

**COURT OF MAGISTRATES (MALTA)**  
**AS A COURT OF CRIMINAL JUDICATURE**  
**MAGISTRATE JOSETTE DEMICOLI LL.D.**

**The Police**  
**(Inspector Elton Taliana)**  
**(Inspector Caroline Fabri)**

**vs**

**Srdan Stankovic**

**Case Number: 391/2015**

**Today 5<sup>th</sup> September 2018**

The Court,

After having seen the charges brought against the accused, Srdan Stankovic, 36 years, son of Srecko and Snazina nee' Vascic, born in Serbia on 1<sup>st</sup> September 1978, residing at Flat 1, Cargio Court, Bay Street, Marsascala, holder of identity card number 127207(A):

And charge him together with other persons with having in these Islands on the 23<sup>rd</sup> November, 2014 at about 20:00hrs in St Julians or in the vicinity:

1. Without intent to kill or put the life in manifest jeopardy, caused grievous bodily harm on the person of Shawn Zammit(Art. 218 Chapter 9 of the Laws of Malta)
2. Accuse him further for having on the same date, time, place and circumstances took part in an accidental affray and caused bodily harm on the person of Shawn Zammit (Art. 237 (b)(c)(d) Chapter 9 of the Laws of Malta).
3. Accuse him further for having on the same date, time, place and circumstances provoked a tumult or an affray for the purpose of

committing a homicide or a bodily harm to the detriment of Shawn Zammit (Art. 238(b) Chapter 9 of the Laws of Malta).

4. Accuse him further for having on the same date, time and place and circumstances operated as a private guard or offer his services as such, without being licensed in accordance with the dispositions of Chapter 389.

Having heard the evidence and having seen the records of the case.

Having seen the note filed by the Attorney General of the 7th June 2016, whereby he found that from a preliminary investigation abovementioned there might result an offence (or offences) against:

- (a) Articles 214, 215, and 218 of the Criminal Code, Chapter 9 of the Laws of Malta;
- (b) Article 237(b) of the Criminal Code, Chapter 9 of the Laws of Malta;
- (c) Articles 238(b) and 218 of the Criminal Code, Chapter 9 of the Laws of Malta;
- (d) Articles 3 and 25(b) of the Private Guards and Local Wardens Act, Chapter 389 of the Laws of Malta;
- (e) Articles 17, 31, 532A, 532B and 533 of the Criminal Code, Chapter 9 of the Laws of Malta.

Having heard the defendant reply that he has no objection that his case be treated by summary proceedings and decided by this Court.

Having heard the final oral submissions.

### **Considers:**

From the acts of the case the following results:

Police Inspector Carol Fabri<sup>1</sup> whilst giving evidence stated that on the 23<sup>rd</sup> November 2014 the Executive Police were informed that a fight broke out in Paceville precisely at the premises named *Bacco Establishment*. However the Inspector pointed out that it was on the 24<sup>th</sup> November that Shawn Zammit filed a report with the executive police and produced a medical certificate attesting

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<sup>1</sup> Sitting held on the 6<sup>th</sup> May 2015

the grievous nature of the injuries suffered during the said fight whilst he was with his wife and friends at *Bacco's*. Shawn Zammit informed the Executive Police that the three (3) persons allegedly involved in the fight were of Serbian nationality unknown to the victim. The Police initiated a search to find the persons of interest but they could not be traced.

In February, Inspector Fabri explained that Shawn Zammit passed on five (5) photos to the Executive Police, three (3) of the photos showed the injuries that he suffered during the said fight whilst the remaining two (2) photos showed two male persons which the injured party claimed were involved in the fight. The Executive Police also obtained the CCTV footage of part of the fight, however the accused was not traced.

Inspector Fabri explained that she spoke to Noel Falzon the Manager of *Bacco's* who identified the person in the photo as a man named Sergio who worked as a security at the establishment and the police spoke to Joseph John Grech who had employed the accused.

Information was received by the Executive Police whereby a person who bore resemblance to the accused was travelling to Serbia and a Warrant of Arrest was issued whereby the accused was arrested at the Malta International Airport. The accused denied working as a security at the time of the incident, claiming that he only worked as a security occasionally during concerts. After being shown the CCTV footage of the said fight and asked to identify the persons involved, the accused claimed that although he remembered the incident he did not know the people in the CCTV footage denying that he had inflicted any injuries on the victim.

In cross-examination Inspector Fabri explained that from the black and white CCTV footage, the scuffle was with so many people and there were three (3) bald people who were amongst the many people who were in the fight. Upon being asked whether the accused can be identified as hitting the victim in CCTV footage, the Inspector replied "*there are so many people hitting each other that I can say that everybody hit each other.*"<sup>2</sup> "It was a very general scuffle".

With regards to the photos of the accused which were passed on to Inspector Fabri by the victim, she stated that Shawn Zammit obtained them from the social network, from the Facebook page of the said entertainment establishment.

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<sup>2</sup> A Fol. 29

Asked whether Inspector Fabri spoke to the victim and whether he recognised the accused as one of the aggressors, she replied in the affirmative stating, *“Yes. Yes he did. In fact he himself together with his wife indicated the person that were, who hit him.”*<sup>3</sup>

Shawn Zammit<sup>4</sup> gave his evidence under oath<sup>5</sup> whereby he recounted how he lodged a report with the Executive Police following a fight which left him suffering from injuries. The witness explained that prior to going out for dinner, together with his wife and friends they decided to have a few drinks at a bar. At around eight o’clock in the evening (8:00p.m.), whilst at the bar, he felt a man pushing him and telling him that he had hit him with his elbow. Although Shawn Zammit did not recall hitting this person with his elbow, he apologised, however the male person kept on pushing him with his chest, after which he made space for this person who still kept on pushing against him. Following this altercation, Shawn Zammit stated that one of his friends started speaking to this male person whilst moving away from him. However all of a sudden he recalls the same person running towards him whereby, *“there was confusion. And in a split of a second I was, a lot of people were hitting me from everywhere and I was lucky that at that instant I managed to cover my face.”*<sup>6</sup>

The witness explained that he remembers the person who was pushing him with his chest wearing white running towards him and in that split second commotion he was separated from his friends who were surrounded by bodyguards whilst more than one bodyguard grabbed and started hitting him. During the scuffle Shawn Zammit states that, *“when they started hitting me from the back what came in my mind is just to cover my face and I couldn’t I only saw couple of with the feet doing like this and I am receiving the hits that’s all I saw.”*<sup>7</sup> He stated that he got feedback from his friends that there were bodyguards hitting him. He stated that it was his wife and friend’s girlfriend who recognised the bodyguard from photos uploaded on *Bacco’s* Facebook<sup>8</sup> whilst a bodyguard involved in the fight was recognised on the same night of the incident after which Shawn Zammit’s friend took a photo of him using his mobile phone<sup>9</sup> whilst going down Saint Rita stairs. With regards to the injuries he sustained following the incident, Shawn Zammit explained that he suffered a

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<sup>3</sup> A Fol. 30

<sup>4</sup> A Fol. 34

<sup>5</sup> Sitting held on the 6<sup>th</sup> May 2015

<sup>6</sup> A Fol. 35

<sup>7</sup> A Fol. 40

<sup>8</sup> Doc. SZ1 – A Fol. 45

<sup>9</sup> Photo 2 – Doc. CF3 – Doc. CF7 – A Fol. 33

fracture to his cheek bone, numbing to his teeth and bruising to his ribs and wrist.

In cross-examination Shawn Zammit stated that he was at the bar between four thirty (4:30p.m.) and five (5:00p.m.) in the afternoon and the incident took place at around eight o'clock in the evening (8:00p.m.) confirming that in the meantime he had drunk around three (3) bottles of beer. Shawn Zammit explained that it was the person dressed in a white shirt that started the fight although he did not recognise or remember him, denying that it was this person who started hitting him, stating, "*No they started he was coming*"<sup>10</sup> clarifying that there was more than one person hitting him and that, "*they came from the back in a confusion and I was receiving from a lot of people. I cannot say it was that person, that person, that person.*"<sup>11</sup> However it was through his wife's intervention who explained to him that the same bodyguard which grabbed her by the neck when she tried getting close to him, was the same person who had hit him several times. Questioned once again whether the initial punches were thrown by the person wearing a white shirt and his friends, Shawn Zammit reiterates that, "*There were a lot of people. I cannot say that it was this person with this white shirt.*"<sup>12</sup> Shawn Zammit confirmed that the fight continued outside whereby he ended up on the floor, he was then assisted by his wife and friends who took him down the stairs and called an ambulance.

Alice Zammit<sup>13</sup> gave her evidence under oath on the 6<sup>th</sup> May 2015 whereby she stated that on the 23<sup>rd</sup> November 2014 together with her husband Shawn Zammit and two other friends whilst enjoying themselves and having drinks at *Bacco's* before dinner a man alleged that her husband had hit him with his elbow and, "*all of a sudden the Securities took my husband near the DeeJay stand and they started to punching him in his face, in his head.*"<sup>14</sup> The witness explained that although around five (5) persons were punching her husband she identified the accused as being one of them because he took her outside the premises by the neck after which she went to hospital together with Shawn Zammit as a consequence of the injuries he was suffering.

The Prosecution made reference to a series of photos both of the accused and the injured party<sup>15</sup>. When Alice Zammit was shown these photos she recognised

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<sup>10</sup> A Fol. 42

<sup>11</sup> A Fol. 43

<sup>12</sup> A Fol. 44

<sup>13</sup> A Fol. 47

<sup>14</sup> A Fol. 48

<sup>15</sup> A Fol. 33 – Doc. CF3 – CF7

the accused as the person who, “*was punching my husband as well with his chest and with his feet*<sup>16</sup>” whilst affirming that the person shown in the photos suffering injuries to his eye was her husband. Recounting how the events leading to the incident unfolded Alice Zammit explained that her husband didn’t realise that he had hit someone, he apologised, moved to the side allowing the other person to pass who tried to pick a fight whereby the security, being around five (5) in number and all masculine immediately intervened. The witness recalled that the person who took her outside the premises was, “*foreign for sure because he was talking in English not in Maltese*<sup>17</sup>”, failing to remember the nationality of the other securities.

In cross-examination the witness affirmed that it was “*all of them*” with reference to the securities who were hitting her husband. However she only recognised the accused because “*he was hitting him like you’re seeing a movie*<sup>18</sup>” whilst identifying him as the same person who grabbed her by the neck. Confirming that her husband was covering his face trying to protect himself during the fight, she could not explain how he suffered the injuries to his face if it was covered insisting with reference to the securities, “*I’ve seen them hitting him for sure*<sup>19</sup>.” However Alice Zammit stated that she saw the person dressed in white also hitting her husband, “*but it wasn’t a big fight*<sup>20</sup>.”

Raymond Sultana testified<sup>21</sup> that on the day of the alleged incident Shawn Zammit, his wife, the witness and his girlfriend had planned on going out for dinner. They arrived around half an hour earlier and decided to go for one drink at a bar named *Bacco*. Having finished the first drink the witness stated that they were about to get another drink before leaving for dinner when a person wearing white working at the bar pushed Shawn Zammit, not knowing for what reason kept on pushing him. The witness explained that he parted the two and carried on by the bar. A few seconds later, Raymond Sultana recalled, around four (4) bouncers grabbed Shawn Zammit, took him towards the DJ side and, “*tawh xebgha li qiesek qed tara fil-films*<sup>22</sup>” recognising the accused as one of the bouncers.

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<sup>16</sup> A fol. 49

<sup>17</sup> A Fol. 50

<sup>18</sup> A Fol. 52

<sup>19</sup> A Fol. 53

<sup>20</sup> A Fol. 53

<sup>21</sup> 17<sup>th</sup> June 2015

<sup>22</sup> A Fol. 67

The witness stated that the four (4) bouncers were hitting Shawn Zammit repeatedly, “*sa mal-art jghatti wiccu u jibqghu jtuh l-erbgha li huma.*”<sup>23</sup> Trying to intervene to help his friend Raymond Sultana explained that it was impossible for him to get through to Shawn Zammit as apart from the fact that the four (4) bouncers were well built another four (4) bouncers stood barricading Shawn Zammit in the corner preventing him from getting through to his friend and grabbing him by the arm as he was using his arm to cover his face. Shawn Zammit was then dragged outside whereby even then he was hit again. Raymond Sultana explained that he followed Shawn Zammit outside whilst his wife Alice Zammit was dragged outside by the neck by the accused. Zammit had a swollen eye, blood was coming out of his mouth and nose and called an ambulance. The witness identified the persons as bouncers as they were all wearing black and were in possession of a radio and headphones. Seeing the same set of photos<sup>24</sup> shown by the Prosecution to the previous witness Raymond Sultana pointed out that he personally took photo number two (2) himself using his mobile phone, indicating the person in the photo who is seen taking a photo as one of the bouncers who was pushing him preventing him from getting close to Shawn Zammit when he was being beaten whilst he indicated the person beside him as the individual who dragged Shawn Zammit outside the club.

In cross-examination, confronted by the defence that the fight initially started between the waiter and Shawn Zammit, Raymond Sultana denied the allegation insisting that the waiter pushed Shawn Zammit and left. Refuting once again when faced with same assertion that the CCTV footage showed a different version of events, cross-examination was suspended. Sultana confirmed that the fight commenced between the waiter and Shawn Zammit by the bar after having seen the CCTV footage, claiming that he when the fight broke out he did not know the whereabouts of the waiter, “*mohhni biex nohrog dak il-povru minn hemm taht, minn taht idejhom.*”<sup>25</sup>

Michaela Camilleri gave evidence<sup>26</sup> stating that on the 20<sup>th</sup> November 2014 together with her partner Raymond Sultana and another couple Shawn Zammit and his wife Alice Zammit whilst at *Bacco*'s in Paceville a man wearing white pushed Shawn Zammit and all of a sudden she saw a complete confusion. A

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<sup>23</sup> A Fol. 68

<sup>24</sup> A Fol. 33 – Doc. CF3 – CF7

<sup>25</sup> A Fol. 73

<sup>26</sup> 17<sup>th</sup> June 2015

number of bodyguards moved him towards the DJ, “*u qabdu jtuh tal-biza; fis-sens li qabdu jtuh bl-idejn u bis-saqajn*”<sup>27</sup> recognising the accused as one of the persons who was hitting Shawn Zammit.” Although Camilleri explained that she tried to help, she couldn’t as the bodyguards formed a boundary, after which she saw the accused grab Alice Zammit by the neck and take her outside whereby the bodyguards continued to hit Shawn Zammit. She recognized the accused as one of the persons who hit Shawn Zammit. Soon after the two couples left and the witness called an ambulance.

In cross-examination the witness recalled that the incident happened “*in a split of a second*”<sup>28</sup> where a waiter wearing white pushed Shawn Zammit and all of a sudden she saw a number of people identifying them as bodyguards or securities through the equipment they were wearing.

PC 443 Vincent Mifsud<sup>29</sup> stationed at the Police Licence Office gave evidence under oath on the 27<sup>th</sup> July 2015 whereby he stated that the accused was not in a possession of a Police Licence with the Commissioner of Police to act as a Private Guard or as a Bouncer.

Dr James Vassallo<sup>30</sup>, an ophthalmologist trainee at Mater Dei Hospital took the witness stand on the 2<sup>nd</sup> September 2015 confirming that he had examined Shawn Zammit’s eye on the 23<sup>rd</sup> November 2014 at nine thirty in the evening (21:30pm) and issued a medical certificate<sup>31</sup>. Dr Vassallo observed that Shawn Zammit had severe swelling and a bruise around his left eye. Some blood on the front white part of the eye was visible together with scratches on the surface of the eye. The witness observed blood on the retina which had some bruising and haemorrhages. Owing to the potentially reversible characteristics of the injuries save for complications Dr Vassallo certified said injuries as slight.

Noel Falzon<sup>32</sup>, in his position as Manager of *Bacco’s Club* in Paceville testified under oath on the 2<sup>nd</sup> September 2015 and explained that he hired security for the club through *Signal Eight Security* operated by Jovan Grech whereby the accused worked at the club occasionally as a security. The witness confirmed that on the 23<sup>rd</sup> November 2014 the accused was working as a security at *Bacco’s Club*.

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<sup>27</sup> A Fol. 75

<sup>28</sup> A fol. 77

<sup>29</sup> A Fol. 85

<sup>30</sup> A Fol. 92

<sup>31</sup> A fol. 13

<sup>32</sup> A Fol. 96



Inspector Elton Taliana<sup>33</sup> took the witness stand on the 28<sup>th</sup> October 2015 and stated that on the 24<sup>th</sup> November 2014, Shawn Zammit and Alice Zammit filed a report with the Executive Police whereby they explained that on the 23<sup>rd</sup> November 2014 whilst having a drink at *Bacco's* in Paceville a fight ensued whereby the securities of the said club intervened and Shawn Zammit was punched by the accused. Investigations were carried out by the Inspector on duty Caroline Fabri, PS 1540 and PS 750 Terry James Mallia. Inspector Fabri being in possession of photos of the accused requested the help of Inspector Taliana to identify the accused whose name was not known at the time. After ascertaining his identity and in possession of information that the accused was still in Malta but was going to leave the country a Warrant of Arrest was issued on the 25<sup>th</sup> April 2015 whereby the accused was arrested at the Airport whilst checking-in to board a flight to Romania.

Inspector Taliana stated that the accused denied his involvement in the argument saying that on that night he was having a drink, recalling that there was a fight, saying that he intervened solely to calm people down, not punching anyone in the process. CCTV footage was also shown to the accused who did not identify himself, however Inspector Taliana explained that the CCTV footage only captured part of the fight not all the fight.

The accused when confronted with his employment as a security working at *Bacco's*, denied ever working there, telling the witness that he used to work at *Hugo's Terrace* and at *The Villa* although he was shown photos of himself dressed in black and wearing an ear piece used by securities.

Dr Stephen Farrugia Sacco<sup>34</sup> exhibited a report<sup>35</sup> in terms of his appointment on the 27<sup>th</sup> July 2015 to analyse a CD which contained footage whereby he explained that the footage appeared to be “*a manual recording taken by means of another recording device, recording the screen of the playback recording.*”<sup>36</sup>. The witness stated that he took stills of the said footage attached to the report showing a commotion leading to a fight.

Joseph John Grech<sup>37</sup> owner of *Signal Eight Security* testified on oath on the 26<sup>th</sup> January 2016 and explained that his company provided security and consultancy

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<sup>33</sup> A Fol. 111

<sup>34</sup> A Fol. 121

<sup>35</sup> Doc. SFS – A Fol. 123 – 142 on the 26<sup>th</sup> January 2016

<sup>36</sup> Doc. SFS – A Fol. 126

<sup>37</sup> A Fol. 145

services confirming that said services were provided to *Bacco's Bar* in Paceville. Although the witness acknowledged knowing the accused by sight he denied ever employing him with his company.

Dr Mario Scerri<sup>38</sup> testified<sup>39</sup> and exhibited a report<sup>40</sup> in terms of his appointment on the 1<sup>st</sup> March 2016 whereby as a result of the alleged aggression Shawn Zammit was transferred to Mater Dei Hospital and underwent a CT Scan procedure. Dr Scerri explained that the lesions which he suffered namely soft tissues swelling over lying the left orbital lesion, a fracture of his nasal bones and a fracture of his left orbital floor were the result of a violent blow to the face categorised as grievous in nature. In view of Shawn Zammit's complaints from lower back pain and more particularly seeing black lines through his left eye when looking upwards following said incident, a possible consequence of the fracture to the orbital floor, Dr Scerri recommended that Shaun Zammit was to be assessed by an ophthalmologist to determine whether the damage suffered was of a permanent nature.

Mr Mario Vella exhibited a report<sup>41</sup> in terms of his appointment on the 18<sup>th</sup> March 2016 whereby he stated that he examined Shawn Zammit on the 14<sup>th</sup> April 2016 prior to which the patient had presented himself as an emergency case on the 10<sup>th</sup> August 2015 and examined by Dr Gabriella Sciriha. Mr Vella agreed with Dr Sciriha's diagnosis, who had found floaters related to the detached jelly substance in the eye, perceived by the patient as black lines which could be a result of trauma, found also however in myopic patients. Although in most cases patients learn to ignore the floaters, Mr Vella explained, the patient in this particular case was still complaining of seeing floaters stating that once the movement of the jelly occurs it is usually permanent however dismissing surgery unless complications developed. The ophthalmic surgeon concluded that visual disability with respect to Shawn Zammit consequential to vitreous detachments amounted to less than one percent (1%) based mainly on the floaters causing shadowing of normal vision.

The accused chose to give evidence in these proceedings<sup>42</sup>. He explained that his name is spelt Srjan and that he is not referred to by any other name or nickname. He explained that on the day of the incident at around seven

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<sup>38</sup> A Fol. 159

<sup>39</sup> 18<sup>th</sup> March 2016

<sup>40</sup> Doc. MS – A Fol. 161 - 169

<sup>41</sup> A Fol. 181 – 182

<sup>42</sup> 21<sup>st</sup> February 2017

(7:00pm) or eight in the evening (8:00pm) he was at *Bacco's* together with his girlfriend Karen and two (2) other friends, an Italian DJ and his girlfriend. Owing to his height being taller than average, the accused could clearly see what was happening in front of him explaining that he was about three (3) to four (4) meters away when he saw Shawn Zammit's friend grabbing the waiter whose nickname is Perle by the shoulders whilst Shawn Zammit was punching him in the face. The accused stated that he immediately tried to intervene but it was hard to explain what happened after owing to the fact that unfolding of events took place at a very fast pace in a very crowded area.

As the fight had already progressed when he stepped in to help, the accused recalled that he saw two (2) men to his left side running, one of whom was a *Bacco's* waiter wearing a white shirt whilst the other person was of big stature. From his right side four (4) men with a built physique appeared, he was hit from the behind and he stepped back, watching the altercation unfold in front of him. The accused explained that Shawn Zammit and his wife and male friend were involved in the fight however their female friend did not interfere during which they were surrounded by two (2) waiters and five (5) men of a big stature, adding up to around nine (9) or ten (10) people involved in the commotion. The accused insisted that throughout this incident he stood back, around three (3) meters away from where the fight took place mentioning that when the fight was coming to an end he witnessed Shawn Zammit's wife jumping on the back of a tall person who he claims was of Macedonian nationality whereby the two (2) couples were subsequently kicked out of the club.

Confronted with the CCTV footage, the accused denied that the person in the video was him stating that the man in the footage was a Macedonian national who was taller than him. The accused affirms that it was this person who was hitting Shawn Zammit severely together with another person who had grabbed him by the shoulders and was kicking him in the head instigating Shawn Zammit's wife to jump on the back of the taller person, grabbing him by the shoulders to try and push him back. When the fight died down the accused went to speak to Perle whose real name is Jacob.

With reference to his clothing on the day of the incident the accused explained that he was wearing his work attire as he had finished work earlier in the evening and went to *Bacco's* to spend some time there before catching the early morning bus at five o'clock (5:00a.m.) emphasising that he was dressed differently to the rest of the staff whilst explaining that in big clubs all the staff

wear an ear piece whether they are working in the kitchen, customer care or as a waiter as otherwise the staff cannot hear each other.

In cross-examination the accused denied any involvement in the fight only intervening in the first part of the fight to help his friend, failing to do so he stood back and witnessed the second part of the fight unfold when other people became involved. He denied hitting Shawn Zammit and the CCTV footage does not show him hitting. He also stated that Shawn Zammit, his friend and wife hit his friend. Confronted by the Prosecution that on the day of the incident he was working as a security attested by the ear piece he was wearing, the accused rejected said claims stating that even on a different occasion with reference to the photo whereby he is dressed as a bouncer wearing an ear piece and a microphone<sup>43</sup> the accused explained that the photo was taken one month before the incident when he had arrived in Malta in September he was not working at *Bacco's* and insisted that he never worked there.

Matthew Mullholand<sup>44</sup> testified on oath on the 10<sup>th</sup> January 2018 and explained that he had knew the accused for around two years, playing football together and meeting at parties where he used to DJ, *Bacco's Club* being one of the establishments that he used to DJ at the event named as *Bacco's Sunday*. He refers to the accused as Sergio because he knows him as such. On the day of the incident he remembered going into the club through its only entrance, namely the terrace and he saw the accused having a drink with a girl at a table, which table was next to the door. The witness stated that he then went on to the DJ stand which is found in the middle of the club towards the left where he had a clear vision of most of the club. The witness claimed that he had gone to *Bacco's Club* to support another DJ friend of his whereby the event that was organised by the club attracted many people as every Sunday it was full of people

The witness explained that as the party got going, three (3) men situated under the DJ stand started pushing creating a commotion resulting in the DJ lowering the sound to catch the attention of the security in the club, the situation escalated with more people getting involved and that's when DJ switched off the music.

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<sup>43</sup> Doc. CF3 -CF7 – A Fol. 33 – Photo 1

<sup>44</sup> A Fol. 251

From his position on the DJ stand the witness explained that he could see the accused who has a big build sitting in front of him on the table having a drink. He did not recall whether or not the accused was working as a security but claimed that a security does not have a drink with a girl whilst working but failed to recognise who the securities working on the day were. Asked by the prosecution whether the accused was involved in this commotion the witness replied in the negative saying, “*I really don’t think there was.*<sup>45</sup>” ...”*Because he was a bit far away, he was with a girl as well and these people were just in front of us and they were just vicious with each other.*<sup>46</sup>” The witness confirmed that the commotion escalated in a split second, securities came and people were leaving the club emphasising that the club was empty apart from the people who were fighting.

In cross-examination the witness stated that he went to *Bacco’s Club* to meet another DJ whom he knew by the name of Jesmar. Asked whether he saw the accused when the commotion started he replied, “*No I didn’t see him in the commotion for sure.*<sup>47</sup>” During the altercation the securities of the club were involved in the fight and could be identified from their physique and their uniform but the witness was not in a position to state that the securities were solely from *Bacco’s Club* or whether they came from other places.

Although the witness used to work at the club on an irregular basis he could not recall whether the accused worked there saying, “*No, no. I can’t remember.*<sup>48</sup>”

Noel Falzon<sup>49</sup> in cross-examination gave evidence on the 14<sup>th</sup> February 2018 after having tendered evidence on the 2<sup>nd</sup> September 2015 whereby contrary to that stated by him in 2015 whereby he had affirmed that the accused was working as a security at *Bacco’s Club* on the date of the incident, he was not a hundred percent sure that the accused had in fact worked on the 23<sup>rd</sup> November 2014.

## **Considers**

The following emerges from the acts of this case:

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<sup>45</sup> A Fol. 259

<sup>46</sup> A Fol. 259

<sup>47</sup> A Fol. 262

<sup>48</sup> A Fol. 263

<sup>49</sup> A Fol. 280

- An incident occurred on the 23<sup>rd</sup> November 2014 at the premises named Bacco's.
- An argument broke out and in this argument Shawn Zammit was injured. Mr Zammit suffered various injuries as already referred to above.
- A CCTV footage has been exhibited.
- The accused was pin-pointed as being the person who hit Shaun Zammit and grabbed his wife by the neck.
- The accused stated that he was in the establishment at the time of the fight but he denied hitting Shaun Zammit.

From the very start, it is to be noted that the Court watched the footage various times precisely because despite the prosecution emphasising that upon viewing this footage the accused had to be found guilty, yet in this footage the accused does not feature. The prosecution stated that the footage does not capture the entire fight but yet the prosecution has very much emphasized its relevance and importance to find guilt.

It results from the testimonies that Shawn Zammit together with his wife and friends on the 23<sup>rd</sup> November 2014 went out and went to Bacco's. Whilst Shawn Zammit was dancing he inadvertently hit one of the waiters who immediately reacted even though Mr Zammit apologized. A fight ensued and from the CCTV footage a number of individuals, most likely, security personnel are seen hitting someone violently. Shawn Zammit states that he does not recognize the person/s who was/were hitting him.

Alice Zammit, on the other hand, testified that about five persons were punching her husband she identified the accused as being one of them because he took her outside the premises by the neck. Raymond Sultana recognized the accused as one of the bouncers. He stated that he followed Shawn Zammit outside whilst his wife was dragged outside by the neck by the accused. Mr Sultana testified that he identified the persons as bouncers as they were all wearing black and were in possession of a radio and headphones. Michaela Camilleri also stated that she recognized the accused as one of the persons who was hitting Shawn Zammit and who grabbed Alice Zammit by the neck.

The accused denies categorically that he was involved in any manner in the fight and he has been stating this since he was arrested. In the final submissions

the defence raises questions as to the manner in which the accused was actually identified as the perpetrator. Defence sustained that the accused's recognition was *ex post facti*. Now, as defence stated, after the incident Alice Zammit went onto facebook, found a photo, extracted same and claimed that the man in the photo is the man who was involved in the fight. Now it has not emerged when did Alice Zammit carry out this find out, whether she was prompted in actual fact. The prosecuting officers testified that at one point in time the Zammits passed on the photos to then, following which an arrest warrant was issued on the 25<sup>th</sup> April 2015 whereby the accused was arrested at the airport. Hence, nearly five months had passed since the incident.

The prosecuting officers also refer to the CCTV footage which they got from Bacco's establishment. In the CCTV footage there is a voice who states that one of the security's name is Sergio. Inspector Fabri testified that she had shown the photo (which was given to her by Alice Zammit) to Noel Falzon (Bacco's Manager) and he told her that the man in the photo was called Sergio who worked as a security at the establishment. Now, no proof has been produced that 'Sergio' is in actual fact the accused. When same Noel Falzon and Joseph John Grech testified they were not asked to confirm that the accused is the Sergio in the CCTV footage. A witness has been called upon by the defence, Matthew Mulholland, who testified that he knows the accused as Sergio but in the Court's opinion this is still not enough to state that the accused is in fact the same Sergio who was recognized by Bacco's establishment as the man who was punching Shawn Zammit.

With regards to identification, reference is being made to the judgment in the names of **Il-Pulizija vs Romeo Bone**<sup>50</sup> wherein it was held:

*"Illi l-Qorti ser tibda billi taghmel riferenza ghall-kawza fl-ismijiet Il- Pulizija vs. Massimo Caruso, deciza fis-17 ta' Marzu 2008 fejn il- Qorti tal-Appell Kriminali qalet hekk:*

*"Dwar il-process ta' identifikazzjoni, il-Qorti ta' l-Appell Kriminali (Sede Inferjuri) fil-kawza Il-Pulizija vs. Stephen Zammit deciza fil-15 ta' Lulju 1998 (Vol. LXXXII.iv.235) qalet li:*

*"Il-ligi taghna hi partikolarment skarsa dwar regoli li ghandhom x'jaqsmu ma' l-identifikazzjoni ta' imputat jew akkuzat. Infatti, l-unika disposizzjoni tal-ligi in*

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<sup>50</sup> Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali deciza fis-17 ta' Mejju 2016

*materja – l-Artikolu 648 tal-Kodici Kriminali - hi redatta fin-negattiv, fis-sens li tghid x'mhux mehtieg u mhux x'inhw mehtieg". Dik id-dispożizzjoni tipprovdi testwalment hekk:*

*"Biex issir il-prova ta' l-identita` ta' persuna li ghandha tigi maghrufa jew ta' oggett li ghandu jingieb bhala prova, mhux mehtieg, bhala regola, li x-xhud jaghraf dik il-persuna minn fost persuni ohra, jew dak l-oggett minn qalb ohrajn bhalu, hlief meta l-Qorti, f'xi kaz partikulari, ikun jidhrilha xieraq taghmel dan ghall-finijiet tal-gustizzja".*

*Dik l-istess Qorti ezaminat fid-dettal din il-kwistjoni, u billi huwa rilevanti ghall-kaz odjern se jigi kkwoat in extenso. Hija fil-fatt qalet:*

*"Minn din id-dispożizzjoni jidher car li l-legislatur ma riedx ixekkel lill-partijiet fil-kawza b'regoli rigidi ta' kif ghandha ssir l-identifikazzjoni ta' persuna jew oggett, izda halla fil-gudizzju prudenti tal-Qorti li tirregola ruhha skond il-kaz. Din id-dispożizzjoni, naturalment, tapplika ghal identifikazzjoni f'Qorti; meta si tratta ta' identifikazzjoni li tkun saret barra mill-Qorti, bhal, per ezempju, fl-Ghassa tal-Pulizija, u li ghalhekk tkun ipprecediet l-identifikazzjoni fil-Qorti, il-ligi taghna ma tghid xejn. Dan ma jfissirx li ma hemmx regoli ta' prudenza dettati mill-bwon sens li ghandhom jigu osservati, speċjalment f'dawk li jissejhu identification parades; dawn ir-regoli huma intizi fl-interess kemm tal-Prosekuzzjoni kif ukoll tad-difiza bl-iskop li l-identifikazzjoni ta' persuna bhala l-awtur ta' reat jew bhala l-persuna altrimenti involuta fih tkun attendibbli b'mod li l-Gudikant tal-fatt ikun jista' jserrah mohhu li ma hemmx zball f'dik l-identifikazzjoni. Fl-Ingilterra hafna minn dawn ir-regoli huma llum inkluzi fil-Code of Practice D taht il-Police and Criminal Evidence Act, 1984. S'intendi dawn ir-regoli mhumieq applikabbli ghal Malta, izda xi whud minnhom huma utili hafna ghax ighinu biex jizguraw dak li nghad aktar 'il fuq, u cioe l-attendibilita` ta' l-identifikazzjoni. Hekk, per ezempju, wahda minn dawn ir-regoli hi li meta jkun hemm aktar minn xhud wiehed u dawna jkunu ser jintwerew xi ritratti, 'only one witness shall be shown photographs at any one time' (para. 2, Annexe D) u dan bl-iskop ovvju li xhud ma jkunx jista' jinfluwenza lix-xhud l-iehor. Ix-xhud ghandu jigi muri numru sostanzjali ta' ritratti, mhux semplicement wiehed jew tnejn, u 'he shall not be prompted or guided in any way but shall be left to make any selection without help' (para. 4). Ir-ritratti hekk uzati, u speċjalment dak li talvolta x-xhud ikun indika bhala li jirrappreżenta lill-persuna li qed jidentifika, ghandhom jigu ppreservati biex jekk ikun il-kaz, jigu esebiti fil-Qorti. Kwantu ghal identification parades dawn ir-regoli jipprovdu, fost hwejjeg ohra li:*

*'The parade shall consist of at least eight persons (in addition to the suspect) who so far as possible resemble the suspect in age, height, general appearance and position in life ...' (para. 8, Annexe A, sottolinear ta' din il-Qorti);*



*Jerga' jigi ribadit li n-non-osservanza ta' dawn ir-regoli ma jwassalx ghall-inammissibilita` tal-prova ta' l-identifikazzjoni; ikun ifisser biss li, skond ic-cirkostanzi partikolari tal-kaz, dik l-identifikazzjoni tista' ma tkunx attendibbli bizzejjed. Lanqas ma ghandu dan kollu jfisser jew jigi interpretat bhala li hemm xi regola generali li xiehda okulari (eye-witness testimony) hija minnha nnifisha inattendibbli jew li fiha xi perikoli. Kif fisser Chief Justice Miles fis-Supreme Court of the Australian Capital Territory fil-kawza **Sharrett vs. Gill** (1993) 65 A Crim R. 44:*

*'... I am unaware of any authority in this country or elsewhere... that lays down a general principle that all eye-witness testimony is subject to weaknesses and dangers. It would be surprising if there were such a principle. Of course, everybody knows that everybody else has human failings with regard to such matters as observation, interpretation, recollection and articulateness and such failings are assumed to be taken into account in most cases by the tribunal of fact unless there is some particular need for the fact-finder to refer to or to be referred to some aspect of the case where such failings are relevant. The highest judicial authorities emphasise that, in jury trials, cases of disputed identification require express and precise reference to these human failings ... and this principle has been extended to trials without a jury. However, it is hard to imagine life where people are not able to act safely and sensibly upon their observations of what they see and hear, and even upon their identification of fellow human beings by such observations. The ability to distinguish one human being from another and to recognise a person as one previously encountered are surely basic skills indispensable to social existence, and skills well acquired at an early age. What the lawyers call identification is essentially no different from what is generally known as recognition';*

*Fi kliem iehor huwa biss f'certu kazijiet li tista' verament tqum il-kwistjoni ta' l-attendibilita` ta' identification evidence. Il-kaz klassiku fl-Ingilterra huwa dak ta' **Turnbull** (1977) QB 224, fejn il-Qorti esprimiet ruhha hekk:*

*'First, whenever the case against the accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken, the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. In addition, he should instruct them as to the reason for the need for such a warning and should make some reference to the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken. Provided that this is done in clear terms the judge need not use any particular form of words. Secondly, the*

*judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way, as for example, by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance? ... Recognition may be more reliable than identification of a stranger; but even when the witness is purporting to recognise someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made. All these matters go to the quality of the identification evidence. If the quality is good and remains good at the close of the accused's case, the danger of a mistaken identification is lessened; but the poorer the quality, the greater the danger' (ara Blackstone's Criminal Practice, 1991, pagna 1991; Archbold, 1997, pagni 1255-1256)''*

*Kif osservat ukoll din il-Qorti fis-sentenza taghha fl-ismijiet **Ir-Repubblika ta' Malta vs Giuseppe sive Joseph Cassar** moghtija fit-22 ta' Marzu 1988 (Vol. LXXII.v.868), "skond il-ligi taghna ghall-identifikazzjoni ta' l-akkuzat mhux necessarja identification parade". Hija qalet:*

*"Dan il-punt gie ttrattat mill-Qorti ta' l-Appell Kriminali (Sede inferjuri) per W. Harding fil-kawza **Il-Pulizija vs. Leading Steward Victor Dalmas** deciza fit-13 ta' Mejju 1961 (Vol. XLV.iv.963), fejn waqt li gie ribadit dak li ghadu kif inghad fuq dan l-artikolu dik il-Qorti qalet ukoll: 'Hu certament desiderabbli li l-identifikazzjoni ssir bla ma dak li jkun imsejjah biex jidentifika jigi b'xi mod, anki involontarjament, suggestjonat, u hi nota l-prattika rakkommandata f'certi kazijiet, fis-sens li f'identifikazzjoni simili, meta jkun jehtieg, jingabru xi persuni, piu` o meno ta' l-istess eta` u klassi socjali tad-detenu, li jkun jista' jiehu post fejn irid fosthom'; M'hemmx dubju li kif qal Lord Parker CJ in **R. vs Parks** ((1961) I.W.L.R. 1484) 'cases of identification are difficult and can lead to a miscarriage of justice' u certament din il-preokkupazzjoni urietha diga` din il-Qorti fis-sentenza taghha in re **Il-Maesta` Taghha r-Regina vs. Joseph Hallet** moghtija fit-22 ta' Marzu 1971 fejn inghad li 'certament, il- Qorti tirrikonoxxi r-riskji li ghalihom tista', in generali, tkun esposta l-prova ta' l-identifikazzjoni ta' persuna'. Din il-Qorti f'dak il-kaz li kien jinvolvi identifikazzjoni minn fuq ritratti murija mill-Pulizija, waqt li enfasizzat il-perikoli inerenti ziedet tghid li 'il-Qorti ma tahsibx illi, ghall-finijiet pratici tal-hajja u l-investigazzjoni ta' delitti, essenzjali ghall-ezistenza ordinata stess tas-socjeta`, dan jista' jigi evitat - basta s'intendi li jsir bil-prekawzjonijiet kollha possibbli biex jigu evitati miscarriages of justice''*

*Illi jkun utili wkoll li l-Qorti taghmel riferenza ghad-decizjoni fl-ismijiet **II-Pulizija vs. Paul Michael Kavanagh** deciza fit-22 ta' Novembru 2012, fejn il-Qorti tal-Appell Kriminali qalet hekk:*

*“Filwaqt li din il-Qorti tifhem illi l-ewwel Qorti messha uzat kliem ahjar biex tiddekrivi l-hsieb taghha, tapprezza ukoll illi l-ewwel Qorti forsi kellha xi diffikulta biex toqghod fuq l-identifikazzjoni illi taw il-persuni aggrediti biex torbot din l-identifikazzjoni mal-imputat. Huwa veru illi d-deskrizzjoni illi giet moghtija taqbel perfettament ma' dik tal-appellat u cioe illi l-agressur kellu karnagjon cara, xaghru kien ta' lewn car ukoll, ghajnejh cari, irqiq u twil. Dawn il-hames karatteritici japplikaw perfettament ghall-appellat, pero mhux necessarjament ghalih biss, u zgur illi hemm nies ohra f'dawn il-Gzejjer illi jaqghu taht din id-deskrizzjoni, u din il-Qorti tifhem il-preokkupazzjoni tal-ewwel Qorti illi tasal biex tikkonkludi minghajr dubbju dettat mir-raguni illi dawn id-deskrizzjonijiet bilfors jirriflettu ghall-appellat u ghal hadd aktar. Ghalhekk bhala provi indizjarji ma jwasslux ghall-konkluzjoni wahda u kwindi ma tistax torbot fuqhom sabiex iwasslu ghal dak il-grad ta' prova rikjest milligi. Ghalhekk din il-Qorti tifhem il-preokkupazzjoni li kellha l-ewwel Qorti meta giet biex tabbina lill-appellat mas-serqa proprja tal-hanut”.*”

It is to be noted that in the CCTV footage various people are recognizable. The Prosecution does not seem to have tried to trace those people – after all, more than one person was hitting the parte civile. The Police could have asked the establishment to give all the names of the personnel who were on duty that evening.

The Court is not quite convinced that the identification of the accused was carried out in accordance with the above-mentioned jurisprudence. It has not been explained to the Court in what manner and when the photo was found. Prosecution refers to a photo in which one can see that a man is taking a picture and they hold it is the accused. But, the Court deems that the facial feature are not quite the same and even if it were the accused it does not mean anything.

The Court is of course aware that when Alice Zammit, Michaela Camilleri and Raymond Sultana testified they stated and repeated the same thing, that is, that the accused grabbed Alice Zammit by the neck and that he was one of the men who punched Shawn Zammit and that they recognized the accused in the dock. In actual fact, as defence stated, it is evident that they had formed a pre-conceived idea that the person in the photo was the person who actually hit Shawn Zammit because Alice Zammit had traced the photo. Another important

point is that although Raymond Sultana stated that the securities were wearing black, however from the the CCTV footage it seems that they wear white. This continues to prove that the defence is right in stating that the witnesses were conditioned by the photo. Also, another thing which leaves the Court in doubt is that it was quite dark in the establishment, a lot of people were involved in the fight, for sure some of the men in the footage were of quite a big frame, bald and tall just like the accused and thus a recognition with so much certainty is quite dubious.

At this stage, the Court refers also to a judgment in the names **Il-Pulizija vs Stephen Azzopardi**<sup>51</sup> in which it was held:

*“Illi l-perikolu ta’ in dock identification huwa evidenti. Fil-fatt il-Privy Council<sup>52</sup> jirreferi ghal the obvious danger that a defendant occupying the dock might automatically be assumed by even a well intentioned eye-witness to be the person who had committed the crime with which he or she was charged”.*

Moreover, the accused himself admits and admitted even upon being arrested that he was in the establishment at the time the fight broke out. He testified that he got involved in the initial stages of the first episode between Shawn Zammit and the waiter who was his friend. He tried to intervene to calm down the situation and not to hit. The accused moreover denies any kind of wrongdoing. Moreover, he also brought Matthew Mulholland as a witness who attested that from the dj stand he could see what was happening and he excluded categorically the accused’s involvement. Mr Mulholland knew the accused previously so he could recognize him.

Hence due to the above-mentioned reasons, the Court deems that the prosecution has failed to prove its case with regards to the first three charges on account that it cannot give much attendibility to the way the accused has been identified in the first place. Consequently the Court cannot find any guilt on the accused.

As for the last charge, Noel Falzon at first testified that the accused was working as a security on the night of the incident. Then, whilst being cross-examined he explained that the establishment commissions the work to a company called Signal 8. The latter company assigns various security personnel to the various establishments. Asked specifically whether the accused was

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<sup>51</sup> Decided on the 13<sup>th</sup> July 2017 by the Court of Magistrates(Malta) as a Court of Criminal Judicature

<sup>5252</sup> Ref Tido vs The Queen (2011) UKPC 16 per Lord Kerr

working there on the day, he said he could not be sure. Moreover, Joseph John Grech (Signal 8's company owner) testified that the accused used to work with it. Another issue is that the invoice which has been exhibited by Noel Falzon does not indicate who were the individuals employed as security. The accused denies this fact also and Mr Mulholland testified that the accused was accompanied by his girlfriend. In the light of all this, the Court deems that the prosecution has not proven this charge beyond reasonable doubt.

Hence for the above-mentioned reasons the Court does not find the accused guilty as charged and acquits him of the charges brought against him.

**Dr Josette Demicoli**  
**Magistrate**