



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

**Magistrate Simone Grech**

**Police**

**Vs**

**Manuel Joe Buttigieg**

Today, the 2<sup>nd</sup> day of September 2020

The Court,

After having seen the charges brought against Manuel Joe Buttigieg, holder of identity card number 16895M, born in the United States of America on the 10<sup>th</sup> April 1987, son of Joseph and Jane neè Cauchi, and residing at 'Xavier', Triq Patri Odorik Grima, Ghajnsielem, Gozo, whereby Buttigieg was accused:

*"...with having on the 19/04/2019 at about 20.00hrs in St Paul Street, Naxxar and on these Maltese Islands*

- 1. You assaulted Sarah Jane Norris and you inflicted slight injuries as certified by Dr M Barbara MD Reg no 5926 of Mosta Health Centre;*
- 2. Your course of conduct caused Sarah Jane Norris to fear that violence will be used against her or her property or against her or the person or property of any ascendants, descendants, brothers or sisters;*
- 3. In any manner not otherwise provided for in this Code, you wilfully disturbed the public good order and peace;*

4. *Uttered insults and threats not otherwise provided for in this Code, or being provoked, carried your insult beyond the limit warranted by the provocation.*

*The court shall, in pronouncing judgement or in any subsequent order, sentence the person convicted or the persons convicted jointly or severally to the payment wholly or in part, to the registrar, of the costs incurred with the employment in the proceedings of any expert or referee, including such experts as would have been appointed in the examination of the process verbal of the inquiry, within such period and in such amount as shall be determined in the judgement or order.”*

Having seen all documents exhibited;

Having heard the testimony of several witnesses including that of the accused;

Having heard oral final submissions;

Having seen all the acts of the case;

Having seen all the relevant articles of the law;

Having seen that all the evidence brought in the case Police vs Sarah Jane Norris shall also apply to this case;

Having seen the acts of Police vs Sarah Jane Norris;

**Considers:**

**Evidence brought forth**

The version given a *tempo vergine* of how this incident occurred was outlined in the affidavit of **WPS 158 Gillian Henwood**. According to this affidavit, Sarah Jane Norris reported through Control Room, that whilst she was driving her vehicle in Triq San Pawl, Naxxar, she had an argument with another driver. Norris stated that she was driving her vehicle from Salini towards Gharghur Bypass, where another driver was also going round the same roundabout. She stated that the roundabout entering the bypass is one lane and she was the first to enter the street, whilst the other driver tried to enter the same street and fell behind her. Norris said that this driver started blasting his horn and she got flustered, and by mistake stalled her vehicle and could not restart it. Norris said that she went out of her vehicle and asked him what was his problem, and that he was in the wrong lane and that he couldn't force her out of her lane. This driver insulted Norris and told her to get in the car and continue to drive, whilst he continued to bang on the side of his vehicle. Then this driver exited his car and told her to get back in her car, and that he pushed her and picked her up and threw her on the floor. She continued that the driver tried to drive away but since Norris was in front of his vehicle, she was afraid he could run her over, and she grabbed hold of the driver's car number plate to get up, but this came off. Norris explained that a passer-by came to help her and took the car keys of the other driver so he would not run her over. She stated that this driver hit the passer-by, and then apologized whilst he continued pushing her about.

The version given by Manuel Joe Buttigieg to WPS 158 was that he was driving his vehicle towards Gharghur Bypass, where the vehicle in front of him driven by Norris, stopped in the middle of the road and he blasted his horn. He explained that Norris came out of her vehicle and came towards his window, and started shouting at him. He told her to get back in her car and drive, and she started swearing at him and he swore back. He got out of his vehicle and she told him that she was pregnant, so he moved back, and she then started banging on the bonnet of his car and pulled off his number plate and started to leave with it. He then tried to take his number plate back, where a couple of passers-by thought they were fighting. He said that she said that she was going to call the Police, where he told her that there was no need as there was no traffic accident. The passers-by took his keys as they thought he was going to drive away. He said that Norris cut her two fingers against the number plate, and he had blood on his bonnet and her rear vehicle. He insisted that he did not hit her or push her, but only tried to take his number plate from her, and also she fell on her own in front of his vehicle. Whilst she was taking his number plate, she slipped and fell.

WPS 158 Henwood reported that on site there was also Keith Edwin Fulcher, who said that he was driving a coach, and he saw two vehicles stationary behind each other, when he suddenly saw the male driver pull the female driver out of her vehicle and throw her onto the floor, whilst he was beating her up and punching her. He said that he ran out of his vehicle and the male driver got into his vehicle and tried to drive off while the female driver was still on the ground. He added that she was on the ground in front of his vehicle, and it seemed that he was going to run her over, so a passenger from his coach came to help and took the male driver's car keys. He said that the male driver kept saying that he was lying.

**Sarah Jane Norris** gave evidence before this Court where she stated that she recognizes Manuel Joe Buttigieg as the man who tried to squeeze in a lane whilst being on the wrong lane on the 19<sup>th</sup> April 2019. She was driving her mate to work and at around 19.45hrs, she was coming up Ta' Targa in the lane to go towards Gharghur. She drove towards San Gwann and Buttigieg tried to squash in front of the lane going to Mosta. She said that he could not do this as there wasn't enough space, and he started beeping his horn. He had his hand outside the window waving it in a fist. His behaviour was erratic, angry, impatient and it was scary. Her car stalled as it doesn't work too well in lower gears and she heard a *dum*. She thought that her car had been hit and so she exited the car to check her car, but her car had not been hit. She said that he continued beeping and he was banging his hand on the outside of his car whilst swearing in Maltese. When she heard the swear word at her, she told him that he was in the wrong lane. She said that he started ordering her to get in the car and saying that he would lose it if she did not get back in the car. She was looking around for help and started walking towards her car and Buttigieg got out of his car and started shouting at her in her face. She said that he pushed her and he picked her up, lifted her up and threw her in between her car and his car. He got into the car and was starting his engine whilst she was still underneath his car. She tried to get up and she took his number plate to get up. She continued that he grabbed her and punched her and she was staggering, trying to go back to her car, whilst holding onto the number plate, as she needed proof as to his identity in case he drove off. Buttigieg kept screaming insanities but nobody stopped. He kept punching her everywhere and she stated that she was pregnant as that is what they had told her when she worked at social services. He managed to get his number plate, but in so doing, sliced all her fingers. Then she saw a man running, trying to stop Buttigieg, and he took the car keys of Buttigieg. Buttigieg kept shouting and then a coach driver called the Police whilst Buttigieg kept abusing her and stating that he never touched her. Buttigieg calmed down when the Police arrived. She stated that she had bruising on her back and had a headache and a lot of stress afterwards. She

said that he had marks which came up two days later. The marks were not massive as she had a lot of padding.

In **cross examination**, she stated that there was a lot of beeping coming only from Buttigieg's car. She came out of the car to check her car and not to approach Buttigieg. As she was outside, Buttigieg started the abusive words. She spoke to Buttigieg when he was uttering the swear words. She screamed when he was lifting her and throwing her to the ground. The two cars were quite close. She insisted that she was thrown on the floor. She used the number plate as a leverage to get up and she kept it in her hand. She was going to her car with the number plate. She disagreed that the injuries to her hand occurred when she grabbed the number plate away. With the punches she received, she was sore for some days. She said that she told a lot of things to the Police, but they did not write many of them. She said that when she read the documents, she saw that they were incorrect. She did not go back to a doctor when the bruising came out. She said that her fingers were sliced and they scarred a little. She does not remember from which part she grabbed the number plate.

In another sitting Norris exhibited four photos and confirmed who took the said photos.

**Manuel Joe Buttigieg** said that on the 19<sup>th</sup> April 2019, he was going from Naxxar to work. He came behind a car who stopped on the second exit of the roundabout. He recognized Norris. She stopped the car and was closing the roundabout. He had no idea why the car had stopped. He insisted that the window of his car was closed with air condition on, even though it was April. When the car stopped, he honked his horn, but everyone else also honked their horns. All the traffic was diverted from there as the main roads were closed due to Good Friday. Norris exited her car and he put down his window and told her that they did not have an accident. Norris came out yelling and told him that he is a savage, an animal and that is not the way to treat people. He said that he was confused and told her to go back in the car. He said that his first language is English, and thus, he would have sworn in English and not Maltese. He said that he would have definitely said different words and not those that Norris alleged were said by him. Norris continued banging on his door and he felt, at a certain point, unsafe. And he opened the door and told her get away from my car and get back in your car. He got out of his car and Norris started screaming that she was pregnant and went around his car. He said that he went out of his car as he felt trapped and

needed to go out. Norris kept banging on the bonnet of his car. He said that Norris said that she was scared of him, but if this is true, she would have gone to her car. He went back in his car, but Norris stayed in front of his car shouting, to stop him from driving.

He tried to reverse, but she grabbed the number plate of his car and ripped it up. As she does this, she cuts her hands and blood lands on the back of her car and all over his bonnet. His licence plate is low, so if you are on the floor, as Norris alleged, it would be impossible to rip it off. The break on the number plate shows that this was lifted upwards. Buttigieg showed the number plate to the court and explained that the number plate had been pulled up. He said that if she was truly on the floor, she would have lifted her arm up, and his number plate was too low for her to use as leverage. There are two bolts and thus the number plate would not come off. If it is to be ripped off as happened, the number plate had to be ripped off from the bottom. He exhibited the number plate brackets. He said that the blood went straight up and came straight down. He exhibited photos of the bonnet of his car. He showed the handprints on his car. As she ripped the licence plate off, she fell on the floor. He said that he went to get his licence plate. He did not touch her but he told her to give him back his plate. He admitted he swore at her at that point. He said he wanted to leave and get away from this woman. There was a bus which could not pass, but cars kept passing by and no one stopped.

Then an Italian guy ran at him and assumed that he was yelling at Norris, but slipped. He said that this man came to attack him, as he assumed that a fight was going on. Another man told him to relax and not to yell at a woman. But I told him that she had stolen his number plate. But this man had very poor English. He got his number plate back because the Italian guy insisted that she gives it back. He got in his car but another man came and took his car key. He panicked and the police were called. He could not leave as he was afraid that his key would be thrown away.

In **cross examination**, he said that these people intervened as Norris was screaming. This man opened his car and took his car keys. He did not resist any of these people. No one tried to hold him at any point. He insisted that the markings on his car were not caused due to the fact that he was being held in order for him not to attack Norris. He said that the number plate had two clips. One part ripped and one part snapped, and thus it would go out at an angle and thus horizontal. Norris had to grip from the bottom part.

**Keith Edwin John Fulcher** gave evidence where he said that he was driving a coach and he saw the junction coming up the Naxxar gap roundabout which was blocked by two cars. He saw a woman being dragged out of the vehicle and being punched and kicked on the road laying down. A passenger on the bus, who is Italian, and himself, went out to assist, and another came to help. The first person to reach the site took the keys of the driver. The Italian guy said that the keys will be retained until the Police arrive. He said that the male driver was stating that he was late for work, but they all insisted that he was going nowhere until the Police arrive. He did not recognize the male driver in court. He said that the lady was on the road and the man was kicking and punching her. He then said that he was holding her down and kicking and punching her in the head. But he could not answer whether the woman was standing on her feet, as he was hundred meters away when he saw the incident.

He said that the male driver was bulky. He said that this man kept saying that all were lying. He said that this man could be around his thirties. He recognized Norris. He said that the male driver kept saying that he was late for work and screaming that he was going, but he was informed that he would not be going until the Police come. He said that he took photos of the vehicles. In another sitting, Fulcher presented two photos of the vehicles in question.

An Affidavit of Dr Maria Andria Barbara was presented where the injuries suffered by Norris were outlined as being of a slight nature and consisting of *“superficial LCW over left hand middle and ring fingers, both over distal pulp with adjacent skin loss. No suture required.”*

## **Considers**

As regards the first charge, the Court concludes that the Prosecution did not manage to prove this charge without any reasonable doubt. The versions given by Norris and Buttigieg are conflicting in the sense that each is depicting the other party as the aggressor. The evidence given by Fulcher does not corroborate the version given by Norris, as Norris never mentioned that she was in the vehicle and that the aggressor dragged her out of her vehicle and started punching her whilst pushing her to the ground. At the same time, Fulcher could not state whether

Norris was on the floor or whether she was standing whilst a few minutes prior, he testified that he saw her on the floor being kicked at her head. The same Fulcher, at no point in time, recognized Buttigieg as the alleged aggressor.

The Court also took note of the photos exhibited and at the versions given *a tempo vergine* by the parties. *A tempo vergine*, Norris stated that she went out of the car and immediately went towards the vehicle of Buttigieg. It was before this Court that her version changed in that she said that she went out to check her car and then subsequently, addressed Buttigieg after he swore at her. The Court also took note of the versions given and at Doc MJB1, and agrees to the version of facts as stated by Buttigieg, in that Norris indeed ripped the number plate and with this action, she sliced her fingers, and also with the force, fell down to the ground.

The other allegations of injuries which were allegedly caused through punching and kicking, were not mentioned in the affidavit of the doctor who examined Norris immediately after the incident. Therefore, the Court concludes that those injuries which were mentioned in the affidavit of Dr Barbara, were not caused by any action of Buttigieg, but by the actions performed by the said Norris.

As regards the second charge, this also was not proven. From the evidence brought forth, no course of conduct from the accused was proven. Reference is made to the judgement in the names of Police vs Joseph Bajada given by the Courts of Magistrates (Gozo) as A Court of Criminal Judicature on the 2<sup>nd</sup> May, 2013:

*“Illi r-reat tal-fastidju u tal-harassement kif ikkontemplati fl-artikoli 251A u 251B ġew introdotti għall-ewwel darba fil-liġi penali Maltija bl-Att XX tas-sena 2005. Illi mill-ġurisprudenza tal-qrati tagħna jidher illi l-imġieba li toħloq il-fastidju trid tkun “a course of conduct” u mhux incident wieħed u iżolat. Illi f’sentenza mogħtija mill-Qorti tal-Appelli Kriminali fil-kawża fl-ismijiet, Il-Pulizija vs James Demanuele, deċiża fis-26 ta’ Novembru 2009, il-Qorti stqarret:*

*“L-artikolu 251A johloq ir-reat ta’ persuna li ġgib ruħha b’mod li tagħti fastidju lil persuna oħra u b’mod li tkun taf jew imissha tkun taf li dan ikun ta’ fastidju għal dik il-persuna. Il-liġi fis-sub-inciż (2) tkompli tiddisponi li persuna li tkun qed iġġib ruħha b’mod dubbjuż imissha tkun taf li dik l-imġieba tammonta għal fastidju ta’ persuna oħra jekk fil-qies ta’ persuna raġjonevoli li jkollha l-istess informazzjoni, din kienet kieku taħseb li dik l-imġieba kienet tammonta għal*



*fastidju tal-persuna l-oħra. Fis-subinciz (3)(c) il-liġi tkompli tgħid li persuna akkużata b'reat taħt dan l-artikolu tista' ggħib prova li fiċ-ċirkostanzi partikolari dik l-imġieba kienet waħda raġjonevoli. Fl-artikolu 251C hu provvdut li riferenzi għall-għoti ta' fastidju lil persuni jinkludi meta wieħed jagħti qata': ("alarming") jew idejjaq: ("causing ..distress") lill-persuna.*

*Illi t-terminu legali fastidju (bl-Ingliż "harassment") gie definit mill-Black's Law Dictionary - (7th. edit.) bħala :-*

*"Words, conduct or action (usu. Repeated or persistent) that being directed at a specific person, annoys, alarms or causes substantial emotional distress in that person and serves no legitimate purpose", dan l-element ta' ripetizzjoni jew persistenza ma jridx jiġi konsidrat "in isolation" b'riferenza biss għall-każ mertu tal-kawża imma wkoll irid jitqies fl-isfond tar-retroxena u tal-aġir preċedenti tal-gudikabbli. Dan għaliex kif gie ritenut minn din il-Qorti fl-Appell Kriminali : "Il-Pulizija vs. Alan Caruana Carabez" [21.6.07] :-*

*"... f' kazijiet bħal dawn ir-retroxena għal kull inċident hija importanti biex il-Qorti tkun tista' tispigola l-inċident iżolat u aċċidentali minn aġir abitwali ta' fastidju fuq perjodu ta' żmien."*

*Però, xorta waħda jkun irid jirriżulta mill-provi għall-fini tal-parametri tal-akkuża nnifisha."*

The court refers to the judgement of Il-Pulizija vs Francis Xavier Micallef, decided by the Courts of Magistrates (Gozo) as a Court of Criminal Judicature, on 17<sup>th</sup> February 2011:

*"Illi l-imputat jinsab akkużat ukoll bir-reat tal-hekk imsejjaħ "harasement" bil-ujolenza kif previst fl-artikolu 251B tal-Kapitolu 9. Illi f'sentenza mogħtija mill-Qorti tal-Appell Kriminali fl-ismijiet, il-Pulizija vs Raymond Parnis (per Prim' Imħallef Vincent DeGaetano 24/04/2009), il-Qorti tat definizzjoni eżawrjenti ta' dak li jikkostitwixxi il-harasement taħt dina d-disposizzjoni tal-liġi. Il-Qorti tal-Appell fis-sentenza tagħha fil-fatt tissottolinja l-fatt illi l-kelma "imġieba" fit-test tal-liġi timplika "a course of conduct" u mhux xi inċident wieħed iżolat. Il-Qorti tistqarr:*

... illi dawn l-affarijiet kollha li seħħew fil-kuntest ta' incident wieħed – ma jistgħu gatt jammontaw għar-reat kontemplat fl-Artikolu 251B imsemmi. Dan ir-reat għe evidentement ispirat mill-Artikolu 4(1) tal-Protection from Harassment Act, 1997 tal-Ingilterra, liema artikolu jipprovi testwalment hekk: “A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him is guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions.” L-Artikolu 251B tagħna – u hawn il-Qorti ser tuża t-test Inqliż proprju biex wieħed ikun jista' jara x-xebħ u fejn saru t-tibdiliet – jipprovi, fis-subartikolu (1) tiegħu, hekk: “A person whose course of conduct causes another to fear that violence will be used against him or his property or against the person or property of any of his ascendants, descendants, brothers or sisters or any person mentioned in sub-article (1) of article 222 shall be guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions...”. Il-kliem “on each of those occasions” huma indikattivi li l-att materjali ma jistax iseħħ f'okkażjoni waħda iżda jrid ikun hemm għall-anqas żewġ okkażjonijiet – proprju kif jingħad fil-matrici Inqliża, “on at least two occasions”. Għal xi raġuni – fil-fehma ta' din il-Qorti kompletament illoġika – il-kliem “on at least two occasions” thallem barra”. Fi kliem l-edituri ta' Blackstone's Criminal Practice, 2008:

“How separate the two occasions must be remains to be seen. The nature of stalking, the activity which primarily created the need for the new offences, might mean that the occasions are likely to be on separate days, although it may be possible to differentiate activities on one day where they can be viewed as not being continuous. The further apart the incidents, the less likely it is that they will be regarded as a course of conduct...It was recognised, however that circumstances can be conceived 'where incidents, as far apart as a year, could constitute a course of conduct'. The type of incidents would be those intended to occur on an annual event such as a religious festival or a birthday...”

Din il-Qorti mhix ser ttipprova tagħti definizzjoni eżawrijenti ta' x'jammonta għal “course of conduct” għall-fini tal-imsemmi Artikolu 251B(1) – u anqas ma hi ser ttipprova telenka każijiet, anke jekk biss bħala forma ta' eżempju, li jammontaw jew ma jammontawx għal tali “imġieba”, haġa li trid tiġi deċiża minn każ għal każ skond iċ-ċirkostanzi u bl-applikazzjoni ta' doża qawwija ta' saggezza min-naħa tal-ġudikant. Dak li qed jiġi deċiż f'din il-kawża hu biss li incident wieħed (u, per di piu, ta' minuti) ma jammontax għal “course of conduct” għall-finijiet tal-Artikolu 251B(1). Inoltr huwa evidenti li l-vjolenza kontemplata fl-imsemmi artikolu hija dik li talvolta tista' tiġi perpetrata fil-futur u mhux dik li effettivament tkun għet

*kommessa. Il-vjolenza effettivamente kommissa tigi punita taħt disposizzjonijiet oħra tal-ligi.”*

The Court states that as charged, the “course of conduct” does not result. (View Court of Criminal Appeal : “Il-Pulizija vs. Raymond Parnis” per V. De Gaetano C. J. [24.4.2009]). The Prosecution is referring to one isolated case and thus this second charge, does not subsist.

As regards the third and fourth charges, the Court is satisfied that these were proven.

With regards to Article 338(dd) of Chapter 9 of the Laws of Malta, in the judgement delivered by the Court of Appeal in the names of “Il-Pulizija vs. Alfred Pisani” [5.5.1995] it was stated that:

*“...ir-reat kontemplat fl-artikolu 338 (dd) tal-Kodiċi Kriminali javverra ruħu meta jkun hemm dak li fil-“common law” Ingliza kien jissejjaħ “a breach of the peace”. Bħala regola jkun hemm din il-kontravvenzjoni meta jkun hemm għemil volontarju li minnu nnifsu jew minħabba ċ-ċirkostanzi li fihom dak l-għemil iseħħ, inissel imqar minimu ta’ inkwiet jew tħassib f’moħħ persuna (li ma tkunx l-akkużat jew l-imputat) dwar l-inkolumita’ fizika ta’ persuna jew dwar l-inkolumita’ ta’ proprjetà , kemm b’riżultat dirett ta’ dak l-għemil jew minħabba l-possibilità ta’ reazzjoni għal dak l-għemil.”*

In a judgement given on 10th June 1890 in the names of “Ispettore Raffaele Calleja v. Paolo Bugeja et” it was stated that:-

*“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’ autorità 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).*

Reference is to be made to McCall Smith and Sheldon, who in their book entitled “Scots Criminal Law” (Edin. Butterworths, 1992), stated:-

*“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).*

Gerald H. Gordon also states in “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).*

*“...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).”*

In the case before this court, both parties stated that a lot of shouting and screaming was caused in the street where the vehicles had stopped and some passers-by also involved themselves in this incident.

As regards, the insults and threats, it results that both parties did exchange insults towards each other which were carried beyond the limit warranted by provocation.

## **Decide**

**For the above mentioned reasons, the Court is finding the accused not guilty of the first and second charges brought against him and acquits him thereto, whereas after having seen articles 339(1) (e) and 338(dd) of Chapter 9 of the Laws of Malta, finds the accused Manuel Joe Buttigieg guilty of the third and fourth charges, and condemns him to a fine (ammenda) of fifty Euro (€50).**

**Magistrate Simone Grech**

**Janet Calleja**

**Deputy Registrar**