



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE DR. JOSEPH MIFSUD
B.A. (LEG. & INT. REL.), B.A. (HONS.), M.A. (EUROPEAN), LL.D.**

**The Police
(Inspector Priscilla Caruana Lee)**

vs

Joseph Feilazoo

Case Number 10/2019

Today the 5th of February, 2019

The Court,

Having seen that **Joseph Feilazoo** of 42 years, son of Festos and Uche Okere, born in Nigeria on the 15th of Decmeber 1975, currently detained at the Detention services in Safi passport number A3586884A was accused that on the 10th of April 2018

around 13:45hrs at the Police Headquarters, Pjazza San Kalcidonju, Floriana to have:-

1. Assaulted or resisted by violence or active force not amounting to public violence, CO165 Dennis Thornton and CO177 Matthew Cilia, persons lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority and this in breach of article 96 of Chapter 9 of the Laws of Malta;
2. And also reviled, threatened or caused bodily harm to CO165 Dennis Thornton and CO177 Matthew Cilia persons lawfully charged with a public duty, while in act of discharging their duty or because of having discharged such duty, or with intent to intimidate or unduly influence them in the discharge of such duty and this in breach of article 95 of Chapter 9 of the Laws of Malta;
3. And also caused injuries of a slight nature on CO165 Dennis Thornton and CO177 Matthew Cilia as certified by Dr. Gabriel Borg MD reg. number 5807 from Floriana Health Centre and this in breach of article 221 of Chapter 9 of the Laws of Malta;
4. And also disobeyed the lawful orders of Insp. Darren Buhagiar, CO165 Dennis Thornton and CO177 Matthew Cilia, any authority or of any person entrusted with a public

service, or hinders or obstructs such person in the exercise of his duties, or otherwise unduly interferes with the exercise of such duties, either by preventing other persons from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons, or in any other manner whatsoever, and this in breach of Article 338(ee) of Chapter 9 of the Laws of Malta.

5. And also wilfully disturbed the public good order or the public peace and this in breach of article 338 (dd) of Chapter 9 of the Laws of Malta.

In case of guilt **Joseph Feilazoo** is to be treated as a recidivist, after having been found guilty by a decision of the courts of Malta, which decision has become res judicata and cannot be changed.

The Court is humbly requested, if it deems it expedient, in addition to the punishment applicable to the offence, apply the provisions of Art 383 of the Criminal Code to provide for the safety of CO165 Dennis Thornton and CO177 Matthew Cilia.

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

Having heard the witnesses brought forward by the Prosecution;

Having heard the person charged voluntarily take the witness stand;

Having heard the other witnesses put forward by the defence;

Having seen the court minute wherein the prosecution and the defence were granted until the 30th November 2018 and the 17th December 2018 respectively to file their note of submissions;

Having seen the notes of submissions filed by the prosecution and by the defence;

Having seen the decree wherein the case was adjourned for judgement for today.

Taking into consideration the evidence submitted before it:

Inspector Darren Buhagiar (Fol. 23) was the first witness to take the witness stand. He explained that on the 10th April 2018 a Nigerian national by the name of Joseph Feilazoo was going to be released from prison. The Corradino Correctional Facility was informed that the accused had to be taken to the Immigration section at the Police Headquarters so that his situation would be evaluated. The accused was brought to Inspector Buhagiar's office. The latter explained that they had received communication from the Spanish Embassy in Malta that the accused could no longer return to Spain, his original place of departure. The

Inspector went on to specify that he informed Feilazoo that a removal order and a return decision were going to be issued against him and that he was going to end up in detention until such orders were executed. The accused became aggressive as he could not accept the fact that he was going back to detention. He insisted with the Inspector that he had already been in prison for ten (10) years and he could not accept the fact that he was going to be detained again. The accused did not listen to the instructions being given to him by the Inspector and at that point the Inspector pointed out to the two Corradino officers present that action had to be taken. Inspector Buhagiar insisted with the accused that he had to abide by the orders given. However, the accused insisted that he was not going to spend one day in detention. He made it clear to the Inspector that if he were to be deported to Nigeria, his escorts would not return back to Malta. At this point the correctional officers approached the accused and instructed him to get out of the office and to go back to the detention van. The accused refused and kept resisting and a scuffle broke out. The two officers tried to restrain the accused. They ended up on the floor. They attempted to hand-cuff him. They did not manage to do so as he was resisting. Pepper spray had to be used and subsequently they managed to handcuff him. Then the two officers together with other persons present managed to get him out of the inspector's office and put him in the detention van. The accused kept shouting because he was seemingly hurt. Medical assistance was brought to him as soon as he was inside the van.

An ambulance was called and the accused was taken to hospital for further medical care.

On being asked during cross-examination when the accused assaulted the police, that is whether it was before or after the use of pepper spray, the witness could not say. He was simply informed that the two officers had been bitten and they were directed to go to the Health Centre so that the relative medical certificate could be issued. The Inspector also said that he did not see the accused biting the officers as during the scuffle he could not see exactly what was happening.

Dr Gabriel Borg (Fol. 26) explained in a sworn declaration that he was asked to examine Matthew Cilia who went over to the Floriana Health Centre. He certified that Matthew Cilia was suffering from slight injuries consisting in superficial swelling over the mandible on the left. In addition, the officer also had two (2) puncture wounds over the base of the right thumb and an abrasion over the dorsum of the hand.

Dr Gabriel Borg also examined Officer Dennis Thornton. This officer was also suffering from slight injuries consisting in swelling of the right periorbital area. He also had a one centimetre laceration on the knuckle.

PS 39 Jean Paul Zahra (Fol. 30) stated in a sworn declaration that on the 10th April 2018, two SRT Officers CO 165 Dennis Thornton

and CO 177 Matthew Cilia filed a police report at the Valletta Police Station. They stated that they had been assaulted by a Nigerian National named Joseph Feilazoo at the CID Yard within the precincts of the Police Headquarters.

CO 177 Matthew Cilia (Fol. 39) stated that on the 10th April 2018 he and his colleague CO 165 Dennis Thornton were instructed to escort Joseph Feilazoo to the Immigration department. They took Feilazoo to Inspector Buhagiar's office. Inspector Buhagiar started telling him that he was going to be deported and until the deportation process was finalised he was going to be kept in detention. The accused did not agree with what he was told and started insisting that he was going to kill the SRT officers and the police on the way to the detention centre. The witness together with CO 165 instructed the accused to walk to the detention van so that he would be taken to the Detention Centre. The accused retaliated by telling the officer not to touch him as otherwise he was going to harm the officers. As soon as Thornton told him to move, the accused raised his arm and he hit Thornton beneath his right eye. The accused and the two officers ended up on the floor. The officers tried to handcuff him but the accused resisted. It proved difficult for them to handcuff him even because he was very well built. A verbal warning was issued that pepper spray was going to be used. The witness continued attempting to restrain the accused and at this point the accused bit him on his right hand. Pepper spray was used and the officers managed to control the accused. He was then handcuffed and placed in the

detention van which was waiting in the CID yard. The witness concluded by saying that the accused was very aggressive in their regards.

On being asked during cross-examination at what point he was bitten by the accused, the witness said that he was bitten before the pepper spray. He also confirmed that he had consulted a doctor as regards the injuries sustained.

CO 165 Dennis Thornton (Fol 42) testified that on the 10th April 2018 he and his colleague CO 177 Matthew Cilia accompanied the accused to Inspector Buhagiar's office. Thornton walked out and some fifteen minutes later, Inspector Buhagiar asked for his assistance since the accused was refusing to be taken to detention. Thornton entered the Inspector's office once again. His colleague was already there. The Inspector once again told him that he had to go the detention centre and that he had to sign a paper to lodge an appeal. The accused insisted that he was not going to the detention centre. The witness together with CO 177 Matthew Cilia tried in an amicable way to convince him to go to the detention centre. As soon as they touched his hand, the accused became aggressive. He hit the witness underneath his eye and the accused started resisting them. He went on to explain that they got hold of his hand and they ended up on the floor. The accused did not take heed of their orders to stop. At this point in time the accused bit CO 177's hand. CO 177 warned him that pepper spray was going to be used if the accused was not going to allow them to handcuff

him. The accused continued resisting, pepper spray was used and subsequently the witness and his colleague managed to restrain him and handcuff him. The accused was then placed in the detention van. He also confirmed that a certificate had been issued confirming the injuries he suffered.

PS 435 David d'Amato (Fol. 46) explained that on the 10th April 2018 he was inside Inspector Mario Haber's office in the CID Yard. Inspector's Buhagiar office was two doors away. The police officer said that at one point he went out of Haber's office and he heard a lot of noise coming over from Buhagiar's office. He went on to check what was happening and on entering the office he saw a person on the floor and two SRT officers were trying to handcuff him. There was also a smell of pepper spray in the room. The witness noted that the accused was quite aggressive, so much so that he asked his colleagues to hand him over tie-clips so that he could tie the accused's legs. The witness was helped out by Sergeant Nigel. After that the accused was hand cuffed he was taken out to the detention van which was in the yard.

SM 739 M Borg (Fol. 56) testified by means of a sworn declaration. He explained that on the 10th April 2018 the accused was brought over to Inspector Darren Buhagiar's office. The accused was informed that he was going to be deported to Nigeria and that he was going to be kept in detention until the process was finalised. The accused started objecting to his detention. The SRT officers instructed him to board the detention van. However at this point

in time, the accused started resisting. The SRT officers tried to handcuff him. However he continued resisting. All of them ended up on the floor and they only managed to handcuff him after that pepper spray was used. Subsequently the accused was escorted out of the office into the detention van. The SRT officers suffered some injuries and they were referred to the Floriana Health Centre. Since Feilazoo could not breathe well, an ambulance was called and he was admitted to Mater Dei Hospital. The witness together with another correctional officer escorted the accused to hospital. He then gave a handover to colleagues from the Valletta Police Station.

WPC Alexia Grech (Fol. 58) also testified by means of a sworn declaration. She explained that on the 10th April 2018 she was working at the Immigration Department. She noted that Inspector Buhagiar was talking to the accused, a Nigerian national, who had just been released from the Corradino Correctional Facility. As soon as the accused was informed that he was going to be sent to the detention centre, he started resisting. He claimed that if the Police officers were going to send him to Nigeria, those police officers were not going to return to Malta. At that point in time there were two correctional officers from the Corradino Facility as well as officers from the detention centre. As soon as the Inspector gave the accused the order to walk out with the detention officers, the accused stood up and notwithstanding that the Inspector tried to persuade him that what was happening was a normal procedure, the accused continued insisting that he was not going

to the detention centre. The accused was amicably instructed to leave the office and board the detention van. The accused did not obey this order and consequently the correctional officers grabbed him from his hands to handcuff him. The accused resisted the officials. Minimal force was used to handcuff the accused. However, he continued resisting and he even bit one of the correctional officers. Some minutes later he was advised that pepper spray was going to be used if he continued resisting. The accused did not take heed, continued acting in aggressive manner and pepper spray was used. Consequently thanks to the help of other police officers, the accused was hand cuffed and escorted to the detention van. The witness noted that the correctional officers had blood on their hands. The accused started complaining that he was suffering from heart pains and an ambulance was called on site. The accused was transferred to Mater Dei hospital whereas the correctional officers went for treatment at the Floriana Health Centre. They were also instructed to prepare medical certificates of the injuries which they sustained.

In his sworn declaration **PS 697 Nigel Apap** (Fol. 62) explained that he went over to Inspector Darren Buhagiar's office with a file. At that point in time the Inspector was talking to the accused who was escorted by two officials of the Special Response Team of the Corradino Correctional Facility. WPC 138 Alexia Grech and SM 739 Michael Borg were also present in the same office. Inspector Buhagiar informed the accused that he was going to be deported from Malta and that until procedures were concluded he was

going to be kept in detention. On hearing this the accused got angry and told the Inspector he was neither going to detention nor to his country since he had other court cases pending. Inspector Buhagiar took note of the court appointments and informed the accused that he was going to inform the detention officers so that the accused would be in a position to attend for all court sittings. However, the accused continued insisting that he was not going to detention. He was quite angry. The correctional officers calmly instructed him to leave the office and board the van. However, he opposed this order and a commotion ensued. The accused and the two correctional officers ended down on the floor. The accused made it impossible for the officers to handcuff him. He was advised that pepper spray was going to be used if he was not going to control himself. This advice was ignored and pepper spray was used. The witness explained that the accused was quite aggressive. The witness himself also attempted to restrain him but he was pushed numerous times. Finally the officers managed to handcuff him. He continued acting aggressively and had to be tied from his legs too. He was then taken out of the office and put in the detention van. The witness stated that the two correctional officers had some injuries on their hands.

Dr Mario Scerri (Fol. 67) who had been appointed during the accused's arraignment, to examine the accused and document his injuries testified that he examined the accused on the 13th April 2018. He noted that the accused had allegedly been assaulted by members of the SRT and that as a result of this assault he had

sustained bruises on the face which were the result of blunt trauma, haematoma on the left mastoid process behind the ear. This was also the result of a blunt trauma. He also had some abrasions on the left forearm resulting from handcuffs. Besides, there was a fracture on the left radial head which was caused by blunt trauma. The expert classified this fracture as one which was grievous *per durata*. He explained that these injuries could have been sustained either by some impact following a fall or else the accused might have been hit. It could also be the case that direct force was applied to the forearm and the radial head was fractured.

The accused **Joseph Feilazoo** voluntarily took the witness stand on the 2nd July 2018 (Fol. 113). He started saying that on the 10th April 2018 at about one o'clock in the afternoon he was informed that Inspector Darren Buhagiar wanted to talk to him at the Police Headquarters. On entering the Inspector's office, he told them he was waiting to hear from them since an officer had talked to him on the 1st April. Major Mike Borg was also present in the office. The witness explained that during the meeting of the 1st April 2018 he had informed them that he was going to be released from prison on the 10th April and he wanted directions as to what was going to happen. He needed to find a place where he could live. He was asked whether he knew anybody in Malta and he indicated that he knew a person. He gave them the name and phone number of this person. He did not receive any calls or any answers following this meeting. On the 9th April, the social

worker Louise Sammut called him and gave him the address where he was going to reside following his release. During his meeting at Inspector Buhagiar's office, the accused said that he was informed that he was not going to be accepted in Spain and that he was going to be deported to Nigeria. The accused insisted that he had court sittings in Malta. He was informed that he was going to detention. He could not accept this since he had entered Malta with a valid European legal document and so he was not an illegal immigrant. The witness confirmed that he was told to go the detention van and he refused. At that point Dennis Thornton grabbed him from the back and Thornton and Cilia started pushing him so that he would move to the van. He also claimed that Thornton started hitting him and after that pepper spray was used. As a result of the spray used, he could not see or breathe. One of the officers tried to cover his mouth when he was desperate for air. He could not identify who was the officer who did so. It was when this officer was covering his mouth that this officer placed his finger in the accused's mouth and the accused closed his mouth. He went on saying that pepper spray was used a second time. Then they put handcuffs and he was taken to the van. After that he was placed in the van, he passed out and only regained consciousness when he was in the ambulance on the way to the hospital. The accused also indicated that he had a pending constitutional court case against the two SRT Officers who had accompanied him to Inspector Buhagiar's office for mistreatment he had suffered at their hands in prison

During cross-examination, the accused said that he refused to abide by the police orders given to him because he was not an illegal immigrant in Malta as he had entered Malta with valid legal documents and he did not want to go to the detention centre. The accused insisted that if the Police wanted to deport him they had nine years to prepare the necessary documents. The accused denied having told the officers that he was going to hurt them if they touched him. On being re-examined, the accused explained that he had refused to put his hands together so that he would be handcuffed. He also confirmed that he was told to go to the van and he refused to go. His refusal was only verbal he insisted.

Dr Frances Dalli Badjadi (Fol. 130) testified that she examined the accused on the 12th April 2018 and the 17th April 2018. The accused was complaining of severe low back pain and he also pointed out to her that he had scratches over his right wrist, bruising over the back of the left wrist, bruising around the right ear, bruising around the left ear, bruising over the left side of the face, abrasions over the left side of the neck and abrasions over the left posterior of the left shoulder and a swollen painful right arm. He also had a fracture on his left elbow which had been attended to earlier at Mater Dei hospital. The witness was not in a position to say with what these injuries were compatible. She simply recorded these injuries and prescribed pain killers to the accused.

Lara Bartolo (Fol. 150) testified that she was part of the paramedic team which was called to the Police Headquarters in Floriana to

assist the accused. She explained that the accused was in a van and he was restrained. He had handcuffs behind his back and he was lying down in the van. She did not remember whether his legs were restrained too. However, he could not move. She found him alert, conscious and he was responding and answering all questions. They checked that he was breathing, that he had good circulation and that his glucose level was fine. She made it clear that he was obeying commands and he was alert all the time. From the van he was transported onto a stretcher and then in the ambulance which took him to Mater Dei. As he was being taken to the hospital he complained that his handcuffs were tight and they were hurting him. So they were loosened a bit. He did not complain of anything else.

Raymond Grech (Fol. 153) explained that he was the driver of the ambulance which had been called to the Police headquarters. He stated that he had met the accused at the Police Depot. He was in the detention van. He was advised to pay attention since the accused was biting and also spitting. He said that the accused did not attempt to bite him or spit at him. They found the accused trying to move. He was handcuffed. The witness was also under the impression that the accused's legs were tied as well. The accused was in a good condition. He noted that the accused did not want to move from the detention van to be placed in the stretcher. However, he was eventually placed on the stretcher and taken to Mater Dei hospital. The witness concluded saying that he

drove to the hospital and the accused was admitted to the Emergency Department.

Jesmond Galea (Fol. 155) testified that on the 10th April 2018 as a member of one of the ambulance teams he was instructed to go to the Police Depot. On arriving there he found the accused who was handcuffed in a van. He was advised to pay attention since the accused was biting and spitting. However, the accused did not bite or spit at him. He did not remember that his legs were tied too. The accused was face down with his hands handcuffed. The nurse checked whether the accused was complaining of any pain. He told him that the handcuffs were very tight and that they were hurting him. These were loosened. He did not notice any particular injuries. The accused was then placed on a stretcher and taken to Mater Dei Hospital.

The last witness to testify in this case was **PC 814 Gordon Stanmore** (Fol. 158), a police constable stationed at the Immigration Department. This witness explained that on the 1st April 2018 he had interviewed the accused at the Corradino Correctional Facility. He was accompanied by Major Michael Borg. He wanted to ascertain the accused's intentions following his release from prison. This meeting did not last more than ten minutes. The accused informed the witness that he had a Spanish residency card as well as a Nigerian passport. But both had expired. The passport was being kept at the Prison's records office whereas the Spanish residency permit was being kept by a friend

of his. The witness explained that the accused had told him he wanted to go back to Spain. However, he had other pending court cases and he needed money to maintain himself. The accused also told the police constable that he had a child somewhere in Spain. The witness confirmed that if a letter would have been issued by Identity Malta to a third country national person to leave the Maltese Islands, that person would have a right of appeal and that until the appeal is decided the person concerned would have to be kept at the detention centre.

In this particular case, the witness went on to explain that the accused wanted to leave Malta. The accused would have had to buy the ticket himself. However, if he did not have any money to buy the ticket the Inspector at the Immigration Department would take care of this matter himself. The witness also stated that since the accused had a Spanish residency permit, the Inspector would have had to check with Spain whether it was willing to accept the accused. The witness informed the accused that somebody from the Department was going to get back to him. The witness was also asked what procedure applied in case the individual wanted to go back to Nigeria and he had an expired passport. The witness replied that the Police would contact the Nigerian authorities directly and a passport would be issued. He would not be involved in this process since the Inspector would take care of all this. The witness was not aware whether in this particular case contact had been established with the Nigerian embassy.

Having considered:

Before going into the specific merits of this particular case, the Court deems it fit to first discuss the aspect on whether the Police officers are entitled to use force. In a recommendation of the Committee of Ministers of the Council of Europe concerning the drawing up of a European Code of Police Ethics, the duties of the policing authorities were identified as being the following:

- (a) *To maintain public tranquillity and law and order in society;*
- (b) *To protect and respect the individual's fundamental rights and freedoms as enshrined, in particular, in the European Convention on Human Rights;*
- (c) *To prevent and combat crime;*
- (d) *To detect crime;*
- (e) *To provide assistance and service functions to the public.*¹

Policing is no easy task and this in view of the *“the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources”*². In deciding to adopt a particular course of action, the Police must keep in mind the following:

1. *the reason(s) for the action taken.*

¹ Recommendation Rec(2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics at Article I.1

² *Kontrova v Slovakia*, judgment of 31 May 2007 at paragraph 50

2. *whether other, less intrusive means could have been taken to achieve the same aim.*
3. *details of relevant legal and administrative provisions and how they have been complied with.*
4. *the necessity for the action to be taken and the foreseeable consequences.*
5. *how the is action likely to impact upon others.*
6. *confirmation, including reasons specific to the decision concerned, that the action is being taken for a legitimate reason and is non-discriminatory.*
7. *whether the decision has been taken on the basis of all relevant information.*

Of particular guidance are the **Ten Key Principles Governing the Use of Force** of the English Police Force, which identify the scenarios where it would be legitimate by a police officer to use force.

1. *Police officers owe a general duty to protect persons and property, to preserve order, to prevent the commission of offences and, where an offence has been committed, to take measures to bring the offender to justice;*

2. *Police officers may, consistent with this duty, use force in the exercise of particular statutory powers, for the prevention of crime or in effecting a lawful arrest. They may also do so in self defence or the defence of others, to stop or prevent an imminent breach of the peace, and to protect property;*
3. *Police officers shall, as far as possible, apply non-violent methods before resorting to any use of force. They should use force only when other methods have proved ineffective, or when it is honestly and reasonably judged that there is no realistic prospect of achieving the lawful objective identified without force;*
4. *When force is used it shall be exercised with restraint. It shall be the minimum honestly and reasonably judged to be necessary to attain the lawful objective;*
5. *Lethal or potentially lethal force should only be used when absolutely necessary in self- defence, or in the defence of others against the threat of death or serious injury;*
6. *Any decision relating to the use of force which may affect children, or other vulnerable persons, must take into account the implications of such status including,*

in particular, the potentially greater impact of force on them;

- 7. Police officers should plan and control operations to minimise, to the greatest extent possible, recourse to lethal force, and to provide for the adoption of a consistent approach to the use of force by all officers. Such planning and control will include the provision to officers of a sufficient range of non-lethal equipment and the availability of adequate medical expertise to respond to harm caused by the use of force;*
- 8. Individual officers are accountable and responsible for any use of force, and must be able to justify their actions in law;*
- 9. In order to promote accountability and best practice all decisions relating to the use of force, and all instances of the use of force, should be reported and recorded either contemporaneously, or as soon as reasonably practicable;*
- 10. Any decision relating to the use of force by police officers must have regard to the duty of care owed by the relevant police service to each individual police officer in the discharge of his duties. Deployment of police officers in a public order context where force may*

be used can carry grave risks to their own safety, and so must be the subject of rigorous control for that reason also.

As has already been pointed out by this Court in previous judgements³:

“Il-Qorti terga’ ttenni li l-Pulizija jridu jkunu protetti waqt li jkunu qed jaghmlu d-dmirijiet taghhom u hadd m’huwa skuzat – tkun xi tkun ir-raguni – li jhedded lil xi ufficjal tal-Pulizija jew li b’xi mod iweggghom.

Ordni tal-Pulizija ghandha tkun obduta mal-ewwel u ghandu jintwera rispett lejn kull ufficjal dejjem u kullimkien. Dan ir-rispett ghandu jidher b’mod l-aktar car u enfatiku f’sitwazzjonijiet fejn tkun dahlet imqar naqra tensjoni.

Il-Qorti qieghda tinnota li fis-socjeta’ taghna qieghed ikun hemm aktar okkazzjonijiet fejn persuni m’hux jobdu ordnijiet legittimi tal-pulizija u wisq aktar jattakkawhom fizikament u mhux l-ewwel darba li jkun hemm min isofri griehi anke gravi.

Il-Qorti ma tridx li membri tal-Korp tal-Pulizija jiddemoralizzaw ruhhom minn dan ghaliex mhux dejjem isibu l-appogg mixtieq ghall-hidma taghhom, jekk ma jispicawx ukoll huma stess mghoddija process popolari ghax iwettqu d-dmirijiet taghhom.

³ **Il-Pulizija vs Paul Calleja** decided 15th December 2015, **Il-Pulizija vs Abubakar Ibrahim Jabril** decided 4th June 2018 and **Il-Pulizija vs Abdell Raouf Mohfoudi Ali Hassan** 13th July 2018

Il-Qorti terga' tfakkar f'dak osservat mil-Qorti fl-Appell Kriminali⁴ "Il-Pulizija vs. Mathew Peter O' Toole" [2.3.06]

" il-Qrati ma jistghux jittrattaw kazijiet bhal dawn fejn ikunu mhedda ufficjali tal-Korp tal-Pulizija, waqt li qed jaqdu dmirijethom - kultant f' sitwazzjonijiet difficli u delikati - b' leggerezza, qisu ma gara xejn, bhallikieku l-Pulizija qieghed hemm biex jigi mzeblah, sfidat, u mhedded.

Illi jidher li l-appellant seta' kien taht l-influwenza ta' xorb alkoholiku eccessiv meta pprovoka dan l-incident bla bzonn, pero' dan bl-ebda mod ma jiskuzah."

u fl-Appell Kriminali ⁵ "Il-Pulizija vs. George Grech" [23.6.05] il-Qorti qalet:

"Illi l-Qorti terga ttenni f'dak li diga' qalet f'diversi sentenzi li r-reati bhal daww ammessi mill-appellant fuq membri tal-korp tal-Pulizija waqt il-qadi tad-dmirijiet taghhom ma jistghux jitqiesu leggerment mill-Qrati li ghandhom joffru kull protezzjoni lill-kustodji tal-ordni pubbliku meta jkun qed jagixxu fiz-zamma tal-ordni taht cirkostanzi mill-aktar difficli u b'riskju kbir ghall-inkolumita' taghhom personali w li ghalhekk f'dawn it-tip

⁴ Qorti ppreseduta mill-Imhalled Joe Galea Debono

⁵ Ibid.

ta' reati hija indikata piena karcerarja effettiva kif del resto tiddisponi l-ligi."

Imbaghad fl-Appell Kriminali ⁶ **"Il-Pulizija vs. Anthony Roderick Farrugia"** [26.4.2007] dik il-Qorti qalet ukoll :-

"Kif irriteniet din il-Qorti diversi drabi, reati ta' vjolenza attiva fil-konfront tal-Pulizija kull ma jmorru qed jizdiedu w jsiru ferm spissi w l-Qrati ghandhom id-dmir, fejn ikun il-kaz, li jaghtu l-protezzjoni xierqa lill-forzi tal-ordni fejn dawn ikunu qed jagixxu entro il-poteri lilhom moghtija fl-esekuzzjoni tal-ligi w ma jistghux jittrattaw dawn il-kazijiet b' leggerezza w jikkondonaw dak li ma ghandux jigi kondonat b' pieni irrizorji aktar u aktar meta dak li jkun ikun recidiv kif inhu f' dan il-kaz." "

Considers:

The First and Second Charges: Article 96 and 95 of the Criminal Code

The accused is being charged of breacking articles 95 and 96 of the Criminal Code.

Artilce 95 specifies that: *"Whosoever, in any other case not included in the last preceding two articles, shall revile, or threaten, or cause a bodily*

⁶ Ibid.

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)."

Article 96 then contemplates 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)."

A succinct explanation of these two articles was made by the Court of Criminal Appeal in the case **Il-Pulizija vs Sean Sinclair Pace**.⁷ The Court of Appeal had to say this with regards to these two (2) articles:

“Illi ma hemmx dubbju illi uhud mill-ingredjenti mehtiega biex jinhmew iz-zewg reati huma identici. Dan ghaliex dawn ir-reati iridu necessarjament jigu kommessi fil-konfront ta’ ufficjal pubbliku jew ta’ persuna inkarigat skond il-ligi minn servizz pubbliku. Issa l-appellanti ghandu ragun meta jishaq illi hemm distinzjoni netta bejn dawn iz-zewg reati ghalkemm it-tnejn ghandhom bhala vittma persuna fil-vesti ufficjali taghha.

Illi l-artikolu 95 jitkellem dwar l-ingurja, it-theddid jew l-offiza fil-konfront tal-ufficjal pubbliku. Issa din l-ingurja, theddida jew offiza trid issir jew (1) filwaqt illi l-ufficjal pubbliku ikun qed jaghmel servizz pubbliku (2) jew inkella minhabba li ikun ghamel dan is-servizz pubbliku, (3) jew bil-hsieb li ibezzghu jew jinfluwixxi fuqu kontra l-ligi fl-esekuzzjoni ta’ dak is-servizz.

Illi l-awturi jaghmlu distinzjoni bejn il-mottiv wara l-oltragg fl-ewwel istanza u dana il-mottiv fit-tieni u it-tielet istanza imsemmija fil-ligi. Dana billi meta dan l-oltragg isir fil-mument illi l-ufficjal pubbliku ikun qieghed jaghti is-servizz

⁷ Decided on the 26th May 2016.

ma huwiex necessarju illi l-ingurja, it-theddida jew l-offiza tkun marbuta mal-funzjoni illi huwa ikun qieghed jezercita. L-awturi Cheveau et Helie, li isemmi il-Professur Mamo fin-notamenti tieghu, ighidu: "Quando l'oltraggio si verifica nel corso delle funzioni, il-motivo che lo determina e' indifferente; la legge vede soltando il turbamento, l'ingiuria fatta all'esercizio delle funzioni, l'insulto che degrada la loro dignita'; avesse pure quest'ingiuria una causa determinante estranea alle funzioni, il turbamento all'esercizio di esse sussisterebbe sempre."

Kuntrarjament fiz-zewg istanzi l-ohra irid ikun jigi ippruvat nexus bejn l-oltragg u il-qadi tal-funzjoni pubblika billi l-att materjali ma ikunx gie kommess filwaqt tal-qadi tal-funzjoni pubblika.

L-artikolu 96, imbaghad ghalkemm ukoll ghandu bhala vittma, l-ufficjal pubbliku, jikkontempla tlett elementi essenzjali ghal kostituzzjoni ta' dana ir-reat:

1. Fl-ewwel lok, irid ikun hemm l-attakk jew resistenza. Illi meta ikun hemm biss disubbidjenza tal-ligi jew ta' ordni moghtija minn xi awtorita', ma tistax tissussiti r-reita taht din id-disposijoni tal-ligi. Il-Mamo ikompli ighid: "It is only when the insubordination or defiance goes so far as to obstruct the execution of the law or of lawful orders of the competent authority that the crime of attack or resistance can arise. The

purpose of the agent in this crime, therefore, must be precisely that of obstructing or frustrating the execution of the law or the lawful orders of the competent authority, by opposing the action of those charged therewith.” Inoltre l-attakk jew resistenza trid tkun necessarjament akkompjanta bl-uzu tal-forza, vjolenza jew bil-hebb.

2. *Fit-tieni lok ir-reat irid jigi komess fil-konfront ta’ufficjal pubbliku jew kif tghid testwalment il-ligi “persuna inkarigata skond il-ligi minn servizz pubbliku”.*

3. *Fl-ahharnett huwa necessarju illi l-attakk jew resistenza kontra l-ufficjal pubbliku irid isir filwaqt illi huwa ikun qiegħed jagixxi għall-esekuzzjoni tal-ligi jew ta’ ordni mogħtija skond il-ligi minn awtorita’ kompetenti. Il-Mamo ikompli ighid: “Therefore, any violence committed after the law or the order has already been executed, even though it may be on account of such execution, would not give rise to this crime.”*

Fis-sentenza Il-Pulizija vs Joseph Zahra deciza mill-Qorti ta’l-Appell Kriminali fid-9 Settembru 2002 gie deciz: “Dana l-artikolu (b’referenza għall-artikolu 96) jirrikjedi mhux biss li l-vittma tkun persuna inkarigata skond il-ligi minn servizz pubbliku” (l-istess bħalma jirrikjedi l-Artikolu 95(1)), izda wkoll li r-reat ikun sar filwaqt li dik il-persuna hekk inkarigata minn dak is-servizz pubbliku “tkun qed tagixxi għall-

eżekuzzjoni tal-ligi jew ta' xi ordni moghti skond il-ligi minn xi awtorita` kompetenti"

After having seen and examined the Acts of this case including the entire CCTV footage which was exhibited by the Prosecution, the Court is convinced that there is proof beyond reasonable doubt that the accused is guilty of the first charge brought against him, that is the charge under article 96. The Court is basing its conclusions on the following:

- (1) The incident which took place in Inspector Buhagiar's office was witnessed by numerous witnesses who all testified in the course of these proceedings, precisely the same Inspector Darren Buhagiar, CO 165 Dennis Thornton, Co 177 Matthew Cilia, PS 435 David D'Amato, WPC Alexia Grech, PS 697 Nigel Apap and SM 739 M Borg. All witnesses give an identical version of events. They explain that the accused was brought over to Inspector Buhagiar's office. He was informed that he had to be deported to Nigeria since his Spanish residency card had expired and he could not return to Spain from where he had left. As soon as the accused was informed that he was going to remain in detention until the deportation process was concluded and until any eventual appeal filed by the accused would be determined, the accused became immensely aggressive. The Correctional officers tried to handcuff him and escort him to the van and immediately a scuffle ensued with the three of them falling onto the floor.

From the description given by the officers present, it was clear that it was no easy feat to control the accused. The accused not only disobeyed the orders given to him to get out of the Inspector's office and board the detention van but he behaved aggressively so that the orders given would not be executed. In fact he refused to be handcuffed; his refusal was not simply verbal as he suggested in his cross-examination. It was also physical. To get an impression of the level of his aggressiveness, suffice to refer to the CCTV footage taken from the cameras inside the CID yard at 13.56.54hrs and 13.57hrs wherein after that the accused was escorted out of the office and placed in the detention van, the detention van is seen swaying from one side to another. He was still being aggressive notwithstanding he had just been placed in the van. This does not give an indication of a "mere verbal resistance".

(2) Moreover, this incident took place at a point in time where the two officers were trying to execute the orders given by Inspector Buhagiar to have the accused transferred to the detention centre. During the whole commotion the two correctional officers - who as correctional officers definitely fit in the parameters of persons lawfully charged with a public duty - who had escorted the accused to the Police Headquarters also suffered injuries. It is also important to note that both the bruise resulting from a blow given to CO 165 Thornton underneath his eye as well as the bite inflicted

on CO 177 Cilia's right hand took place before the pepper spray was used.⁸ Hence, these injuries cannot in any way be considered as a reaction to the use of pepper spray. Bearing in mind this scenario, the use of force as well as the use of the pepper spray was legitimate and aimed to reign in the accused and limits his aggressiveness.

The offence under article 95 can also be said to exist. Indeed when being addressed by Inspector Buhagiar, the accused made it clear that: *"if you send me to Nigeria with escorts they will go to Nigeria but they will not come back to Malta"*.⁹ The Court cannot in any way accept the defence's plea that in addressing this comment to the Inspector the accused *"certainly did not threaten to kill the guards, nor did he say that anyone else would kill them (in Nigeria). He was just saying that the Nigerian authorities would allow them to entry but would not allow them exist from the country should they escort him there."*¹⁰ It must be pointed out that at the point in time the accused addressed this comment, he had already become frustrated, he was not listening to the Inspector's instructions and he was not abiding by them. In such circumstances, it is difficult not to consider these words as specific threats aimed at intimidating or duly influencing the Inspector in the discharge of his duties.

⁸ Refer to Fol. 51.

⁹ Fol 24 of the Acts.

¹⁰ Fol. 176 of the Acts of the Case.

The defence also dismissed the threat reported by CO 177 Matthew Cilia that the accused was going to kill the police officers and the SRT officers if they were to take him to detention and the other threat that he would hurt any officer if CO 177 touched him. This on the basis that these threats have not been corroborated by other witnesses. This Court considers that in this particular case no corroboration was required. As specified in article 638(2), *“the testimony of one witness if believed by those who have to judge of the fact shall be sufficient to constitute proof thereof, in as full and ample a manner as if the fact had been proved by two or more witnesses.”* This Court had the opportunity to hear CO 177 Matthew Cilia testify viva voce and him being cross-examined. From the way he behaved on the witness stand and the way he replied to the questions made, there was nothing which in any way suggested that this witness was not saying the truth.

The Court understands that the accused was really frustrated when he got to know that he was going to be kept in detention for a further period of time after having been released from prison after serving a ten-year term.

The way the Immigration Department handled this case in the sense that it only started working on the deportation procedures on the 1st April 2018, merely nine days before the accused release from prison (when the same department is aware of the bureaucratic process involved as noted by PC 814 Gordon Stanmore) cannot be possibly lauded. This Court is not the competent court to decide whether the

accused's rights were breached as a result of the way the Immigration Department handled this case. However, notwithstanding this scenario, the accused was not justified to act as he acted, even the more so when he was fully aware of how to seek redress bearing in mind that he already had other pending cases regarding alleged mistreatment in his regards.

As pointed out by this Court presided by Magistrate Aaron Bugeja in the case **Il-Pulizija vs Jerkin Decelis**, decided on the 22nd November 2013:

“L-imputat kien fid-dmir li, minghajr paroli u xenati zejda, jobdi l-ordnijiet legittimi li kienu gew moghtija lilu mill-Pulizija ...L-ordnijiet legittimi moghtija mill-Pulizija lic-cittadin ma humiex hemmhekk biex jigu konstestati, argumentati, mkasbra jew injorati sommarjament mir-ricevent. Qeghdin hemmhekk biex jigu obduti – dejjem u minghajr dewmien, ghalkemm bla pregudizju ghad-dritt ta’ dak li jkun li jirreklama wara l-gustizzja intrinseka ta’ dik l-ordni. Altrimenti jkun ifisser li kull persuna jkollha l-jedd tagixxi kif trid u joghghobha minghajr hadd ma jista’ jzommha jew irazzanha. Nigu fi stat ta’ gungla – l-antitezi tal-ordni mehtiega biex il-hajja socjali tkun tista tezisti f’armonija relattiva.”

Third Charge - Slight Injuries

As regards the third charge, this has also been proved beyond reasonable doubt. Evidence was submitted showing that the two correctional officers suffered slight injuries at the instance of the accused. Medical certificates were produced and confirmed by Dr Gabriel Borg who examined the two officers shortly after they suffered the same injuries. In addition these injuries were also confirmed by the various eye-witnesses whose testimony was reported earlier on.

Fourth Charge - Disobeyance of the Lawful Orders Given

This contravention is comprised and involved in the first charge, that under article 96. As has been expounded above, it is quite clear that the accused not only disobeyed the lawful orders of the Inspector and the Correctional Officers but he behaved and acted in such a way so that the orders given would not be executed.

Fifth Charge - Disturbance of Public Good Order and Public Peace

As pointed out in "Scots Criminal Law" (Edin. Butterworths, 1992):
"The essence of the offence is the causing of alarm in the minds of the lieges. This alarm has been variously defined by the Courts. In Ferguson v. Carnochan (1889) it was said not necessarily to be "alarm in the sense of personal fear, but alarm lest if what is going on is allowed to continue it

will lead to the breaking of the social peace". Alarm may now be too strong a term: in Macmillan v. Normand (1989) the offence was committed when abusive language caused "concern" on the part of policemen at whom it was directed." (p.192).

From an examination of the Acts of the case, it is clear that this whole incident caused alarm and disturbance in the CID yard. Suffice to say that PS 435 David d'Amato was outside another office a short distance away, heard a lot of noise coming from Inspector's Buhagiar office and this prompted him to go to Inspector's Buhagiar office:

"Mela fl-ghaxra (10) ta' April elfejn u tmintax (2018) ghall-habta tas-siegha (1.00) jiena kont qiegħed go l-ufficju tiegħi tal-Ispettur Mario Haber u zewg bibien il-bogħod minna hemm l-ufficju tas-Sur Darren Buhagiar.

Pros: Issa l-ufficju tiegħek fejn hu sitwat ?

Xhud: Id-Depot fil-bitha. Dak il-hin jiena hriġt naqra fil-bieb u bdejt nisma' hafna storbuju gew minn naha tal-ufficju tas-Sur Darren Buhagiar. Jiena mort nittawwal....."¹¹

This definitely confirms the sense of alarm which was generated by the whole commotion precipitated by the accused.

¹¹ Fol. 46 of the Acts of the Case.

Finally proof has also been brought confirming that the accused is a recidivist in terms of articles 49 and 50 of the Criminal Code and consequently this Court shall also be taking consideration of this point in calibrating judgement.

DECIDE:

Therefore for the reasons expounded above and after having seen articles 96(a), 95, 221, 338(ee), 338(dd), 49, 50 and 383 of the Criminal, the Court is finding the accused guilty of all charges brought against him and is condemning the accused to two (2) years imprisonment¹² and a fine of five thousand euros (€5,000).

After having seen article 383 of Chapter 9 of the Laws of Malta in order to provide for the safety of CO165 Dennis Thornton and CO177 Matthew Cilia orders the offender to enter into his own recognizance in the sum of two thousand euros (€2000) for a period of one year from today.

By application of article 533 of Chapter 9 of the Laws of Malta Joseph Feilazoo is being ordered to pay the expenses related to the appointment of Dr Mario Scerri as expert in these proceedings, upon receipt from the Registrar of the Criminal Court and Tribunals.

¹² from which the period of time he had spent in prison till today should be deducted

Finally, the Court declares him illegal immigrant in terms of sections 5(2)(d) and 14 of Chapter 217 of the Laws of Malta and orders the Principal Immigration Officer to use his powers provided by the Law, for his immediate deportation from these islands after serving his sentence.

Dr. Joseph Mifsud
Magistrate