



**In the Court of Magistrates (Malta)  
As a Court of Criminal Judicature**

**Magistrate Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)**

*Criminal Inquiry No. 513/2019*

**The Police  
(Inspector Roderick Attard)**

**-vs-**

**Nicholas Obaseki holder of Maltese Identity Document Number 0135303A**

Today, the 15<sup>th</sup> day of June, 2020

The Court,

Having seen the charges brought against the accused **Nicholas Obaseki** for having:<sup>1</sup>

**On the 18th August, 2019, between 08:30hrs and 09:30hrs in Bir id-Deheb Road, Zejtun:**

1. Assaulted or resisted 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.
2. On the same date, time, place and circumstance, without the intention to kill or to put the life in manifest jeopardy, caused slight bodily harm on the person of Assistant Commissioner Alexander Gatt and PC 543 Julian

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<sup>1</sup> Charges sworn on Oath are those at fol.7-8

Grech, persons lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority.

3. Within the same place, date, time and circumstances, reviled, or threatened, or caused a bodily harm to any person lawfully charged with a public duty, while in the act of discharging his duty or because of his having discharged such duty, or with intent to intimidate or unduly influence him in the discharge of such duty.
4. Within the same place, time and circumstances, in any manner not otherwise provided for in the Chapter 9 of the Laws of Malta, wilfully disturbed the public good order or the public peace.
5. On the same date, time, place and circumstances, drove a vehicle bearing registration plates BCC 084, make *Citroen*, without a driving licence issued by the competent authority.
6. Within the same, time and circumstances, drove vehicle bearing registration plates BCC 084, make *Citroen*, without the vehicle being insured for any risks incurred for third parties.
7. Within the same date, drove or attempted to drive or was in charge of a motor vehicle or other vehicle on a road or other public place if he was unfit to drive through drink or drugs.
8. On the same date, time, place and circumstance, breached the conditions of bail imposed by the Criminal Court (Malta) presided by Dr. Neville Camilleri LL.D., on the 2nd December, 2016, in that he does not commit another crime and this in breach of Article 579(2) of the Laws of Malta.
9. Within the same date, time, place and circumstance disobeyed the lawful orders of any authority or of any person entrusted with a public service, or hindered or obstructed such person in the exercise of his duties. [sic]

Having seen the Attorney General's consent so that this case be tried summarily;

Having heard the accused declare that he does not object to the case being tried summarily by this Court;

Having heard witnesses;

Having seen all the acts and documents exhibited;

Having heard the prosecution and defence counsel make their submissions;

Considered,

**Inspector Roderick Attard** gave an overview of the investigations he had carried out upon being informed of the incident and exhibited the statement released by the accused. A copy of the bail conditions given in separate proceedings was exhibited<sup>2</sup> as was a judgement delivered by Magistrate Dr. Josette Demicoli<sup>3</sup> which was pending on appeal.<sup>4</sup>

Upon interrogation, the accused contended that following a collision he was involved in, he was approached by two officers wearing black who, after enquiring whether he was injured, requested the accused to give them the car insurance and driving licence; he duly complied. They called an ambulance and he proceeded to take pictures of the damages sustained by the other vehicle. After they left, he got back in the car and as he was seated in the driver's seat a LESA officer came who, after talking to the other driver, left the scene. Five minutes later another LESA officer came on the scene who, after talking to the other car's driver, also left. On the scene with the other driver were 2 other individuals. When the ambulance arrived, he informed them he was suffering from chest pains, but as he got out of the car he blacked out and fell. He denied having been drunk at the time. He stated that the car was insured with Middlesea and he carries a Nigerian driving licence.<sup>5</sup> The accused chose not to sign his statement.<sup>6</sup>

**Assistant Commissioner Alexander Gatt** recounted how on the day in question he was heading to Marsaxlokk with PC543 Julian Grech, and at around 8:45am, *"when I arrived at the traffic lights at Bir id-Deheb Zejtun, I noticed an ambulance stopping in the middle of the road and a person who was about to speak to me, which I recognised to be a Police Officer stationed at Sliema Police Station. I asked him what happened and he told me that he involved in a collision with another person. Consequently, I sent my driver to see what was happening in front of the ambulance, he came back and he told me that there was a person lying on a stretcher who was not speaking, I think he was unconscious. I proceeded to the stretcher, spoke to the nurse and she told me that the person involved himself called for the ambulance assistance. All of a sudden, the person whom I recognise here<sup>7</sup>... As **the accused**, started to be very agitated and all of a sudden, he started shouting and can't*

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<sup>2</sup> Doc.RSZ a fol.

<sup>3</sup> Doc.RSZ1 a fol.106 et seq

<sup>4</sup> Doc.RSZ2 a fol. 117

<sup>5</sup> Fol.13

<sup>6</sup> Fol.14

<sup>7</sup> Fol.51

*remember what he was shouting about but all of a sudden, I saw that he was becoming very violent, so I instructed PC 543 to handcuff him".* He explains that whilst the constable was in uniform, he was in plain clothes but wearing the police tag. The police car was an unmarked car with Police registration plates, GVP.

The Assistant Commissioner continues: *"Then I gave instructions to PC 543 to handcuff him and all of a sudden he became very violent, in fact I had to kneel down to assist PC 543. I tried to hold his hands and [he] tried to bite PC 543. Consequently, the ambulance attendants also came to give a helping hand and with I have to say with much strength we had to restrain him. Consequently, I called the headquarters on the 119 for assistance, RIU came within 5 to 6 minutes and since he was handcuffed with his hands in front, the Police Sergeant asked the nurse if he could lift him up from the stretcher so that he could handcuff him behind his back. Consequently, the nurse told him that he was drunk. I have to state that I smelt very strong smell of alcohol coming out from his mouth. At one point, he continued telling us that we are racists and that we hate them and continued with this talking. Consequently, he was handcuffed with his hands in front, taken under Police custody into the ambulance and was escorted to Mater Dei for further medical investigations. I had to put an escort before and in front of the ambulance for the safe keeping of the ambulance crew and the nurses..... I had to kneel down to help my colleague. With the force he was giving to us, I had some scratches in my hand and consequently went to Paola Health Centre with PC 543 where I was certified that I was suffering from slight injuries...."*<sup>8</sup> The accused was resisting the police as he was being restrained, and even tried to bite his colleague, PC543.<sup>9</sup> Upon being shown the medical certificate Gatt confirmed that he was issued with same.<sup>10</sup>

Upon cross-examination the witness explained that the accused was resisting the police whilst he was being restrained on the stretcher and tried to sit up.<sup>11</sup> He didn't succeed to get out of the stretcher since he was being restrained by two ambulance staff, the witness and PC543. Gatt adds, *"I gave order to even tie his legs because he was, when they took him up and was escorting him towards the ambulance, in the ambulance he was fighting with his feet and I thought if we use a tie clip to tie his legs and I told them to take him to Mater Dei under Police escort."*<sup>12</sup> PC543 was the prime target of the accused's violent actions even though he was in uniform.<sup>13</sup>

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<sup>8</sup> Fol.52-53

<sup>9</sup> Fol.53

<sup>10</sup> Fol.54

<sup>11</sup> Ibid.

<sup>12</sup> Fol.55

<sup>13</sup> Fol.56

**PC543 Julian Grech** gave his version of events: *“On the 18th August at about 8.45 am, we were going towards Birzebugia. I saw a car that was hit on the rear and some meters ahead there was an ambulance. I stopped behind the ambulance and I went down to speak to the nurse to see what had happened. She told me that there was an accident and that they were waiting for the Police to come, I told her that we are going to call them again and at that moment I heard a lot of arguing from my back, I turned and I saw, while I was speaking to the nurse they were putting the accused on a stretcher, and she told me that it was the accused that called the ambulance, the accused whom I recognise here in Court and I heard a lot of shouting and arguing and I turned to see what was happening. **He was arguing and he was being aggressive towards the ambulance staff**, I kneeled down near him and told him to calm down and that they were doing their job and they were putting the neck brace and some restraints so that he would not move. As soon as he opened his mouth there was a strong smell of alcohol and he was shouting, I don’t know what he was saying, just shouting, banging his head on the stretcher, **continuing to be aggressive towards us, towards me and towards the ambulance people.** ..... I was in my uniform. **At that moment the AC Gatt came and he was helping me to restrain him, to hold him and we handcuffed him so he would not be of danger to us all and to himself.** While we were handcuffing him, he didn’t want to obey the orders I told him many times to stay, to calm down and they were only doing their job and it was for his good. .... **I told him that I was handcuffing him because he was being aggressive towards us, because he was not obeying Police orders and because he would not stay. He started holding on to the bumper of the ambulance so that we would not handcuff him, in the process I got hurt ... .. He tried, he tried to bite me, but he didn’t manage that and while I was trying to handcuff him, I got hurt .... I was trying to handcuff him and afterwards I realised that I was hurt because at that moment I didn’t realise”.**<sup>14</sup>*

Grech confirmed that the medical certificate exhibited was issued in his regard and explained that *“we restrained him ourselves, me, AC Gatt, we managed to handcuff him but with a lot of resistance. He did not want to cooperate<sup>15</sup> .... when me and the Assistant Commissioner where trying to handcuff him because he was on the stretcher, we handcuffed him on the front, when the colleagues arrived, then because we were more people, we then handcuffed him on the rear so had more control on him.”*<sup>16</sup>

**PS1226 Silvan Pulis** also recounted what had happened on the day he was called in to assist Assistant Commissioner Gatt. *“On the 18th August of this year at about 9.00 am, I was informed by Assistant Commissioner Sandro Gatt that he*

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<sup>14</sup> Fol.57-58

<sup>15</sup> Fol.59

<sup>16</sup> Fol.60

needed my assistance near the lights that they take your from Zejtun to Birzebbugia or Marsaxlokk. I went on the spot where there were PC 1352 and PC 1121 which were holding a person which I recognise in the Court. They were holding him and the accused aggressively he was handcuffed and, in the meantime, he was also trying to get up and acting not so normal. We held the person and took him to the ambulance which was waiting at the spot and I tried to ask him about his details. **I asked him several times where he refused to give me his details**, and one moment he said you are the Police and you should know everything, ask the Court Neville Camilleri about me. **I continued to ask him for his details but he refused**. I performed a search in the vehicle he was driving which was a Citroen with registration number BBC 084 where I found a wallet and a driving licence in the name of Obaseki Nicholas born 7<sup>th</sup> November 1987. I could recognise that the photo matched the person we had in the ambulance and I gave him back his wallet. He was escorted to Mater Dei by PC 1047 and 1478. .... When I went to the Police Station I checked about the vehicle the person was driving with registration BBC 084, which resulted that it was in the name of Bright holder of id card number 9000607A. I contacted this person and informed him to come at the Police Station and when I informed him what just happened, he said he did not know that the vehicle was in the possession of Nicholas Obasenki and when I asked him how did Nicholas got the key, he phoned his wife and his wife informed him that Nicholas went at this residence and convinced his wife to give him the key without telling anything to Bright. I informed him what has happened, I gave him back his key. Then I informed Inspector Roderick Attard about it.”<sup>17</sup>

The witness exhibited the **Full Road Traffic Accident Report**<sup>18</sup> he drew up.<sup>19</sup> He adds that he saw two RIU officers trying to control the accused but he was still being aggressive and refused to co-operate as he was being led into the ambulance thus tying him to the stretcher.<sup>20</sup> In this report it is stated that PC1352 and PC1121 were trying to restrain the accused but he reacted by trying to bite anyone who was near him. The said officers tried to control him in a bid to prevent him from continuing to assault the ambulance staff. It states: “*Dan il-persuna gie ikkontrollat u mtella gewwa l-ambulanza, waqt li beda jigi mtella gol-ambulanza dan il-persuna beda jitkaxxkar mal-art u jipprova jigdem lill-pulizija w beda jghajjat kemm jiflah. Dan gie ikkontrollat gewwa l-ambulanza billi gie marbut mal-istretecher pero dan baqa jghajjat u jipprova jinhal*”.<sup>21</sup> The accused’s Nigerian driving licence was also exhibited.<sup>22</sup>

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<sup>17</sup> Fol.62-63

<sup>18</sup> **Doc.SP** a fol. 66 et seq.

<sup>19</sup> Fol.63

<sup>20</sup> Fol.64

<sup>21</sup> Fol.70

<sup>22</sup> **Doc.SP1** a fol. 74

**PC 1352 Ismael Buhagiar** testified *“It was the 18th of August 2019, I was patrol, I was working on my day duty, it was about 9am. I was working day duty with my colleague, PC 1121, and the control room told us that the Assistant Commissioner Gatt needed assistance at the lights that intersect Birzebbugia and Marsaxlokk and when we arrived at the scene we saw a person on a stretcher and he was acting aggressively and he was held with straps that the ambulance had made, tal-stretcher. When we arrived on the scene, we handcuffed him at the back because I feel more safe when someone is handcuffed at the back. **He was acting aggressively and tried to bite me as well.** He was saying, he was cursing<sup>23</sup>.... I know he was cursing and acting aggressively and me and my colleague we put him in the ambulance, he was saying, he was cursing and acting aggressively and that’s it and when we put him in the ambulance”<sup>24</sup>. **He never informed him that he was under arrest.** When he arrived on the scene, the accused was handcuffed with his hands in front but he was so agitated that the stretcher was being lifted off the ground due to his movements.<sup>25</sup>*

**Dr. Rose Marie Spiteri** confirmed that she had certified the injuries suffered by Alexander Gatt and Julian Grech.<sup>26</sup> She explained that Gatt suffered abrasions on the ring-finger and the little finger of the left hand, the middle finger and the ring finger of the right hand. Grech suffered abrasions on the left hand and the index finger of the right hand. These injuries were classified as **slight injuries**.<sup>27</sup>

**RC3021 Rita Cassar** exhibited documentation to show that Assistant Commissioner Alexander Gatt and PC543 Julian Grech were members of the police force since 1990 and 2008 respectively.<sup>28</sup>

**Dr. Nadya Vella**, in representation of Mapfre Middlesea Insurance, testified that the vehicle bearing registration number BCC084 was covered by an insurance policy issued on the 12<sup>th</sup> June, 2019, in the name of a Bright Osarenkhoe.<sup>29</sup> It covered *“The Policy holder and Any Driver Aged 25 and Over Driving on the Policyholder’s order or permission”*<sup>30</sup>. The certificate of the motor insurance as well as the Schedule forming part of the policy were exhibited.<sup>31</sup>

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<sup>23</sup> Fol.97

<sup>24</sup> Fol.98

<sup>25</sup> Ibid.

<sup>26</sup> Fol.78-79

<sup>27</sup> Fol.79

<sup>28</sup> Fol.84 et seq.

<sup>29</sup> Fol.92

<sup>30</sup> Doc.NV a fol.95

<sup>31</sup> Doc.NV a fol. 95 et seq.

**Stephen Cachia**, in representation of Transport Malta, declared that according to Subsidiary Legislation 65.18 a non-EU driving licence may be used in Malta for a period not exceeding 12 months from the date of the holder's last entry into Malta.<sup>32</sup>

The accused, **Nicholas Obaseki** chose to testify. He began by explaining how he was involved in a car accident. He was approached by two police officers who requested his driving licence and log book.<sup>33</sup> Whilst he called for an ambulance he blacked out and when he came to, he was handcuffed to the stretcher.<sup>34</sup> He started crying as he questioned why he was restrained to the stretcher.<sup>35</sup> He denied hitting the officer as he was tied and an officer in uniform was sitting on top of him.<sup>36</sup> Another officer asked him to calm down as he was being taken to hospital and he queried whether he was being arrested or taken to hospital.<sup>37</sup> Obaseki denied hitting the police<sup>38</sup> and admits he was excited when he realized that he had been handcuffed.<sup>39</sup> He clarifies that the officer was sitting on his legs whilst he was lying down with his hand on Obaseki's chest.<sup>40</sup> He denied disobeying police orders or being drunk<sup>41</sup> and states that he had had beer the night before.<sup>42</sup> He blacked out not owing to his being drunk, but because of the pain. When he regained consciousness, he found himself surrounded by 4-5 police officers.<sup>43</sup>

He stated that he has been using his Nigerian driving licence for years<sup>44</sup> but no question was made to him as to the date of his last entry into Malta! This acquires relevance with respect to the Court's considerations regarding the fifth charge further on in this judgement.

The accused denies ever being aggressive even when it was suggested to him that this was his first reaction upon regaining consciousness upon finding himself restrained!<sup>45</sup> He also denied refusing to give his particulars although when confronted by the fact that he had told police officers to ask Magistrate

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<sup>32</sup> Fol.76

<sup>33</sup> Fol.123-124

<sup>34</sup> Fol.123-125

<sup>35</sup> Fol.126

<sup>36</sup> Fol.127

<sup>37</sup> Fol.128

<sup>38</sup> Fol.129

<sup>39</sup> Fol.131

<sup>40</sup> Ibid.

<sup>41</sup> Fol.132

<sup>42</sup> Fol.140

<sup>43</sup> Fol.134

<sup>44</sup> Fol.136

<sup>45</sup> Fol.137



Neville Camilleri about his particulars, he admitted that he is facing criminal proceedings before the Honourable Magistrate. He contended that he mentioned Magistrate Camilleri when in hospital.<sup>46</sup>

The accused mentioned that racist remarks were made towards him by the Assistant Commissioner who had testified that *“At one point, he continued telling us that we are racists and that we hate them..”*.<sup>47</sup> However in the course of Gatt’s cross-examination, not a question was made to him in a bid to substantiate this serious allegation. Thus, the Court is very hesitant to afford any credibility to the accused who continues to deny even his being agitated and resisting police officers when several witnesses testified to these facts!

### The first three charges: Articles 96, 221 & 95 of the Criminal Code

From the testimonies of the police officers who were on the scene, it results that once Obaseki realised he was strapped on to the stretcher he became aggressive and made several attempts to get off it; **this led police to handcuff him**. When police tried to prevent him from persisting in his attempts to get off the stretcher, he tried to bite PC543 and PC1352. The slight injuries sustained by Assistant Commissioner Gatt and PC543 Julian Grech, were caused owing to the resistance being made by the accused.

**In Il-Pulizija vs Stephen Borg** the Court made the following considerations:

Sabiex jissusti r-reat ikkontemplat fl-artikolu 96 tal-Kodiċi Kriminali jrid ikun hemm, fost affarijiet oħra, u bħala minimu, xi forma ta’ forza illeġittima diretta lejn il-persuna inkarigata skont il-liġi minn servizz pubbliku. L-att li bih tali forza tiġi eżercitata irid ikun tali li jkun tendenti, ossia li jkollu l-potenzjalità li jikkaġuna xi ħsara lill-persuna tal-uffiċjal pubbliku, żgħira kemm hi żgħira din il-ħsara, anke jekk bħala fatt u fil-fatt konkret ebda ħsara ma tiġi kkaġunata, u anke jekk l-aġent ma jkollu l-ebda intenzjoni li jikkaġuna tali ħsara: hekk, per eżempju, ikun il-każ ta’ min sempliċement jimbotta b’mod goff jew ostili lill-uffiċjal pubbliku li jkun intimalu li ser jarrestah, jew ta’ min jibda jithabat meta jkun f’idejn l-uffiċjal pubbliku, propju biex jehles minn idejh. Biex ikun hemm dan ir-reat l-aġent irid mhux biss attakka (il fatto di prendere l’offensiva) jew irrezista (il fatto di prendere la difensiva) lill-uffiċjal pubbliku, iżda li tali attakk jew rezistenza tkun ġiet magħmula permezz ta’ vjolenza jew hebb (vie di fatto). Mhux biżżejjed għalhekk attakk bil-kliem, anke jekk dak il-kliem ikun iebes, inġurjuż jew minatorju (tali kliem jsita’ naturalment jammonta għar-reat ikkontemplat fl-artikolu 95(1) tal-Kodiċi Kriminali). Anqas ma hi biżżejjed, għall-finijiet tal-artikolu 96 is-sempliċi rezistenza passiva (ez. li wiehed ma jiftaħx il-bieb jew li jintelaq mal-art) jew l-użu ta’ forza jew vjolenza applikata fuq, jew fil-konfront ta’ oġġett, b’mod pero’, li dik il-forza ma tkunx tista’ direttament jew indirettament, tikkaġuna xi ħsara lill-uffiċjal pubbliku (eż, wiehed jagħti bil-ponn fuq vettura biex ibeżża’ lill-uffiċjal pubbliku, għalkemm f’dan il-każ jista’ jikkonfigura reat ieħor). Differenti hu l-każ ta’ min, biex jirrezisti

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<sup>46</sup> Fol.139

<sup>47</sup> Fol.52

arrest, iwaddab xi oġġetti fil-konfront ta' uffiċjal pubbliku, għax f'dak il-każ, għalkemm ma jkunx hemm kuntatt fiżiku bejn l-aġent u l-uffiċjal pubbliku, ikun hemm forza illeġittima li tkun qed tiġi diretta lejn il-persuna u permezz ta'att li għandu l-potenzjalita' li jikkaguna hsara lill-persuna.<sup>48</sup>

## Reference is made to the judgement **Il-Pulizija vs Daniele Festari u Redeemer Bonnici**:<sup>49</sup>

Illi bid-dovut rispettt, il-ġurisprudenza tgħallem li Pulizija mhux qiegħed hemm biex targumenta miegħu jew biex jiġi użat minflok "punching bag", kif b'xorti ħażina qiegħed jidher li qiegħed jiġri tul dawn l-aħħar snin. Għalkemm huwa fattur pożittiv li matul is-snin saret kampanja sħiħa ta' għarfien liċ-ċittadini dwar x'inhuma d-drittijiet tagħhom li jitnissu minn għixien f'soċjeta ħielsa u demokratika, matul din it-triq pero ħafna mill-istess ċittadini in-sew warajhom x'inhuma l-obbligi tagħhom lejn is-soċjeta u x'inhu r-rispett lejn l-Awtorita' .....

Il-ġurisprudenza tgħallem li mal-Pulizija ma targumentax, anke jekk wieħed iħoss li l-azzjoni tagħhom mhix ġusta. **L-imputat kien fid-dmir li, mingħajr paroli u xenati żejda, jobdi l-ordnijiet legittimi li kienu ġew mogħtija lill mill-Pulizija** sabiex jitlaq minn fuq il-post mingħajr aktar inkwiet. L-ordnijiet legittimi mogħtija mill-Pulizija liċ-ċittadin ma humiex hemmhekk biex jiġu kkonstestati, argumentati, mkasbra jew injorati sommarjament mir-riċevent għax hekk iħoss jew għax hekk jidhirlu. Dawn l-ordnijiet legittimi qegħdin hemmhekk biex jiġu obduti – dejjem u mingħajr dewmien, għalkemm bla preġudizju għad-dritt ta' dak li jkun li jirreklama **wara** l-ġustizzja intrinseka ta' dik l-ordni.<sup>50</sup> Altrimenti kieku dan ma kienx hekk kien ikun ifisser li kull persuna jkollha l-jedd taġixxi kif trid u kif jogħgobha mingħajr ħadd ma jista' jzommha jew irazzanha:- kulhadd jagħmel li jrid u jogħgbu ikunu xi jkunu l-azzjonijiet tiegħu. Bid-dovut rispettt għal min jaħseb hekk, din hija filosofija li twassal biss għall-kaos u fejn allura tirrenja l-liġi tal-ġungla u mhux l-Istat tad-Dritt.....

Iżda anke jekk għall-grazzja tal-argument Bonnici kellu raġun iħossu inġustament arrestat, ir-reazzjoni tiegħu ma kellhiex tkun dik deskritta mill-Pulizija li xehdu f'dan il-każ. L-iżball li għamel l-imputat kien li meta ħassu aggravat bid-deċiżjoni tal-Pulizija huwa ma rrikorriex għall-metodu legali biex jagħmel ir-rimostranzi tiegħu ċjoe li **jobdi l-ordni legittimu mogħti mill-pulizija bla dewmien, salv id-dritt li wieħed jirreklama dwar il-ġustizzja intrinsika ta' dik l-ordni**. Kieku għamel hekk l-effetti ta' dan l-incident ma kienux ikunu daqshekk gravi kontrihi. Iżda b'xorti ħażina l-imputat ma għamilx hekk u għażel li jhalli t-tempra tagħmel bih, u rrikorra għal aktar minn semplici rimostranza. U jekk kellu raġun, issa spicċa li poġġa lill-nifsu fit-tort.

Issa għalhekk f'dan il-każ ta' Redeemer Bonnici l-Qorti tqis li għandu japplika dak li għallem l-Imħallef William Harding fil-każ **Il-Pulizija vs John Mallia** deciz nhar il-21 ta' Mejju 1960 fejn qal li :-

Jekk wieħed jindahal fid-doveri tal-pulizija u juza mhux biss "vie di fatto", imma vjolenza effettiva allura hu jkun hati ta' attakk u rezistenza lill-Pulizija a differenza tal-każ, fejn ikun hemm semplici kliem oltragguz jew semplici minacci jew "mera inazione". Fil-każ tal-persuna li tkun f'idejn il-Pulizija jista' talvolta jkun hemm certa tolleranza, billi dik il-persuna tkun qegħda tirrezisti lill-Pulizija għax tkun spinta mix-xewqa naturali tal-

<sup>48</sup> Decided 26<sup>th</sup> January, 1999; Vol.LXXXIII.iv.165. Cited in **Il-Pulizija vs Mario Camilleri** Decided 11<sup>th</sup> February, 2013 per Mr. Justice Lawrence Quintano

<sup>49</sup> Per Hon. Magistrate Dr. Aaron M. Bugeja; Decided 30<sup>th</sup> September, 2015

<sup>50</sup> **Il-Pulizija vs Maria Victoria Sive Marvic Attard Gialanze**, Qorti tal-Appell Kriminali, per VDG, 25 ta' Gunju 1997.

liberta' proprja; imma din it-tolleranza tispicca malli dik il-persuna tispingi jdejha fuq il-membri tal-Pulizija li jkunu qeghdin izommuha biex toffendihom fil-persuna taghhom u tmur oltre s-semplici sforz biex tevadi l-arrest.

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Jirrizulta li meta seħħ dan l-incident u ps 887 ġie mbuttata lura, huwa kien qiegħed fil-mument tal-eżekuzzjoni tad-doveri tiegħu kif ukoll jeżercita setgħa fil-vesti tiegħu ta' persuna inkarigata minn servizz pubbliku. Il-Qorti ssib ukoll li l-Pulizija de quo, għar-ragunijiet hawn fuq imsemmija, ġie attakkat (jew aħjar attakkati – għax kien hemm aġenti tal-pulizija oħra li sofrew konsegwenzi) bi vjolenza jew b'hebb ta' xorta li ma titqiesx vjolenza pubblika, **fil-waqt** li kien qed jaġixxi għall-eżekuzzjoni tal-ligi jew ta' ordni mogħti skond il-ligi mill-awtorità kompetenti.

Din l-intepretazzjoni tal-konkomanza bejn il-waqt ta' meta l-ufficjal pubbliku jkun qiegħed jaġixxi għall-eżekuzzjoni tal-ligi u l-attakk jew rezistenza hija sorretta kemm mill-ġurisprudenza kif ukoll mid-dottrina. Hekk per eżempju fis-sentenza tal-Qorti tal-Appell Kriminali fil-każ **II-Pulizija vs Lawrence Attard** deċiż mill-Prim Imħallef Emeritus Vincent de Gaetano nhar it-12 ta' Settembru 1996 ingħad li :

biex jissussisti r-reat ikkontemplat fl-artikolu 96 tal-Kodici Kriminali (re:attakk jew rezistenza kontra ufficjal pubbliku) irid ikun hemm mhux biss attakk jew opposizzjoni ossia rezistenza kontra persuna inkarigata skond il-ligi minn servizz pubbliku, izda ukoll li dana l-attakk jew rezistenza isir bi vjolenza jew b'hebb u jsir waqt li dik il-persuna tkun tagixxi għall-eżekuzzjoni tal-ligi jew ta' ordni mogħti skond il-ligi mill-awtorità kompetenti. Meta ufficjal tal-pulizija jintima li jkun ser jarresta lil xi hadd, jew ikun effettivament qed jipprocedi biex jarresta lil xi hadd, jew ikun ga' arresta u qed izomm lil xi hadd arrestat, huwa jkun certament qiegħed jesegwixxi l-ligi. Izda meta ufficjal tal-pulizija jkun qiegħed jipprova jipperswadi lil xi hadd bil-kelma t-tajba sabiex iwarrab minn fuq il-post u għalhekk mingħajr ma dak il-pulizija jeżercita s-setgħa tiegħu li jarresta, ma jistax jingħad li dak il-pulizija jkun qed jaġixxi "għall-eżekuzzjoni tal-ligi" fis-sens ta' l-artikolu 96, għalkemm huwa jkun qiegħed jagħmel is-servizz pubbliku tiegħu fis-sens ta' l-artikolu 95.

Inoltre, fil-każ **II-Pulizija vs Joseph Zahra**, deċiż nhar id-9 ta' Settembru 2002 mill-Qorti tal-Appell Kriminali presjeduta mill-Prim Imħallef Emeritus Vincent de Gaetano intqal li :

Skond l-Artikolu 96(a) tal-Kodici Kriminali 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 fil-waqt li dik il-persuna hekk inkarigata minn dak is-servizz pubbliku "tkun qed tagixxi għall-eżekuzzjoni tal-ligi jew ta' xi ordni mogħti skond il-ligi minn xi awtorità kompetenti". Din l-espressjoni hi differenti minn dik uzata fl-Artikolu 95(1) - "waqt li jkun jagħmel jew minhabba li jkun għamel dan is-servizz, jew bil-hsieb li jbezzgħu jew li jinfluwixxi fuqu kontra l-ligi fl-eżekuzzjoni ta' dan is-servizz.

Oltre minn hekk l-istess interpretazzjoni dwar il-konkomanza tidher li tingħata mid-dottrina. Minbarra dak imsemmi mill-Professor Mamo fin-Noti tiegħu, hekk kif is-silta l-aktar rilevanti ġiet citata mill-abbli Avukat Difensur fin-nota ta' sottomissjonijiet tiegħu, jirrizulta wkoll minn diversi awturi li din ir-rabta mal-waqt li jkun hemm l-eżekuzzjoni tal-ligi hija meħtieġa. Hekk per eżempju fil-"**Commentario Teorico-Pratico del Codice Penale**", Torino, 1860, fol 361, il-**Farrarotti**, waqt li jikkommenta inter alia fuq id-disposizzjonijiet simili fil-Kodici Penali ta' diversi

Stati Taljani, inkluż dak tar-Regno delle Due Sicilie (li kien jipprovdi għar-reat ta' "ribellione" li fuqu l-Artikolu 96 tal-Kodiċi Kriminali Malti jidher modallat), jagħti s-segwent i eżempju : -

8. Giusta la generale disposizione di questo articolo, si verifica reato di ribellione tuttavolta venga commesso omicidio sulla persona di un carabiniere reale, **nell'atto stesso ch'egli agisce per l'esecuzione delle leggi e degli ordini dell'autorità pubblica e trovasi così nell'attuale esercizio delle sue funzioni** – Cass. 31 marzo 1857, ricorso Orsi ed altri – Bettini 1857, Parte 1, p. 318, seg." (Enfazi mizjuda).

Skont il-Carrara, fil-Programma, Parte Speciale, Volume 5, Lucca, 1868, f'pagni 357 u 358, paragrafi 2743 u 2744 jirriżulta car li dan ir-reat ta' "resistenza" – (li huwa jippreferi jsejjaħ minflok "ribellione" u dan fuq it-tagħlim tal-Carmignani) li hija fil-bażi ta' dan ir-reat trid issir fil-konfront tal-uffiċjali eżercenti awtorità pubblika u l-elementi materjali u formali iridu jiġu riflessi l-eżerċizzju tal-azzjoni pożittiva ta' kommissjoni li turi "l'antagonismo di due forze che vicendevolmente tendono a conflittarsi" u cioè l-vires privat ma dak pubbliku. Din il-Qorti tifhem għalhekk antagoniżmu li allura jippresupponi konkomanza fl-eżerċizzju tiegħu.

Even more relevant to the case under review, due to the fact that the circumstances encountered therein bear a strong similarity to the circumstances of the present case, is the decision by the Court of Criminal Appeal in **Il-Pulizija vs Sean Sinclair Pace** held:<sup>51</sup>

Illi l-lanjanza ewlenija imqanqla mill-appellanti hija wahda ta' natura legali meta jilmenta illi l-Ewwel Qorti naqqset milli tagħmel distinzjoni bejn ir-reat ipotizzat fl-artikolu 95 u dak li jtkellem dwaru l-artikolu 96 tal-Kodiċi Kriminali. Jishaq illi l-fattispeċje ta' dan il-kaz jinkwadraw rwiehom fl-elementi li isawwru ir-reat taht l-artikolu 95 u mhux dak prospettat fl-artikolu 96 u għalhekk kellha tinsab htija għall-ewwel akkuza u mhux ukoll tat-tieni wahda bl-assorbiment tal-akkuza l-oħra fl-ewwel akkuza.

Illi ma hemmx dubbju illi uhud mill-ingredjenti mehtiega biex jinmew iz-zewg reati huma identici. Dan għaliex dawn ir-reati iridu necessarjament jiġu kommessi fil-konfront ta' uffiċjal pubbliku jew ta' persuna inkarigat skond il-ligi minn servizz pubbliku. Issa l-appellanti għandu ragun meta jishaq illi hemm distinzjoni netta bejn dawn iz-zewg reati għalkemm it-tnejn għandhom bhala vittma persuna fil-vesti uffiċjali tagħha.

Illi l-artikolu 95 jtkellem dwar l-ingurja, it-thedd id jew l-offiza fil-konfront ta' l-uffiċjal pubbliku. Issa din l-ingurja, theddida jew offiza trid issir jew (1) filwaqt illi l-uffiċjal pubbliku ikun qed jagħmel servizz pubbliku (2) jew inkella minhabba li ikun għamel dana is-servizz pubbliku, (3) jew bil-ħsieb li ibezzghu jew jinfluwixxi fuqu kontra l-ligi fl-eżekuzzjoni ta' dak is-servizz.

Illi l-awturi jagħmlu 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-uffiċjal pubbliku ikun qiegħed jagħti is-servizz ma huwiex necessarju illi l-ingurja, it-theddida jew l-offiza tkun marbuta mal-funzjoni illi huwa ikun qiegħed jeżercita. L-awturi **Cheveau et Helie**, li isemmi il-**Professur Mammo** fin-notamenti tiegħu, ighidu:

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<sup>51</sup> Appeal No.519/2015; Per Hon. Mdme Justice Dr. Edwina Grima, 26<sup>th</sup> May, 2016

*“Quando l’oltraggio si verifica nel corso delle funzioni, il-motivo che lo determina e’ indifferente; la legge vede soltanto 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 tissussisti 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 qieghed jagixxi ghall-esekuzzjoni tal-ligi jew ta’ ordni moghtija 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 ghall-artikolu 96) jirrikjedi mhux biss li l-vittma tkun persuna inkarigata skond il-ligi minn servizz pubbliku” (l-istess bhalma 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 ghall-ezekuzzjoni tal-ligi jew ta’ xi ordni moghti skond il-ligi minn xi awtorita’ kompetenti”.*

Illi l-Qorti qed tossottolinja din l-ahhar parti ta’ dan it-tagħlim gurisprudenzjali billi huwa hawnhekk illi l-appellanti qieghed iressaq il-kontestazzjoni tieghu. Dan ghaliex fil-fehma tieghu f’dan l-incident li sehh gewwa l-isptar Mater Dei, meta l-pulizija Cilia resaq lejx biex izommu meta huwa kien fi stat ta’ agitazzjoni u qieghed jirribella ghad-decizjoni tat-tobba illi jintbaghat l-isptar Monte Carmeli, dan il-pulizija ma kienx qieghed jagixxi ghall-esekuzzjoni tal-ligi jew jezegwixxi xi ordni moghtija skont il-ligi, billi **ma kienx qieghed jipprocedi ghall-arrest tieghu, izda kien qieghed biss jipprova jikkalmah u irazznu.**

Issa l-Ewwel Qorti sabet ir-reita’ fl-appellanti ghal dina l-akkuza billi dehrilha illi l-ufficjal tal-pulizija fid-Dipartiment ta’l-Emergenza kien qieghed hemmhekk prezenti ghaz-zamma tal-buon ordni. Illi allura fil-mument illi huwa indahal sabiex irazzan lill-appellanti milli ikompli ihebb ghat-

tabib li kien qed jezaminah, tishaq l-Ewwel Qorti, huwa kien necessarjament qieghed jezegwixxi dak li tghidlu l-ligi u dak li kien fid-dmir li jaghmel u cioe' li izomm il-bon ordni ghalkemm sa dak il-mument ma kienx qieghed jipprocedi ghall-arrest ta'l-appellanti. Izda imbaghad stranament l-Ewwel Qorti tghaddi biex ticitata gurisprudenza fejn hemm indikat xort'ohra minn dak affermat minnha meta issir referenza ghad-decizjoni moghtija minn din il-Qorti kif diversament ippresjeduta mill-Prim'Imhalled Emeritus Vincent DeGaetano fid-decizjoni **Il-Pulizija vs Lawrence Attard** deciza fit-12 ta' Settembru 1996 fejn inghad:

*“Meta ufficjal tal-pulizija jintima li jkun ser jarresta lil xi hadd, jew ikun ga' arresta u qed izomm lil xi hadd arrestat, huwa ikun certament qieghed jezegwixxi il-ligi. Izda meta ufficjal tal-pulizija ikun qieghed jipprova jipperswadi lil xi hadd bil-kelma t-tajba sabiex iwarrab minn fuq il-post u ghalhekk minghajr ma dak il-pulizija jezercita s-setgha tieghu li jarresta, ma jistax jinghad li dak il-pulizija jkun qed jagixxi 'ghall-esekuzzjoni tal-ligi' fis-sens ta'l-artikolu 96, ghalkemm huwa jkun qieghed jaghmel is-servizz pubbliku tieghu fis-sens ta'l-artikolu 95.”*

Issa il-fattispecje ta' dina id-decizjoni iccitata huma simili hafna ghal dawk taht il-lenti ta' din il-Qorti f'dan l-appell. L-PC488 Emanuel Cilia ighid hekk dwar dak li seh:

*“Meta jiena mort biex niftah il-purtiera ghax smajt l-istorbju sibt lill-imputat .... u dan ghaliex xtaq johrog mill-cubicle peress li t-tabib u l-psikjatra rieduh imur l-isptar Monte Carmeli. Illi effettivament dak il-hin Sean kien bil-wieqfa b'basket, it-tabib Dr. Mark Attard Biancardi ipprova jzommu b'id wahda. Nghid li dak il-hin Sean xejjer idejh biex qala' idejh minn idejn it-tabib. Dhalt jien zammejt lil Sean minn wara u ghidtlu 'mhux hekk habib' u meta l-imputat dar lura u induna li jiena pulizija dar u beda jaghtini bil-ponn mill-ewwel. Ha il-posizzjoni tal-boxing, tani daqqa go rasi, ippruvajt nilqa' d-daqqiet. ... Jiena bdejts nersaq lura ghax kelli spazju fejn nersaq lura, uzajt f'it forza minima biex imbuttajtu fil-genb u ersaq lura. ...”*

Illi mid-deskrizzjoni ta' dan ix-xenarju kif imfisser mill-kuntistabbli stess, ghalkemm l-imsemmi ufficjal kien qieghed jaqdi d-dmir tieghu billi jipprova izomm il-bon ordni meta sofru dina l-offiza fuq il-persuna tieghu u spicca mhedded, madanakollu ma jistax jinghad illi huwa f'dan il-hin qasir kien qieghed jagixxi ghall-esekuzzjoni tal-ligi, jew ta' xi ordni moghtija skont il-ligi minn xi awtorita'. **Fl-ebda hin** f'dawn l-ghaxar sekondi li kien quddiem l-appellanti (kif ighid hu stess fix-xhieda tieghu) **ma jidher illi huwa kien ser jipprocedi ghall-arrest tieghu.**

Lanqas ma jista jinghad li jissussisti dan ir-reat iktar tard u cioe' l-ghada fil-ghodu filwaqt li kien jinstab arrestat gewwa l-Ghassa tal-Pulizija ta' Tas-Sliema, billi ma jidherx illi f'dan it-tieni incident huwa hebb ghas-surgent Christopher Ellul li kien qieghed ghasa mieghu, jew inkella li uza xi vjolenza fil-konfront tieghu, billi s-surgent ighid illi l-appellanti qal biss xi kliem ingurjuz fil-konfront tieghu.

Kwindi l-appellanti ghandu ragun fl-ilment minnu imressqa billi huwa ghandu jinstab hati tar-reat ikkontemplat fl-artikolu 95, izda mhux ukoll dak indikat fl-artikolu 96 billi wiehed mill-elementi necessarji sabiex tinstab htija ghal dan ir-reat huwa nieqes.

[emphasis by the Court]

Similarly, in this case it was never the case that the accused was **being arrested** by the officers; indeed, **at no point was he informed that he was**

**under arrest** and the Court is perturbed by the fact that police chose to handcuff a man who at no point was placed under arrest!

Gatt testifies *“Consequently I sent my driver to see what was happening in front of the ambulance, he came back and he told me that there was a person lying on a stretcher who was not speaking, I think he was unconscious.....all of a sudden I saw that he was becoming very violent, so I instructed PC 543 to handcuff him..... “Then I gave instructions to PC 543 to handcuff him and all of a sudden **he became very violent**,”<sup>52</sup>. In addition Gatt clarifies that at no point did the accused try to get off the stretcher to fight off the police: “No, no, he tried to come up, resisting like this, we had to restrain him”<sup>53</sup>*

Moreover, PC543 states: *“He was arguing and he was being aggressive towards the ambulance staff, I kneeled down near him and told him to calm down and that they were doing their job and they were putting the neck brace and some restraints so that he would not move,..... continuing to be aggressive towards us, towards me and towards the ambulance people. .... I was in my uniform. At that moment the AC Gatt came and he was helping me to restrain him, to hold him and **we handcuffed him so he would not be of danger to us all and to himself.**”. Asked specifically by the Court **whether Obaseki was informed he was being arrested** the officer replied *“I told him that I was handcuffing him because he was being aggressive towards us, because he was not obeying Police orders and because he would not stay. He started holding on to the bumper of the ambulance so that we would not handcuff him, ... ....”*<sup>54</sup>*

**Thus, it clearly results that at no point was the accused informed that he was being placed under arrest before police proceeded to handcuff him!!** The handcuffs were put on him in view of his aggressive behaviour as he found himself restrained on a stretcher upon regaining consciousness.

In the light of the jurisprudence cited, it results that the order Police gave Obaseki, namely to calm down and allow ambulance personnel to take him to hospital, whilst undoubtedly done in the act of discharging their duty to uphold public order, **cannot be perceived as an order placing him under arrest.**

Consequently it cannot be said that they were acting in the execution of the law or of a lawful order: *“minghajr ma dak il-pulizija jezercita s-setgha tieghu li jarresta, ma jistax jinghad li dak il-pulizija jkun qed jagixxi ‘ghall-esekuzzjoni tal-ligi’*

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<sup>52</sup> Fol.52

<sup>53</sup> Fol.54

<sup>54</sup> Fol.57-58

*fis-sens ta' l-artikolu 96, ghalkemm huwa jkun qieghed jaghmel is-servizz pubbliku tieghu fis-sens ta' l-artikolu 95.”<sup>55</sup>*

Thus, the accused is being found guilty of the third charge, that in terms of Article 95 of the Criminal Code but not the first charge, which is the offence in terms of Article 96 of the Code.

The second charge, that of causing slight injuries, has also been adequately proven. In this case, the two officers fortunately suffered only abrasions and thus, the said injuries can be deemed as being **of small consequence** in terms of Article 221(3)(b) of the Criminal Code. It was also satisfactorily shown that both Alexander Gatt and Julian Grech were serving police officers.

#### The Fourth Charge: Article 338(dd) of the Criminal Code

With reference to the fourth charge, that of having wilfully disturbed the public good order or the public peace, reference is made to the judgement **Il-Pulizija versus Maria Concetta Green** wherein the Court held:<sup>56</sup>

L-artikolu 338(dd) tal-Kodici Kriminali jikkontempla r-reat komunement imsejjaħ ‘breach of the peace’. L-elementi ta’ dan ir-reat gew ezaminati funditus f’diversi sentenzi u gie ritenut li, bhala regola, ikun hemm din il-kontravvenzjoni meta jkun hemm ghemil volontarju li minnu nnifsu jew minhabba c-cirkostanzi li fihom dak l-ghamil isehh inissel imqar minimu ta’ nkwiet jew thassib f’ mohh persuna (li ma tkunx l-akkuzat jew l-imputat) dwar l-inkolumita’ ta’ persuna jew dwar l-inkolumita’ ta’ proprjeta’, kemm b’rizzultat dirett ta’ dak l-ghamil jew minhabba l-possibilita’ ta’ reazzjoni ghal dak l-ghemil.

L-iskambju ta’ kliem, anke jekk ingurjuz jew minaccjuz fih innifsu u minghajr ma jkun hemm xejn aktar x’jindika li dak l-argument jista’ jizviluppa fih, jew iwassal ghal, xi haga ohra u aktar serja (bhal glied bl-idejn jew hsara fil-proprjeta’) ma jammontax ghall-breach of the peace fis-sens tal-artikolu 338(dd) tal-Kodici Kriminali.

In the judgement by the said Court differently presided, **Il-Pulizija vs. Noel Tanti** it was held:<sup>57</sup>

Illi kif gie ritenut minn din il-Qorti fl-Appell Kriminali : “Il-Pulizija vs. Alfred Pisani” [5.5.1995] ir-reat kontemplat fl-artikolu 338 (dd) tal-Kodici Kriminali javverra ruhu meta jkun hemm dak li fil-“common law” Ingliza kien jissejjah “a breach of the peace.” Bhala regola jkun hemm din il-kontravvenzjoni meta jkun hemm ghemil volontarju li minnu nnifsu jew minhabba c-cirkostanzi li fihom dak l-ghemil isehh, inissel imqar minimu ta’ inkwiet jew thassib f’ mohh persuna (li ma

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<sup>55</sup> **Il-Pulizija vs Lawrence Attard**. Vide *supra*

<sup>56</sup> Court of Criminal Appeal; Dec. 19th November, 1999; Volum LXXXIII.iv.441

<sup>57</sup> Per Hon. Mr. Justice Joseph Galea Debono; Criminal Appeal No.46/2005; Decided 5<sup>th</sup> May, 2005



tkunx l-akkuzat jew l-imputat) dwar l-inkolumità fizika ta' persuna jew dwar l-inkolumità ta' proprjeta', kemm b' rizzultat dirett ta' dak l-ghemil jew minnhabba l-possibilita' ta' reazzjoni ghal dak l-ghemil.

Fl-Appell Kriminali "Il-Pulizija vs. Paul Busuttil" [23.6.1994] umbaghad gie ritenut li din l-ekwiparazzjoni ta' dan ir-reat mal-kuncett Ingiliz ta' "breach of the peace" tirsalisi ghal zmien Sir Adriano Dingli li proprju f' kawza deciza minnu fl-10 ta' Gunju, 1890, fl-ismijiet: "Ispettore Raffaele Calleja v. Paolo Bugeja et." kien qal hekk :-

*"Che il buon ordine e la tranquillita' pubblica sta nella sicurezza, o nella opinione ferma della sicurezza sociale, -- nel rispetto dei diritti e dei doveri sia degli individui in faccia all' autorita' pubblica, sia degli individui stessi fra loro, e ogni atto che toglie o diminuisce la opinione della sicurezza pubblica, o della sicurezza individuale, e' violazione dell' ordine pubblico, indipendentemente dalla perpetrazione di altro reato."* (Kollez. Vol. XVII, p.47, 475).

Fl-istess sentenza ta' Paul Busuttil gew citati b'approvazzjoni McCall Smith u Sheldon li, fil-ktieb taghhom "Scots Criminal Law" (Edin. Butterworths, 1992), jghidu :-

*"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)

u dik il-Qorti ziedet tghid li :-

*"Naturalment huwa kwazi impossibbli li wiehed jiddeciedi aprioristikament x' jammonta jew x' ma jammontax f' kull kaz ghar-reat ta' ksur volontarju tal-buon ordni u l-kwiet tal-pubbliku. Kif jghid awtur iehor Skocciz, Gerald H. Gordon, fit-test awtorevoli tieghu "The Criminal Law of Scotland" (Edinburgh, 1978):*

*"Whether or not any particular acts amount to such a disturbance is a question of fact depending on the circumstances of each case, and strictly speaking probably no case on breach of the peace can be regarded as an authority of general application."* (p.985, para.41-01).

U aktar 'l quddiem l-istess awtur jghid :-

*"...although it has been held not to be a breach of the peace merely to annoy someone such annoyance could amount to a criminal breach of the peace if the circumstances were such that it was calculated to lead actual disturbance."* (p.986, para. 41-04).

Ikkonsidrat;

Issa li kieku kellu jirrizulta li fit-triq barra l-ghassa kien hemm xi diverbju "a voce alta" li seta' gibed l-attenzjoni tan-nies jew li seta' holoq certa apprensioni fost dawk li kienu vicini, wiehed jifhem li setghet talvolta tirrizulta l-kontravvenzjoni in dizamina. Pero' fl-istat tal-provi fejn kull ma hemm hija d-depozizzjoni ta' mart l-appellant kontradetta mic-cahda tal-istess appellant dwar jekk hu ghajjatx jew le meta kien qal il-kliem in kwistjoni, din il-Qorti thoss li din il-kontravvenzjoni ma gietx sufficjentement pruvata, fic-cirkostanzi partikolari ta' dan il-kaz.

On the basis of the evidence brought forward, this charge has been satisfactorily proven. Several were the witnesses who described the tantrum thrown by the accused who was shouting and acting aggressively towards the ambulance personnel and police officers who were trying to calm him down.

#### The Fifth (5) Charge: Driving without a Valid Licence

As to the fifth charge the prosecution failed to prove that the accused's last entry into Malta was one which exceeded 12 months. Regulation 5 of the *Motor Vehicles (Driving Licences) Regulations (S.L.65.18)*, provides:

5. The holder of a driving licence issued by the competent authority in a third country<sup>58</sup> may drive in Malta, for a period not exceeding twelve months from the date of his last entry into Malta, any class or description of vehicle covered by the driving licence issued to him by the competent authority in that third country: .....

In this case although the accused in his statement admits to having lived in Malta for "Close to 6 years now"<sup>59</sup> nowhere does he mention when the **date of his last entry into Malta** was!

The prosecution needed to prove that Obaseki had been in Malta continuously for a period of twelve months or more from the date of his last entry into these Islands, yet no such evidence was forthcoming.

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<sup>58</sup> In Regulation 2 one finds the following:

"third country" means a country which is not a Member State;

"Member State" means a Member State of the European Union or member of the European Economic Area.

<sup>59</sup> Fol.12

## The Sixth (6) Charge: Driving an Uninsured Vehicle

Nor did the prosecution satisfactorily prove the sixth charge. The insurance policy clearly dictates that the policy holder could permit any driver aged 25 or over to make use of the vehicle. Yet for reasons known only to the prosecution, they failed to provide evidence that Bright Osarenkhoe did not permit the accused to drive the vehicle on the day in question.

## The Seventh (7) Charge: Unfit to Drive through drink or drugs

Reference is made to the judgement in **Il-Pulizija vs Joseph Said** where the Court of Criminal Appeal held:<sup>60</sup>

Illi l-artikolu 15A tal-Kapitolu 65 tal-Ligijiet ta' Malta li ghalha tirreferi l-ewwel imputazzjoni jaqra hekk:

**“(1) Ebda persuna ma għandha ssuq jew tipprova ssuq jew ikollha l-kontroll ta' vettura bil-mutur jew vettura oħra li tkun fit-triq jew f'post pubbliku ieħor jekk ma tkunx f'kundizzjoni li ssuq minhabba xorb jew drogi. (2) Għall-finijiet ta' dan l-artikolu, persuna titqies li m'hijiex f'kundizzjoni li ssuq jekk il-kapaċità tagħha li ssuq sew tkun għal xi hin imnaqqsa.”**

Illi l-gurisprudenza tghallem li ghalkemm ma hemmx necessarjament ness bejn ir-reat kontemplat fis-subartikolu (1) tal-Artikolu 15A tal-Kapitolu 65 tal-Ligijiet ta' Malta u l-fatt li l-analizi tan-nifs (a differenza tat-test tan-nifs) ikun inkomplet jew ma jsirx, madanakollu:

**“Kif din il-Qorti kellha okkazzjoni tosserva fis-sentenza tagħha tat-2 ta' Settembru, 1999 fl-ismijiet Il-Pulizija v. Francis Pace, biex jigi deciz jekk persuna kienitx qed issuq “meta l-kapaċità tagħha li ssuq sew [kienet] għal xi hin imnaqqsa” minhabba xorb (jew drogi) bi ksur ta' l-Artikolu 15A, wiehed jista' jiehu in konsiderazzjoni provi oħra, cioe` apparti mir-risultat o meno ta' l-analizi maghmula skond l-Artikolu 15E. Tali prova oħra tista' tinkludi il-komportament u l-kundizzjoni fizika tas-sewwieq, kif ukoll ir-risultat tat-test (preliminari) tan-nifs maghmul taht l-Artikolu 15C.**

**Meta l-ligi titkellem dwar "inkapaċità fizika jew mentali" qed tirreferi għal inkapaċità li trid tezisti indipendentement mill-istat ta' intossikazzjoni li tkun fiha l-persuna li tintalab tagħti l-kampjun, kif ukoll indipendentement mill-ansjeta` dovuta għall-fatt li dik il-persuna tkun involuta f'incident awtomobilistiku.”<sup>61</sup>**

Illi kif imfisser f'dan it-tagħlim giurisprudenjali huwa bil-wisq evidenti illi l-appellanti ma kellux dik il-kapaċità fizika u mentali essenzjali sabiex huwa ikun jista' isuq vettura fit-triq u dan minghajr ma ikun ta' periklu għalih innifsu u għall-oħrajn. Xhieda ta' dan huwa il-komportament tieghu wara l-impatt li kien indikattiv ta' l-istat ta' inebrijta' tieghu.

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<sup>60</sup> Per Hon. Mdme Justice Edwina Grima, Decided 25<sup>th</sup> February, 2016; Appeal No.301/2015

<sup>61</sup> **Il-Pulizija vs Marlon Montebello** – App.Inf. – 09/02/2001

In the present case, the only evidence on the basis of which this Court is being called upon to determine the accused's guilt or otherwise, is the testimony of police officers who stated that the accused's breath reeked of alcohol. Their statements simply lead the Court to a finding that the accused consumed alcohol however they fall short from proving that owing to his alcohol intake he was unfit to drive.

In the present case the best evidence would undoubtedly have been the testimony of the medics who treated the accused in hospital (and who could shed light as to the findings any test results) the police officers who accompanied the accused and who, similarly to the medics, could have shed light as to whether the accused was unfit to drive due to his alcohol intake.

#### Eight Charge: Article 579 of the Criminal Code

With respect to the eight charge, the Court notes that the bail conditions exhibited by the prosecuting officer **do not contain the identification details of the accused** and whilst the Court holds that it is highly probable that the said conditions refer to the accused, the level of proof required by the prosecution is that of proof beyond reasonable doubt. In this case, the prosecution failed to reach that level of proof when it omitted from presenting as a witness the deputy registrar of the Court in question who authenticated the copy of the bail conditions and who could have attested to the fact that the accused in these proceedings was also accused before that Court which granted the said conditions and that the same conditions had not been varied at the time of the incident. Alternatively and to this end, the prosecution ought to have summoned the prosecuting officer in those proceedings, Inspector Gabriel Micallef. This would have constituted the best evidence.

Reference is made to the Court of Criminal Appeal's judgement in **The Police vs Alvaro Garcia Bello**:<sup>62</sup>

It is the duty of the prosecution to bring forward the best evidence it has to be able to convince the court that the charges brought forward against the accused do exist and should result. In fact reference can be made to the Italian author Manzini to his book named *Diritto Penale* Vol III Kap IV pagna 234, Edizione 1890:-

*"Il cosi` detto onero della prova, cioe` il carico di fornire, spetta a chi accusa – onus probandi incumbit ui osservit".*

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<sup>62</sup>Per Hon. Mdme Justice Consuelo Scerri Herrera; Decided the 31<sup>st</sup> July, 2018; Appeal No.100/2017

It is a basic principle practiced in our Court in criminal proceedings that, in order for the Court to find the accused person guilty, the charges have to be proven beyond reasonable doubt, namely beyond every doubt that is dictated by reason. The court makes references to the case decided by this Court though presided by a different Judge in the names '**Il-Pulizija v Philip Zammit et**<sup>63</sup>' whereby the Court held that not every minimal doubt is a ground for the Court to acquit the accused, but the doubt must be one that is dictated by reason.

.....

With regards to the best evidence rule, the Court feels that it must make reference to the English author Blackstone and has the following to comment.

*"The best evidence rule, which was used in the 18th and early 19th centuries as an exclusionary principle, i.e. to prevent the admission of certain evidence where better evidence was available, is now all but defunct. Lord Denning MR has stated: The old rule, that a party must produce the best evidence that the nature of the case will allow, and that any less good evidence is to be excluded, has gone by the board long ago. The only remaining instance of it is that, if an original document is available on one's hands, one must produce it; that one cannot give secondary evidence by producing a copy. Nowadays we do not confine ourselves to the best evidence. We admit all relevant evidence. The goodness or badness of it goes only to weight, and not to admissibility.' (Garton vs Hunter 1969)."*

The -"best evidence rule" is found in article 638 (1) of chapter 9 of the laws of Malta which provides the following. *"In general, care must be taken to produce the fullest and most satisfactory proof available, and not to omit the production of any important witness"*

This article begins with the words 'In general' and there this means that it is not necessary in every case that the prosecution brings forward the best evidence. However, undoubtedly it would be desirable that this takes place. Should the prosecution keep back any evidence for one reason or another, it would only be prejudicing its own case. Nevertheless, this does not mean that the Court should disregard all other evidence brought forward by the same prosecution. Therefore, if the prosecution that the evidence it brought forward was sufficient to be able to get a conviction in this eventuality it can rest its case and there is no need for the prosecution to burden the court with further evidence.

Admittedly, the accused in the course of his testimony, indicates that he is facing proceedings before Magistrate Neville Camilleri when he testifies that his identification documents were in the Honourable Magistrate's "office", there is no way of knowing whether the particular bail conditions exhibited - wherein he stood to forfeit €30,000 upon their breach - referred to him or to another Nicholas Obaseki! Nor whether they had been varied on the date of the offences of which he stands charged!

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<sup>63</sup> Decided on the 7th September, 1994.

### Ninth Charge: Article 338(ee) of the Criminal Code

On the basis of the evidence before this Court, it was adequately proven that Obaseki disobeyed the lawful orders given to him by the police. However, this provision provides:

(ee) disobeys the lawful orders of any authority or of any person entrusted with a public service, .....**unless** such disobedience or interference falls under any other provision of this Code or of any other law;

It has already been ascertained that the accused's behaviour falls under the provision of Article 95 of the Code and thus, the Court deems this as an alternative charge to the third charge of which the accused is being found guilty. Consequently, the court is abstaining from taking further cognisance thereof.

The Court notes that it was stated that the accused failed to give his particulars to the police. However, the correct charge would have been that provided in terms of Article 338(g) of the Code and not that in terms of Article 338(ee) which is the charge brought against the Obaseki:

338. Every person is guilty of a contravention against public order, who - ...

(g) refuses to give, or untruthfully gives to any public officer or any other person entrusted with a public service in the actual exercise of his duties, his name, surname, address and other particulars;

### Punishment

In its considerations on punishment, the Court took note of the nature of the charges with regards to which the accused is being found guilty, his clean criminal record and all the circumstances of the case. The Court will never tolerate instances of abusive and violent behaviour directed at police officers. In this case, the accused apparently reacted in this manner after finding himself restrained following his loss of consciousness. Nonetheless his behaviour remains inexcusable and it is indeed fortunate that the officers suffered only abrasions to their fingers.

With respect to charges numbers two (2) and three (3) the principle of concurrent offences applies and thus the punishment for the graver offence, that foreseen by article 95 of the Code, applies. Thus, in the case under review the punishment provided for under Article 221(3)(b), that of contraventions, is to be increased by two degrees.

## Decides

For the said reasons the Court, after seeing Articles 17, 31, 95, 214, 221, 222(1)(c) and 338(dd) of Chapter IX of the Laws of Malta, finds Nicholas Obaseki guilty of the second (2), third (3) and fourth (4) charge brought against him, abstains from taking further cognisance of the ninth (9) charge and acquits him of the remaining charges,<sup>64</sup> and condemns him to a term of imprisonment of **four (4) months** which by virtue of article 28A of Chapter IX of the Laws of Malta, are being suspended for one (1) year and to a fine, *multa*, of **€800**.

The Court explained to the accused, in ordinary language, the consequences should he chose to commit another offence within the operative period of this judgement.

**Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)**  
**Magistrate**

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<sup>64</sup> Charges (1), (5), (6), (7) and (8) a fol.7-8