¹¹ Fol 34-36

George Mercieca, Enforcement Officer 3, testified¹² that on the fourth (4th) of November 2022 at around 9:00 am. he and his colleague EO 8 Antoine Grech visited the accused's home in Triq it-Tigrija, Nadur to secure the removal of an unlicensed vehicle which the accused had parked on the street. The officers instructed the accused to either regularize the vehicle's license and pay the fines or else remove it from the street. Despite the accused's protests about financial constraints, the officers insisted. Feeling mistreated, the accused asked to go back inside his home while officers waited, only to reappear sometime later and set fire to the officers' vehicle (Peugeot 107 - AQZ 544) using penetrating oil and a lighter, causing damage to the front seats. The accused then sprayed Mercieca with the oil while shouting 'You want some'. The officer managed to restrain the accused and both officers extinguished the fire with help from neighbours and passing vehicles. The police were also contacted for assistance. The officers then went to hospital and were examined. At a later stage in the proceedings, Mercieca also confirmed¹³ the CCTV footage (Document JG8) and the content of the DVD presented, where he recognised himself and also the accused.

Antoine Grech, Enforcement Officer 8 testified¹⁴ that on the fourth (4th) of November 2022 he had gone for the second time to talk to the accused about an unlicensed, uninsured truck which the latter had

¹² Fol 51-54

¹³ Fol 152-153

¹⁴ Fol 55 - 59

parked in this street. Three days earlier Grech had already spoken to the accused and gave him some time to remove the truck. Once again, on the 4th November, despite being told to remove the vehicle, the accused claimed he had no money or place to put it and asked for a two-year extension. When the officer threatened to tow the truck, the accused argued with the officers, claiming discrimination. After briefly leaving, the accused returned with a can and lighter, igniting the officers' vehicle. Grech tried to stop him but was chased by the accused who pointed the can in his face. The accused continued setting the vehicle on fire until he was finally wrestled to the ground and calmed down by his colleague. The officers eventually extinguished the fire with help from passersby. Transport Malta officials, a fire engine and Police reported on site to give their assistance. Grech was later hospitalized due to shock and chest pain. Grech exhibited a photograph which he took of the accused where the accused is clearly seen igniting the vehicle. This photograph shows the accused holding a can and leaning into the window of a white vehicle. An orange flame can also be seen through the windscreen. Grech also confirmed¹⁵ the CCTV footage (JG8) and the content of the DVD presented, where he recognised himself and his colleague.

Joseph Camenzuli,¹⁶ the managing director of Princess Garage, confirmed that a Peugeot bearing registration number AQZ 544 is

¹⁵ Fol 148 -150

¹⁶Fol 61-62

owned by the company and that the same is currently on loan to Transport Malta. During his testimony, Camenzuli discussed a repair quotation from Peugeot agent Michael Attard Limited, estimating the cost of the damages at €5,742.89 (referenced as JG11). Camenzuli also presented a series of photographs marked as JC1 to JC11, showing the extent of the damage the vehicle sustained. The photos confirm that significant damage was done to the interior and the fire had affected the seats, floor, boards, roof, and other areas of the car.

Reuben Said, Senior Manager, Enforcement Section at Transport Malta,¹⁷ testified that on the first (1st) and fourth (4th) November 2022, he had instructed Enforcement Officers Antoine Grech and George Mercieca to conduct a site inspection in Nadur to follow up on a report which had been filed regarding an unlicensed truck in Triq it-Tigrija, Nadur. On the fourth (4th) of November 2022, Said went on to state that he received a call from a colleague informing him that one of the Enforcement Officers had reported an attempt to set a Transport Malta vehicle on fire. Reacting swiftly, Said headed to the site in Nadur, contacting the Police and the Civil Protection Department (CPD) for assistance en route.

Upon arriving at the scene, he found the accused sitting on a bench a few meters away from where the vehicle was parked. Said then spoke to the Enforcement Officers on site, who provided him with details

¹⁷ Fol 63 -64

about the incident. Shortly thereafter, the Police and CPD arrived to manage the situation.

Dr. Josette Rapa,¹⁸ a medical doctor testified that on the fourth (4th) of November 2022 she was on duty at Gozo General Hospital. She examined Antoine Grech, who had presented himself at the casualty department with minor injuries. Dr. Rapa confirmed that she had classified the injuries sustained as slight.

Dr. Chantelle Azzopardi¹⁹, a consultant psychiatrist at Gozo General Hospital testified that she had examined the accused on the fourth (4th) of November 2022. She confirmed that, according to her evaluation at that time, the accused was not experiencing psychosis and was deemed fit to be interrogated and to participate in legal proceedings.

Dr. Rowena Marie Zrinzo,²⁰ testified that on the fourth (4th) of November 2022 she had medically examined George Mercieca and she had certified that he was suffering from slight injuries save complications.

PS 676 Edelon Spiteri testified²¹ that on the fourth (4th) of November 2022 at about nine o'clock in the morning (09:00hrs) Transport Malta

¹⁸ Fol 91 -94

¹⁹ Fol 95 -96

²⁰ Fol 97-98

²¹ Fol 99-100

officers had called for police assistance after being assaulted while performing their duties in Racecourse Street in Nadur. Spiteri and his colleagues responded to the call and arrived at the scene, where they observed that the situation had already been brought under control. One of Spiteri's colleagues had the accused in custody. Transport Malta Enforcement Officers, Antoine Grech and George Mercieca, explained that they had instructed the accused to remove an unlicensed vehicle. In response, the accused reportedly retrieved a spray aerosol can from his garage and used it to ignite the Transport Malta vehicle with registration AQZ 544. He also allegedly sprayed the aerosol in the direction of Officers Grech and Mercieca.

Spiteri further testified that he verbally informed the accused of his rights and placed him under arrest. Following the arrest, the accused was taken to hospital by the police. Officers. Additionally, Spiteri mentioned that CCTV footage from a camera in the vicinity was collected as evidence by PC 1155.

PS 1462 Joseph Attard testified²² that on the fourth (4th) of November 2022 at around nine o'clock in the morning (09:00hrs) Transport Malta officers called for police assistance after being assaulted while performing their duties in Racecourse Street in Nadur. Attard dispatched his unit and went on site together with district Police and proceeded to arrest the accused, who was given his rights and then

²² Fol 101 - 107

taken to Gozo General Hospital for treatment. Transport Malta officers were spoken to who explained that they had spoken to accused about an unlicensed vehicle bearing registration number plate HAO 409 which was parked on the road. Attard confirmed that the vehicle in question was unlicensed and had received a lot of traffic contraventions. Attard also inspected the vehicle which was allegedly damaged by the accused. Attard exhibited a report which he drew up on the date of the incident marked Dok JA.

PC 1155 Nicholas Gatt testified²³ that his involvement was limited to taking photographs of the damages to the Transport Malta officials' vehicle. He was also tasked with elevating CCTV footage from a house in Racecourse Street, Nadur, across the road from where the incident occurred. Gatt presented a report which was marked as evidence and designated NG3. The report shows pictures of Racecourse street and the damaged vehicle from different angles, a red lighter and a spray can which were allegedly used during the incident.

Saviour Farrugia, Assistant Principal at Transport Malta, Gozo confirmed that vehicle AQZ 544 a Peugeot 108 was registered on Princess Operations Ltd.

²³ Fol 108 -110

Alan Cutajar, Leading Assistant and Rescue Office at the Civil Protection Department (CPD), testified²⁴ in these proceedings along with **Manuel Attard**²⁵ and **Keith Genuis**²⁶. All three said that on the fourth (4th) November 2022 at approximately half past nine in the morning (9.30hrs), they were called to assist in an incident in Triq it-Tigrija Nadur because a Transport Malta car had been set on fire. Upon arrival they found that the fire had already been extinguished and they disconnected the car battery to eliminate all potential danger. They also took note of all details and particulars as necessary.

Kenneth Psaila,²⁷ Spare Parts Manager with Michael Attard Ltd confirmed the quotation exhibited as Doc JG11 concerning the parts which required replacement in vehicle AQZ 544 following the fourth (4th) November 2022 incident.

Considers;

The facts of the case are as follows: on the fourth (4th) of November 2022 Transport Malta officers Antoine Grech and George Mercieca reported to the accused's residence named "Satar" in Triq it-Tigrija, Nadur, Gozo to speak to him regarding an unlicensed and uninsured vehicle which he had left on the public road. The two (2) officers

²⁴ Fol 136 -137

²⁵ Fol 138 -140

²⁶ Fol 141 -143

²⁷ Fol. 144.

informed the accused that he could not leave his vehicle outside unless he renewed its road licence. He had to either settle all outstanding contraventions and pay the relative road licence or else he had to scrap the vehicle or move it within the precincts of a private property. The accused informed them that he was having financial difficulties and that he did not have enough funds to settle the outstanding payments. He also told the same officers that he did not have a place where he could house the same vehicle. He requested a two-year extension but was informed that the vehicle could not be left any longer on a public road. The officers informed him that in that eventuality the vehicle would have to be towed to the Transport Malta compound at his expense. The accused started complaining that he was being treated in this way because he was a foreigner. He then went back inside his residence. Moments later he came back out holding an aerosol can and a lighter and he walked toward the officials' vehicle and he tried to set it on fire. One of the officers Antoine Grech tried to stop him however the accused pointed the flame towards his direction. Grech ran away to avoid the flame. The accused continued trying to ignite the car. Subsequently the accused ran towards the other official George Mercieca. He attempted to direct the flame at him but Mercieca managed to remove the aerosol can and Grech moved it to a safe distance so that it could not be used again by the accused. Attempts were made to put off the fire. Using a bucket of water and a fire extinguisher provided by one of the residents in the vicinity, the officials

managed to put off the fire. The accused was then arrested by the Police who reported on site.

Considers:

- **The First Charge - Article 95 of Chapter 9**

This article deals with vilifications, threats or bodily harm against a person lawfully charged with a public duty while in the act of discharging his duty or because of having discharged such duty. This article provides that:

“Whosoever, in any other case not included in the last preceding two articles, shall revile, or threaten, or cause a bodily harm to any person lawfully charged with a public duty, while in the act of discharging his duty or because of his having discharged such duty, or with intent to intimidate or unduly influence him in the discharge of such duty, shall, on conviction, be liable to the punishment established for the vilification, threat, or bodily harm, when not accompanied with the circumstances mentioned in this article, increased by two degrees and to a fine (multa) of not less

than eight hundred euro (€800) and not more than five thousand euro(€5,000).

The first element of this offence consists in an attack: it has to be either a verbal attack which amounts to a threat or vilification or a physical attack which results in some form of bodily harm. Mere disobedience does not suffice. The purpose or reason for the attack must be inextricably linked to the discharge of one's duties: the Prosecution must prove that the attack was carried out in opposition or resistance to the discharge of one's duty.

The second element of this crime refers to the condition or capacity of the person against whom the attack or resistance is directed. The law speaks of any person lawfully charged with a public duty. It is not necessary that the person executing the law, or lawful order should at the time be wearing his uniform or any other badge or distinctive mark of office: but it is nevertheless necessary that his capacity should be known to the accused.

From the evidence submitted, there is absolutely no doubt in the Court's mind that Antoine Grech and George Mercieca had reported to the accused's residence in the official capacity as Transport Malta Enforcement Officers to follow-up on a report which had been received concerning an uninsured and unlicensed vehicle which had been left on the street by the accused and which belonged to the same accused. The

officers' position as Transport Malta public officials was more than known to the accused. Indeed the fourth (4th) November 2022 visit was not the first visit the Transport Malta representatives had paid to the accused. EO 8 Antoine Grech testified how a couple of days earlier he had gone to the accused's residence and ordered him to remove the vehicle within the next few days. The accused had been informed that there was going to be a follow-up visit to check whether orders had been adhered to. However, on the fourth (4th) of November 2022 when the officers went on site, they realised that the orders had been ignored by the accused as the car was still parked in the same location. Secondly, as reported by the same officers, the accused had alleged that they were targeting him because he was a foreigner. This also goes to confirm that he was fully aware of their public functions.

From the testimony given by the officers, which testimony is corroborated by the CCTV footage exhibited, it is clear that the accused's actions were triggered simply because he had been ordered by the Transport Malta officials to remove his vehicle or else they were going to have it towed. He did not take this order down well as he insisted that he was short of money and he could not settle all contraventions and the road licence fees due. Furthermore, he did not have any alternative place to where he could move the same vehicle so as not to leave it on the public road. When his request to leave the vehicle for a further two (2) years was ignored and the officials insisted that they were going to take action to have it towed, the accused lost it

completely. Indeed the CCTV footage indicates how the accused first entered into a heated discussion with the Transport Malta officials. Subsequently he is seen entering his residence and come out a few seconds later holding an aerosol can and a lighter. He then proceeds to set fire to the officers' car. He was partially successfully in this regard.

It is quite evident to the Court that the accused's action was intended to specifically intimidate the same officers so that they would not proceed to instruct their superiors to have the vehicle towed to the compound. When the same officials tried to stop him, he attempted to use the flame against them fortunately without success. In the whole commotion which ensued, he did manage however to cause slight injuries to the same officials as confirmed by the medical certificates exhibited and confirmed on oath by the medical practitioners who issued the same certificates. The first charge has therefore been proven.

- **The Second Charge – Article 96 of Chapter 9**

Article 96 lays down that:

“Whosoever shall assault or resist by violence or active force not amounting to public violence, any person lawfully charged with a public duty when in the execution of the law or of a lawful order issued

by a competent authority, shall, on conviction, be liable - (a) where the assault or resistance is committed by one or two persons, to imprisonment for a term from six months to two years and to a fine (multa) of not less than four thousand euro (4,000) and not more than ten thousand euro (10,000); (b) where the assault or resistance is committed by three or more persons, to imprisonment for a term from nine months to three years and to a fine (multa) of not less than five thousand euro (5,000) and not more than fifteen thousand euro (15,000).”

Although articles 95 and 96 refer to offences which are committed against public officers, the two offences are distinct from each other: for a finding of guilt, different elements need to be proved for each of the specific offences. As pointed out by this Court presided by Magistrate now Judge Dr Edwina Grima in the case **Il-Pulizija vs Anthony Grech** decided on the 7th April 2009:

“Il-Qrati taghna f’diversi sentenzi spjegaw id-differenzi bejn dawn iz-zewg reati. (ara The Police vs John Shayer et deciza fl-14 ta’ Novembru 1959, Police vs Joseph Polidano – 7 ta’ Frar 1966 Il-Pulizija vs Carmelo Zammit – 23 November 1959 fost

ohrajn) “The difference to the two crimes envisaged under Sections 94 and 95 of the Criminal Code (illum 95 u 96) does not lie in the nature of the act, nor in the seriousness of the consequences, much less in the personal qualities of the injured person, but only in the character of the duties the injured person is performing at the time of the offence. Indeed Section 94 (illum 95) states “while in the act of discharging his duty or because of his having discharged such duty, or with intent to intimidate or unduly influence him in the discharge of such duty,’ whilst section 95 (illum 96) requires that the offence is committed when in the execution of the law or of a lawful order issued by a competent authority.” (Police vs A.B. Michael Locking deciza 3 ta’ Ottubru 1966).

Illi ghalhekk filwaqt illi ir-reat ikkontemplat fl-artikolu 95 huwa reat ta’ oltragg lil ufficjal pubbliku waqt il-qadi tas-servizz pubbliku tieghu jew minhabba li ikun qieghed jaqdi tali servizz, l-artikolu 96 jipotizza r-reat ta’ attakk jew resistenza kontra persuna inkarigata skond il-ligi minn servizz pubbliku filwaqt li dik il-persuna tkun qed tagixxi ghall-esekuzzjoni tal-ligi, jew ta’ xi ordni moghti

skond il-ligi minn xi awtorita kompetenti. Illi din l-espressjoni hi differenti minn dik uzata fl-artikolu 95(1) – waqt li jkun jaghmel jew minhabba li jkun ghamel dan is-servizz, jew bil-hsieb li jbezzghu jew li jinfluwixxi fuqu kontra l-ligi fl-esekuzzjoni ta’ dana is-servizz. (ara sentenza Il-Pulizija vs Joseph Zahra Appell Kriminali – 9 Settembru 2002)”

It is therefore clear that the offence envisaged in article 96 requires the attack or resistance against the public officer to occur at the moment of the execution of the law or of a lawful order (for example while the Police are in the process of carrying out an arrest). Indeed, the formal element of this crime consists in the purpose of the offender of impeding or frustrating the execution of the law or of a lawful order. Consequently, any violence committed after the law or the order would have already been executed, even though it may be on account of such execution, would not give rise to a breach under article 96.²⁸

In the case under examination, although the officers were on site on duty, they were not carrying out a lawful order as envisaged by this section of the law. They were simply requesting the accused to remove his vehicle from the public road as otherwise they were going to have it towed at his expense and transported to the compound. The Court does not consider the circumstances of the case as being proscribed by

²⁸ Mamo A., Second Year Criminal Law Notes, Revamped by Christopher Aquilina (2022), page 72.

article 96: in fact no lawful order was being executed at that point in time. **Indeed, the attack took place after that the officers had finished talking to the accused and they had 'dismissed' the accused as it were.** The accused had in actual fact asked the officers if he could leave and they told him that he could. This emerges quite clearly from Antoine Grech's testimony:

“U provajt, ifhimni, għidtlu, “Ħa ntik l-aħħar çans,” għidtlu, ħa ntik çans” għidtlu, “ħa tneħħih dan it-trakk?” Qalli, “Le, m għandix fejn inneħħih.” Għidtlu, “Mela m’għandix alternattiva.” U bdejt niprova nċempel lill-imgħallem tiegħi, lis-senior Manager Reuben Said. Kif appena qed niprova nċempel, li kien engaged il-ħin kollu, provajt nikkuntattjah kemm -il darba lill-manager tiegħi, l-akkużat qalli jekk jistaqx jitlaq, jekk jien inhix lest minnu. Għidtlu, “iva tista’ tmur, tista’ tidħol,” għax talabni biex jidħol lejn id-dar.

.....

Qalli, “Nista’ nidħol jien ?” Għidtlu, “iva, tista’ tmur, tista’ tidħol, aħna lesti.” U fl-istess ħin, wara ftit, appena ħames sekondi, m’għaddewx għaxar sekondi, daħal ġewwa, jiena miexi lejn il-vettura,

għadda minn warajja, u narah daħħal idejh fil-vettura. Fl-istess ħin osservajt li kellu tip ta' bott kulur abjad u oranġjo, u qed nara lighter in-naħa l-oħra jipprova, igniting, jiġifieri qed jipprova jqabbad il-fjamma. Fil-fatt qabbadha l-fjamma, u beda prova jaħraq id-dashboard.”²⁹

The situation would have been different had the attack occurred while the Transport Malta officials were in the process of impounding the accused’s vehicle to take it to the compound. It would have been quite plausible in such a scenario to consider the same a violation of article 96. Hence, the Court shall be acquitting the accused of the second charge.

- **The Third (3rd) and Fourth (4th) Charges – Article 214 of Chapter 9**

With regard to these two (2) charges, it is clear from the evidence submitted that both charges have been proven. Both officers suffered slight injuries as a direct result of the accused’s actions. This as certified by the respective medical practitioners who examined them shortly after the accident. George Mercieca suffered slight injuries when he had the penetrating oil sprayed onto his face and he injured his back after that he fell down when he was trying to remove the aerosol can from the hands of the accused. On the other hand, Antoine Grech

²⁹ Fol. 56 u 57 tal-proċess.

suffered from shock as a result of the events which unfolded, causing palpitations. He even ended up inhaling smoke as he was trying to put off the fire ignited by the accused. The medical practitioners testified on oath during the hearing of this case and they confirmed the medical certificates which they issued.

- **The Fifth (5th) Charge – Article 325(1)(b) of Chapter 9**

With reference to this charge, the accused registered a guilty plea. Hence the Court will proceed to find the accused guilty of this charge. In any case, this charge has also been proven from the evidence submitted. It emerged quite clear that the accused set the car being used by the Transport Officials on fire and that this fire caused substantial damage to the same vehicle. The value of the damages caused amounts to at least five thousand seven hundred and forty-two euro and eighty-nine cents (€ 5,742.89) as evidenced by the quote submitted and confirmed on oath during these same proceedings.

- **The Sixth (6th) Charge – Article 338(dd) of Chapter 9**

This charge punishes the conduct of a person aimed at disturbing the public good order or the public peace. In the case ***The Police vs. Rocco D'Alessandro***³⁰, the Court established the criteria required for a finding

³⁰ Decided by the Court of Criminal Appeal on 20 May 2013 (Criminal Appeal Number 223/2012). Also reported in the judgment in the names ***The Police vs Joseph Feilazoo*** (Appeal number 44/2019) decided by the Court of Criminal Appeal on 16 May 2019.

of guilt under this article of law. The Court noted that the Prosecution has to prove the commission of a voluntary act by the accused, which act doesn't necessarily need to cause harm directly but must have the potential to create concern or worry in the mind of a reasonable person. Moreover, the concern must relate to the physical integrity of such person or his property. The fear or worry should be on account of the act itself or because of the possible reaction it could provoke. The circumstances surrounding the act are crucial. They must objectively justify the concern or worry, implying that a reasonable person in the same situation would also be concerned.

The Court has no doubt that this charge has been proven. Both Transport Malta officials confirm that the accused's action caused concern as regards their physical integrity. Antoine Grech had to run away from the accused to avoid being injured by the flame which was being ignited by the accused. George Mercieca had to take direct action to remove the aerosol can from the accused's hands so as to avoid potential injuries to him and his colleague as well as to prevent further damages to their car. The whole episode was hugely alarming both objectively and subjectively, causing substantial trauma and distress to both the victims. The Court will therefore also pronounce guilt as regards this charge.

- **The Seventh (7th) Charge – Article 339(1)(b)**

Article 399(1)(b) of Chapter 9 specifies that a person is guilty of a contravention against the person if “*without inflicting any wound or blow, threatens others with stones or other hard substances, or throws the same, or takes up any other weapon against any person.*” During this incident, the accused had in his possession an aerosol can as well as a lighter. From the evidence of the Transport Malta officials as well as the CCTV footage it is quite clear that the accused was using the can and lighter as a form of weapon against the two officials: indeed he was using the aerosol can to ignite flames and at one point he even directed the same towards the two officers. It was simply a matter of luck that the two were not injured by these flames. Hence the accused is also guilty of this contravention.

- **The Eighth (8th) Charge – Article 339(1)(d)**

In the judgement **Il-Pulizija vs Joseph Pace**³¹ in relation to this contravention, the Court of Criminal Appeal had underlined that:

“Din il-kontravvenzjoni kontra l-persuna sseħħ meta persuna tħebb kontra persuna oħra sabiex tingurja, iddejjaq jew tagħmel ħsara lil dik il-persuna l-oħra jew lil ħaddiehor, kemm-il darba l-fatt ma jkunx jaqa’ taħt xi disposizzjoni oħra tal-Kodiċi Kriminali. Biex persuna tħebb kontra

³¹ Decided on the 9th May 1997.

persuna oħra ma hemmx għalfejn li effettivament ikun hemm kuntatt fiżiku; biżżejjed li jkun hemm il-potenzjalita` ta' tali kuntatt permezz tal-manifestazzjoni ta' forza fiżika indirizzata lejn dik il-persuna oħra. Forsi t-test Ingliz ta' din il-kontravvenzjoni jiddeskrivi aħjar il-kunċett ta' 'hebb': '... 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 hebb għal persuna oħra, sakemm il-fatt ma jammontax għal xi reat ieħor jew reat aktar gravi”³²

Reference is also made to the case **Il-Pulizija vs Omissis** wherein the Court had emphasized that:

“Sabiex din l-akkuża tirriżulta ma hemmx bżonn li l-akkużat jikkaguna feriti iżda anke s-sempliċi attentat ta' kaġunar ta' ferita jammontaw għal dan ir-reat.”³³

³² Refer also to **Il-Pulizija vs Caven Cutajar** decided by the Court of Criminal Appeal on the 15th September 2020 as well as **Il-Pulizija vs David Farrugia** decided by the Court of Criminal Appeal on the 25th January 2022.

³³ Refer also to **Il-Pulizija vs Lawrence Gerada**, decided by the Court of Magistrates as a Court of Criminal Judicature on the 16th April 2021; **Il-Pulizija vs Harold Gerada**, decided by the Court of Magistrates as a Court of Criminal Judicature on the 16th April 2021.

In the case under examination, it is clear that the accused attempted to use force against both enforcement officers. As regards George Mercieca, there was even physical contact between the two, so much so that George Mercieca fell down. In so far as Antoine Grech is concerned, the accused attempted to use force when he ran in his direction. It is evident that he wanted to inflict an injury on the person of Antoine Grech. Hence there is no doubt that there should also be a declaration of guilt as regards this offence.

- **Considerations as Regards Punishment**

The Court considers attacks on public officers serious in nature and absolutely not acceptable in a democratic society. Definitely the accused acted in a cow-boy manner and attacked the officers and intimidated them by setting their car on fire. This simply because the officers drew his attention to the fact that he could no longer leave his car on a public road since its road licence had expired and that direct action was going to be taken unless he regularised his position. One appreciates that the accused could have been facing financial constraints: but this did not entitle him to threaten and attack the same officers who were carrying out their duties. The only reason why the Court will not be imposing a term of effective imprisonment in this case is because this appears to be the accused's first brush with the law since he has a clean police conduct and the accused via his lawyer during final submissions apologised for his actions. The quantum of the punishment

however will still reflect the gravity of the charges which the accused will be found guilty of; in fact the Court will not be imposing the minimum punishment which the law allows.

- **Decide**

Consequently, for the reasons outlined above:

(a) the Court **is not find the accused guilty of the second (2nd) charge** and is acquitting him of this charge;

(b) after having seen articles 17, 31, 95, 214, 221, 325(1)(a), 338(dd), 339(1)(b) and 339(1)(d) of Chapter 9 of the Laws of Malta the Court **is finding the accused guilty of the first (1st), third (3rd), fourth (4th), fifth (5th), sixth (6th), seventh (7th) and eighth (8th) charges** brought against him and is condemning him to a fine *multa* of two thousand and five hundred euro (€ 2,500) and to two (2) years imprisonment but orders that this sentence is not to take effect unless during a period of four (4) years from today, the offender commits another offence punishable with imprisonment.

In terms of article 28A(4) of Chapter 9 of the Laws of Malta, the Court explained to the offender in ordinary language his liability under article

28B of Chapter 9 if during the operational period of this judgement he commits another offence punishable with imprisonment.

After having seen article 15A of Chapter 9 of the Laws of Malta, the Court is also concurrently ordering the offender to pay to Christian Borg of Princess Operations Limited the sum of **five thousand seven hundred and forty-two euro and eighty-nine cents (€ 5,742.89)** being the value of the damages sustained by the same Christian Borg of Princess Operations Limited on vehicle bearing registration number plate AQZ 544 as a result of the offender's deliberate actions. Said payment is to be made by not later than one (1) year from today. This order of payment which is being issued by this Court shall constitute an executive title for all intents and purposes of the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta) as if it were an order given by a competent Civil Court.

Finally the Court after having seen article 383 of Chapter 9 of the Laws of Malta in order to provide for the safety of EO 03 George Mercieca and EO 08 Antoine Grech is ordering the offender to bind himself not to molest, threaten or annoy the same EO 03 George Mercieca and EO 08 Antoine Grech and this for a period of one (1) year from today. Should the offender fail to abide by this guarantee a penalty of one thousand euro (€ 1,000) shall be due to the Government of Malta.

(sgd.) Dr. Jean Paul Grech
Magistrate

(sgd) Diane Farrugia
Deputy Registrar

True Copy

For The Registrar