



**Criminal Court of Appeal**

**Hon. Judge Dr. Consuelo Scerri Herrera, LL.D., Dip Matr., (Can)**

Appeal Nr: 414 / 2021

**The Police**  
**(Inspector Jonathan Cassar)**  
**vs**  
**Ronan Clyde Hamill and**  
**Omisses**

**Today the 8<sup>th</sup> February 2022**

The Court,

Having seen the charges brought against:

1. Ronan Clyde Hamill, son of Thomas & Mary nee' Leenfield, born in France on the 23<sup>rd</sup> May, 1997, without a fixed address and holder of Irish Passport bearing number PV0708801;

And;

2. Omisses

before the Court of Magistrates (Malta) as a Court of Criminal Judicature of having:

On the 2<sup>nd</sup> May, 2021, between half past six in the morning (06:30am) and seven o'clock in the morning (7am) in St. Julian's, Malta: -

1. Without the intent to kill or to put the life of Ivan Gauci I.D. No: - 97349M in manifest jeopardy, caused harm to his body or health, which bodily harm is considered grievous; Articles 214, 215, 216 (1) (b) , 218 (1) (a) (b) and 222A (1) of Chapter 9 of the Laws of Malta.
2. Wilfully committed any spoil, damage or injury to or upon any movable or immovable property, that is vehicle bearing registration number GVN700 of make Peugeot to the detriment of the Civil Protection Department of Malta which amount of the damage does not exceed two thousand and five hundred euro but exceeds two hundred [sic] and fifty euro (€250) and this in violation of Article 325 (1) (1) of Chapter 9 of the Laws of Malta;
3. Uttered insults or threats to Ivan Gauci I.D.No:- 97349M not otherwise provided for in this code, or being provoked, carried their insults beyond the limit warranted by the provocation;  
*Article 339 1 (e) of Chapter 9 of the Laws of Malta*
4. Wilfully disturbed the public good order or the public peace;  
*Article 338 (dd) of Chapter 9 of the Laws of Malta.*
5. In a public place or a place open to the public were found drunk and incapable of taking care of themselves.  
*Article 338 (ff) of Chapter 9 of the Laws of Malta*

This Court was requested to issue a Protection Order against the accused in order to provide the security to Ivan Gauci I.D. No:- 97349M or for keeping public peace or for protecting the injured person or other individuals from harassment or other

conduct which will cause a fear of violence in accordance to Article 412C of Chapter 9 of the Laws of Malta

Having seen the note of referral for judgement of the Attorney General of the 12<sup>th</sup> August, 2021, wherein he sent the records of this case for the persons charged to be tried by this Court, having found from the preliminary investigation, that there might result an offence (or offences) under the provisions of:

- (a) Articles 214, 215, 216, 222A (1) of the Criminal Code, Chapter 9 of the Laws of Malta;
- (b) Articles 325 (1) and the third proviso of Article 325 (1) of the Criminal Code, Chapter 9 of the Laws;
- (c) Article 339 (1) (e) of the Criminal Code, Chapter 9 of the Laws of Malta;
- (d) Article 338 (dd) of the Criminal Code, Chapter 9 of the Laws of Malta;
- (e) Article 338 (ff) of the Criminal Code, Chapter 9 of the Laws of Malta;
- (f) Articles 382 A, 383, 384, 385, 386 and 412 C and 412 D of the Criminal Code, Chapter 9 of the Laws of Malta; and
- (g) Articles 15 A, 17, 31, 532 A, 532 B and 533 of the Criminal Code, Chapter 9 of the Laws of Malta

Having seen the judgment meted by the Court of Magistrates (Malta) as a Court of Criminal Judicature proffered on the 1st November, 2021, whereby the Court after seeing the note of referral for judgement of the Attorney General of the 12<sup>th</sup> August, 2021:

1. Found both defendants not guilty of the contraventions contemplated in Articles 339 (1) (e) and 338 (ff) of the Criminal Code, Chapter 9 of the Laws of Malta, and consequently discharges both the defendants from having committed these offences;

2. After seeing Article 214, 215, 216 (1) (d) , 222 A (1) , 325 (1) (c) , the third proviso to Article 325 (1) and, 338 (dd) of the Criminal Code, Chapter 9 of the Laws of Malta, finds the defendant Ronan Clyde Hamill guilty of the criminal offences contemplated in these provisions of law, and, after taking into account all the circumstances of the case condemns him to four (4) years imprisonment and to a fine of one hundred Euro (€100) , which must be paid forthwith. If the defendant fails to pay this amount, or any balance thereof, the fine will be converted into imprisonment according to the rate established by law.
  
3. After seeing Article 214, 215, 216 (1) (d) , 222 A (1) , 42 (e) , 325 (1) (c) , the third proviso to Article 325 (1) and 338 (dd) of the Criminal Code, Chapter 9 of the Laws of Malta, found the defendant Paula Fernandez Romero guilty of the criminal offences contemplated in these provisions of law and, after taking into account all the circumstances of the case condemns her to four (4) years imprisonment and to a fine of one hundred Euro (€100) , which must be paid forthwith. If the defendant fails to pay this amount, or any balance thereof, the fine will be converted into imprisonment according to the rate established by law.
  
4. In terms of Article 15 A of Chapter 9 of the Laws of Malta, and in terms of Article 24 of Chapter 466 of the Laws of Malta, made applicable to these proceedings by Article 532 A of Chapter 9 of the Laws of Malta, the Court condemns the persons convicted to pay in solidum between them the amount of six thousand Euro (€6000) to Ivan Gauci, as compensation for the damages suffered as a result of the criminal offences committed by the convicted persons. This order shall constitute an executive title for all intents and purposes of the Code of Organisation and Civil Procedure.

5. Moreover, the Court orders the persons convicted to pay in solidum between them to the Registrar all the costs incurred in connection with the employment in the proceedings of all the experts, in terms of Article 533 of Chapter 9 of the Laws of Malta. These costs are to be paid within a period of one (1) week from when the Registrar of the Criminal Courts communicates to them the amount due by them. If the persons convicted fail to pay this amount or part of it within the time herein prescribed, the amount, or any balance of it, will become immediately due and payable, and in default of payment thereof, the outstanding amount still due shall be converted into imprisonment at the rate established by law.

Having seen the appeal application presented by Ronan Clyde Hamill in the registry of this Court on the 17th November, 2021, whereby he humbly requests that this Honourable Court to vary the judgement of the first court by confirming the acquittal as to the third and fifth charges and reverses the judgment in so far as Applicant was found guilty to the first, second and forth charges by declaring him not guilty and acquits him from criminal guilt, and should this honourable court confirm the judgment of the first court, to vary the degree of punishment by inflicting a more just punishment in these circumstances.

Having seen the acts of the proceedings;

Having seen the updated conduct sheet of the appellant, presented by the prosecution as requested by this Court.

Having seen the grounds for this appeal are the following: Wrong analogy and the powers of the attorney general.

1. That with all due respect, in the decision of the inferior Court, namely paragraphs marked 10 to 15 of the Judgment, do not assess the point brought forward by the defence of Appellant. There is no dispute as to the

interpretation of the Court that the summons is a '*semplice avviso di comparire*'. This is the spirit of article 360 (2) of the Criminal Code.

2. That however, this in reality, is not the point in issue, and this due to the below reasons:

I. That when appellant was arraigned in Court under arrest, the prosecution indicated clearly under which sections of the law he was being accused and this as can be seen from fol. 1 and 2 of acts of the proceedings. In fol. 4, it is clear that the prosecuting officer read and confirmed the charges on oath, therefore all that was contained when he had previously read out the same in Court. This is a a major change from the normal writ of summons which is a *semplice avviso di comparire*. In fact, in *Police vs Arthur s Mortimer* decided on the 6<sup>th</sup> of December 1948 (Vol. XXIII.iv.758) the Court made an elaborate exposition of the origins of sub-article 2 of article 360 introduced in 1911. This judgment is an important landmark also to respectfully contradict what the first Court seems to be arguing. The first Court in its judgment said in more than one occasion that the accusation originally made against appellant in the note of the attorney general are identical to the Attorney general's powers when he writes the bill of indictment before the criminal court.

II. The Mortimer Case states '*brevement, iċ-ċitazzjoni ma hi xejn hlief avviż jew ordni sabiex il-ġudikabbli, jidher quddiem Qorti inferjuri fil-ħin u data li jiġu indikati lilu, minflok ma jingieb quddiem dik il-Qorti taħt arrest. Din iċ-ċitazzjoni ma hix il-baži tal-akkuża, **bħal ma hu l-każ tal-att tal-akkuża quddiem il-Qorti kriminali.** (sottolinear tal-appellant).*

- III. As decided in *Police vs Noel Zarb Adami* on the 19<sup>th</sup> of June 1989 ...”l-imputat ikun jaf biex qed jigi akkużat sabiex ikun jista’ jiddefendi ruhu sew, kif ukoll l-interruzzjoni tal-preskrizzjoni.” The above clearly shows that there is no doubt that the prosecution was accusing appellant under section 216 (1) (b) and section 218 (1) (a) (b) as far as the nature of the grievous offence. As, stated this was confirmed on oath by the prosecuting officer after it was presented, read and confirmed.
- IV. The note by the Attorney General of the 12<sup>th</sup> of August 2021, simply indicates, section 216 without confirming the article of the law under which Appellant was originally charged. The first Court seemed to argue that *il piu’ comprende il meno* but with respect, this is not in these circumstances a true interpretation that leads to justice with Appellant. It is an established principle, that the attorney General cannot charge in his note of referral the accused with a different section of the law that changes the specific nature of the offense as originally charged. Under section 216 (1) (b) defendant had to be found guilty beyond reasonable doubt should he have caused any deformity or disfigurement in the face, neck of either of the hands of the person injured. There is definitely, no evidence to show this, not even on the basis of possibility. The Court confirms that the attorney General had the right to exercise in his note of referral the blank provision of the law embracing all specific types of grievous injury. As already explained, this is not the situation that was pronounced in the *Mortimer* case. With respect, the judgment of Michael Carter quoted in para 11 of the judgment does not help in the legal argumentation made by the defence. This is because this is not a case of whether the Magistrate’s court in such a situation can embrace within the note of referral an attempt of the crime or a crime that is *‘compreso e involuto’*. It is the first

Court itself that admits that 'there is no provision of the law which specifies what the charge sheet should contain when the person charged is brought to court under arrest'. In default of an explanation, the Court presumes, that the prosecution relied on article 360 (2) but with respect, we have already seen that this section is not applicable. With due respect to the court, when dealing with the liberty of an individual, the Court cannot presume, because it is an established principle that certainty of the law is paramount for any court when it is dealing with the adjudication of a criminal offence. Besides, this is a procedural matter. It is also a principle that the Court always abides by a very strict interpretation and not a loose one that relies on presumption.

V. Appellant refers to his note of written submissions and in this regard, humbly asks that the argumentation therein made forms part of this appeal.

A. Contestation on extend of the Wilfull damage:

VI. There is no contestation that appellant did kick the car in question. Appellant however, would like to contest the question of damage.

VII. As it was pointed, the Car in question was examined days after the incident. There is also no doubt that Natalino Agius presumably acting for the parte civile, Civil Protection, gave an incorrect not to say false statement as to the damages caused. This a blatant attempt to inflate the expenses and collate additional damage that was caused to the car by other persons. The original accusation refers to article 325 (1) (1) of Chapter 9 of the laws of Malta, and specifically states that the amount of damage is more than 250 Euro. Article 325 (1) (1) does not exist in



the Criminal Code. The Attorney General's note of referral refers to the correct article namely article 325 (1) but adds the third proviso of this said article. The Court, with respect, agreed that Natalino Agius was misleading the Court, and presumably trying to take an unfair advantage. However, it arbitrarily decided, without any valuation that the damage amounts to 200 Euro. It indicates, that the damage was on the mudguard, when the CCTV clearly shows, that the kicks were directed at the door of the car. Also, there is no mention that the court is not indicating the section of the law that is whether the damage is as originally indicated or below € 250 two hundred and fifty euro. This makes a difference in punishment.

- VIII. For the sake of argument, if Natalino Agius was an expert appointed by the court, Appellant should not be made to pay for his fees, when the evidence he gave did not help the court but on the contrary was untruthful.

Appellant reserves the right to make further argumentation on this point which will be made orally to this honourable court.

#### B. Forth Charge

- I. Appellant has no reason to appeal from this charge which carries the punishment for contraventions.

#### C. Third & Fifth Charge

- I. Appellant asks this honourable court to confirm the judgment delivered by the first Court wherein he was acquitted.

D. Wrongful interpretation of the law in regard to Wilful Grievous  
bodily harm

- I. As stated above, Appellant will be analysing and interpreting the facts in an objective manner. Appellant will call a spade, a spade. Appellant will not state that what is black is white but will stick to an appreciation that will be closer to the truth than the version of the alleged victim. Appellant is aware that this Honourable court, as a rule, will not disturb the appreciation of facts by the first court. However, with all due respect to the first Court, the Court seemed to have been influenced by certain natural feelings that if one is not careful, may create prejudice, and eventually be a vehicle for injustice.
- II. Appellant in the first place acknowledges that it was wrong that he was at such an early hour of the day seemingly 'happy'. Appellant furthermore, acknowledges, that it was not correct and indeed very stupid of him to kick a parked car. It might have been an act of euphoria or complete disregard to third party property. One must admit that at the end of the day it was not as serious as one is accustomed to when acts of wilful damage are concerned, that is, when the perpetrator's intention is the total destruction of the movable, and this by repeated violent acts.
- III. It is to be stated that at this stage, apart from kicking the parked car, and the consequential breach of the law, appellant was not causing harm to anybody, except to himself in this strang joie de vivre.
- IV. It is undisputed that after the kicks on the car, Appellant together with Romero started walking up main street and covered quite a distance. This can be ascertained from an examination of the CCTV.

- V. At this point in time comes on the scene, the alleged victim, Ivan Gauci who was a passer-by. There were other passers-by, as could be seen from the CCTV but these kept on going along the way. Mr. Ivan Gauci thought otherwise and presumably wanted to capture evidence of the appellant and Romero, in all probability to report them. One may argue that there is nothing wrong in doing so. However, what follows may be tantamount to a vacuum in the evidence that the first court completely disregarded.
- VI. Mr. Ivan Gauci could have easily captured photos or indeed a video recording through his mobile phone from a distance, taking also into consideration that mobile phone recording are equipped with digital zoom. In spite of this, Gauci first hurried his pace to catch up with appellant and Romero, and afterwards he goes straight in front of them and around them presumably recording their faces. This was done in such a way that the distance, as can be seen from CCTV was so close that the mobile phone nearly touched their faces. Whether one has been up to few minutes ago in the wrong or not i.e. the wilful damage, one does not expect such a brusque action to happen right in front of his face and around his body. Whether one has been right or wrong in that sudden moment, taken quite by surprise, one would not necessarily colligate such an action to what had happened minutes before. So in reality, such an action tantamount to provocation and definitely physical harassment. With all due respect to the judgment of the first court, the court was so fixated by the wrongdoing of the wilful damage, so much so that it justified the actions of Ivan Gauci, disregarded the happy behaviour of Appellant, and therefore felt that what Gauci did was right and for Appellant to react was wrong. In other words, Gauci's provocation was justified because of the previous wrong-doing of Appellant that happened minutes before, where Gauci had nothing to do with it, and thus failing short to identify the commencement of execution and a completed crime,

and considered all the acts of the case, as one single criminal act from the accused.

VII. Against the backcloth of the above facts and circumstances, objectively, one would not interpret the taking away of Gauci's mobile phone from his hand, as an act of violence but rather as a reaction to stop Gauci's harassment and exaggerated intervention. The first Court relied a lot on the CCTV but here unfortunately what has subsequently happened is not caught on tape due to being covered by part of the building in locus. What we do know however, that Ivan Gauci was quite a strong man, because though Appellant is young in the Action were appellant tried to take the mobile phone, Appellant ended on the floor and Gauci managed to get his mobile back. Quite a feat when also, Appellant was accompanied by Romero. In this scuffle, we see an action where Romero seems to be dragged around whilst Ivan Gauci remains seemingly stable. There is no doubt that Ivan Gauci must have in one way or another assaulted Romero, because we immediately see a reaction from Romero in getting to Gauci immediately that this happens. Gauci must have been quite swift to avoid this reaction and hurry down main street, while Appellant and Romero were picking their things which were in the middle of the street. Hence, we see Appellant and Romero hurrying their pace to reach Gauci. This was not to take away his phone and remove any evidence but because Gauci, in the first scuffle, was the one who got on to the couple rather than vice versa. The first act thus, factually, is where Gauci assaulted Appellant. There the act was complete. Romero in rebuttle, went to confront Gauci and Appellant, to defend Romero, was yet again slammed to the ground. Another act of violence by Gauci, which is also complete. When Appellant and Romero went after Gauci, the CCTV does not capture the third scuffle, only the quick reaction of Gauci whom turned violently to Appellant and seen onto each other out of CCTV visual. These are the facts, with no

interpretations. Blatant facts seen with the naked eye from the CCTV. Any interpretation to the contrary is unjust and untruthful. The hypothesis of the first Court to state that the damage occurred at that part where the CCTV does not cover on record cannot be proven beyond reasonable doubt just as equally there is the first scuffle which is also partly not visible. The only visual there is in both the first second and third scuffle, visually evident, Gauci action to Appellant throwing him to the ground. The only full visual there is, is on the second scuffle which manifestly blatant shows Gauci's actions to landing Appellant on his backside and receiving blows to his head, violently.

VIII. The First Court, therefore, was always on the side of Gauci, silently praising him for taking the steps he took, and ignoring that even the Appellant and Romero had rights. The Court, in Appellant's humble opinion might have been influenced by Gauci's age as if people of that age may act in any manner they wish. This whole incident could have been avoided had Gauci acted differently; had Gauci not provoked a situation by the exaggerated misuse of his mobile phone; could have avoided all this, as Appellant and Romero never of their own will, went to provoke, harass or attack Gauci. It is true that Gauci suffered certain injuries. However, it is also true that the CCTV cameras in this third phase of this incident is not clear as what happened. The action seemed to have happened near a building. The first Court for no apparent reason, derived from the evidence, concluded that the injuries suffered by Gauci, were caused in this third instance and as a result of Appellant's blows. If one were to proceed to the place where Appellant was pushed to the floor by Gauci, when the former took his phone from his hand, one will notice that the edge of the pavement is quite high. Appellant states this because the first Court seems to have disregarded the evidence of its own Medical Expert. Dr Mario Scerri confirmed that the fractured ribs were not the

result of blows but probably Gauci falling on some hard edge. All this means that with great respect, the first Court was gratuitous in presuming the location the injuries were suffered, and also whether these were caused as a result of the alleged blows. Here again, the Court seems to give its own explanation to facts when there is a vacuum in evidence. Here it is not a question of *prestet fides supplementum*, namely, to fill in gaps with what the court believes, but to interpret fact concretely.

- IX. In view of the above, for reasons already explained, and for other reasons that will be made during the oral submissions, it is being humbly submitted that it was Gauci who provoked this incident, and what ensued is a reaction to that provocation. One should not be prejudiced by the bad actions of wilful damage, to make appellant such a bad man, as to be made responsible where he isn't. Furthermore, the ensuing grievous injuries, should be also analysed after 1 supra, namely, whether he is answerable to 216 (1) (b) or to section 216 in toto.

#### E. Excessive Punishment

- I. Without prejudice to the above, it is not fair for the first Court to state that because appellant is foreigner and was in Malta on holiday, the Court is not aware of his Criminal record and declares that it cannot take his good conduct into consideration. On the contrary, it is presuming that there may be some record! With respect, another presumption with the ones above referred to.
- II. It is true that there is jurisprudence that in such cases a prison term is indicated. However, taking into consideration, two acquittals, one a guilty contravention, and one guilty of wilful damage for less than €250 two hundred and fifty euro, four years for the remaining accusation is

excessive. It true that it falls within the parameters of the law. But one should be made responsible, against the backcloth of facts which are attributable to one's own actions and not instigated as above shown by the alleged Victim.

- III. Appellant was also condemned to six thousand Euro (€6000) in damages under an executive title. With respect, the court, failed to explained how it has reached such a figure. In Civil matters, our courts have always been guided by the decision of butler vs Herd which stipulates the *lucrum cesans* as a percentage of disability times the annual income times the life expectancy minus twenty percent for lump sum payment. The Court had not evidence as to the annual income of Ivan Gauci. As to life expectancy, his age is 72 years. There is no medical evidence of any percentage of disability. Therefore, without prejudice to the reasons above referred to in the sections paragraphs supra, no amount of damage should be due and if at all, the sum is to be revised.
- IV. That without prejudice to the above, the appellant is making reference to regulation 12 of Subsidiary Legislation 9.12, whereby any amount so fixed in virtue of article 532A, shall be paid by the Claims Officer without the need of any assessment;

**Now therefore the Court considers: -**

This Court notices that the appellant is arguing about the fact that while Article 216(1)(b) of the Criminal is specified in the summons, in the note of referral, the Attorney General simply indicates Article 216 of the Criminal Code. The appellant disagrees with the First Court when it argued that *il piu comprende il meno* and that it presumed that the prosecution relied on Article 360(2) of the Criminal Code.

Article 360 of the Criminal Code stipulates the following:

*'360. (1) Where there are not sufficient grounds according to law for the arrest of any person charged with an offence, the Executive Police shall, by an order in writing, summon such person to appear before the Court of Magistrates.*

*(2) The summons shall contain a clear designation of the person summoned and a brief statement of the facts of the charge together with such particulars as to time and place as it may be necessary or practicable to give. It shall also contain an intimation that, in default of appearance, the person summoned shall be arrested by warrant of the court and arraigned on such day as may be stated in the warrant.'*

Here the Court makes reference to the judgment in the names **Il-Pulizija vs Saviour Busuttil**<sup>1</sup> which made reference to the judgment in the names **Il-Pulizija (Spettur Jurgen Vella) vs Duncan Cefai**<sup>2</sup> where it was stated that:

*'Il-Qorti trattat dan l-aggravju u ghamlet referenza ghas-sentenza fl-ismijiet Il-Pulizija vs Brian Camilleri (Deciza mill-Qorti tal Appelli Kriminali nhar l-4 ta April 2016) fejn stqarret li l-artikolu 360(2) tal-Kodici Kriminali jirregola c-citazzjoni, ossia l-ordni bil-miktub li biha titharrek persuna imputata ta' reat. "Ic-citazzjoni ghandha ssemmi car il-persuna mharrka, u ghandu jkun fiha, fil-qosor, il-fatti tal-akkuza, bil-partikularitajiet ta' zmien u ta' lok li jkunu jinhtiegu jew li jkunu jistghu jinghataw.". Kif kostantement deciz mill-Qrati taghna, dak li hu rikjest mill-prosekuzzjoni fit-tnedija tac-citazzjoni hu li tindika fiha l-fatti li dwarhom l-imputat hu mitlub jidher quddiem il-Qorti fid-data u hin indikati. Dawn il-fatti naturalment iridu juru b'mod car ir-reat li tieghu il-persuna tkun imputata,*

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<sup>1</sup> Decided by the Court of Magistrates on the 17<sup>th</sup> January, 2022.

<sup>2</sup> Decided by the Court of Criminal Appeal on the 14<sup>th</sup> April, 2016.



igifieri b' mod li l-imputat ikun jaf ta' liema reat jew reati qed ikun akkuzat u ghal liema reat jew reati irid iwiegeb (Il-Pulizija vs Philip Schembri App Krim 18.11.1994). Jibqa' biex ikun konsiderat imbaghad jekk daww il-fatti kif migjuba fic-citazzjoni jammontawx ghal xi reat jew reati ohra (Il-Pulizija vs Joseph Farrugia (App Krim 13.1.1995). Jizdied ma' dan ukoll li ic-citazzjoni li jkun fiha l-ordni lill-imputat biex jidher quddiem il-Qorti tal-Magistrati qatt ma tista' tkun nulla, kemm jekk tkun tikkontjeni kif ukoll jekk ma tikkontjenix dettalji korretti jew skoretti tal-fatti (Il-Pulizija vs Emanuel Buttigieg App Krim 4.11.1994). Fis-sentenza l-ahhar citata, din il-Qorti wara li ccitat id-dibatti fil-Kunsill Tal-Gvern dwar l-origini tas-subartikolu (2) tal-artikolu 360 tal-Kodici Kriminali, rriteniet illi "**ic-citazzjoni ghadha mhix hlief avviz lill-imputat biex jidher quddiem il-Qorti tal-Magistrati. Id-dettalji msemmijin dwar il-fatti ghandhom jigu ndikati fiha mhux ghall-fini tal-validita' taghhom jew tal-proceduri, kompriza ssentenza, li jsegwuha, izda ghall-fini ta' pratticita' u ta' evitar ta' telf ta' zmien**". Il-mankanza tal-indikazzjoni tan-numru ta' registrazzjoni tad-dghajsa fil-kaz hawn devolut ma jirraviza ebda nullita' tac-citazzjoni u ghalhekk dan l-aggravju qed ikun michud;

**Mill-process odjern jirrizulta wkoll li nstemghu l-provi viva voce u gew registrati u ghalhekk l-appellant seta' jifhem x'kien l-imputazzjonijiet dedotti kontrih.** Di piu dan ma kienx xi kaz ta kawza sommarja li kienet qed tinstema f'seduta wahda izda hija kawza li damet pendenti quddiem din il-Qorti ghal iktar minn sentejn u ghalhekk zgur li wara dan iz-zmien kollu u wara li semgha ix xhieda imresqa mill-proesekuzzjoni kien jaf ghal xiex kien qed jigi akkuzat tant li anke difiza hejja l-avukat tieghu'

It is true that the appellant was arraigned before the Court of Magistrates under arrest and so strictly speaking Article 360 of the Criminal Code is not applicable since it specifically provides that it applies to individuals not arraigned under arrest. However, with particular reference to the wording of the accusations at the very beginning of summons, the police accused the appellant that “without the intent to kill or to put the life of Ivan Gauci I.D. No. 97347M in manifest jeopardy, caused harm to his body or health, which bodily harm is considered grievous.” The First Court stated that the wording of this accusation was a direct reference to Article 216 of the Criminal Code in its entirety, because the charge sheet did not refer to any one or more of the specific types of grievous bodily harm stipulated under Article 216. It must be pointed out here, that throughout the years this Court have seen several summons and drafting styles. The articles of the law are at times indicated at the very bottom of the summons and at other times they are not even put down in writing. However, in the end this Court will rely on the note of referral of the Attorney General which happens to correspond with the wording of the first accusation.

The appellant is also contesting the extent of the wilful damage as estimated by the First Court. The latter chose not to rely on the report drawn up by Natalino Agius on behalf of the Civil Protection Department and concluded that the damage on the car amounted to two hundred euros (€200.00). Firstly, it should be stated that the Court is free not to rely on the conclusions of experts and in this light this Court refers to the judgment in the names **Il-Pulizija vs John Pierre Farrugia**<sup>3</sup> where it was stated that:

*‘Illi l-ewwel Qorti l-istess ma kellhiex tisfilza l-konkluzjonijiet milhuqa mill-espert. Fil-fatt, fil-korp tas-sentenza jidher car li l-ewwel Qorti ma qablitx mal-konkluzjonijiet milhuqa mill-espert indipendentement mill-fatt li parti mill-konkluzjonijiet gew sfilzati. L-ewwel Qorti hi kompletament hielsa li taqbel ma jew ma taqbilx mal-konkluzjonijiet tal-esperti li hi tahtar. Ghal dan*

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<sup>3</sup> Decided by the Court of Appeal on the 25<sup>th</sup> October, 2017.

*l-ewwel Qorti tat ragunijiet validi ghaliex waslet ghal konluzjonijiet taghha.*

Mr. Natalino Agius was not appointed by the Court and was an *ex parte* expert, therefore the above applies more notably. Furthermore, even in cases relating to bodily harm, it is not the first time that a Court concluded that an injury is of a slight nature when a doctor certified it as a grievous injury.<sup>4</sup> The Court is free to disagree with experts' conclusions when it has reasonable and valid reasons to do so. The Court opines that an impartial expert should have been appointed by the Court to give an estimate of the damages caused by the appellant. However, this Court thinks that the First Court was just in limiting the expense to repair the dent to two hundred euros (€200.00).

Furthermore, the appellant's next ground of appeal mainly focuses on the First Court's wrong evaluation of the evidence. It has been firmly established in both local and foreign case law that the Court of Appeal does not disturb the evaluation of the evidence made by the Court of first instance, if it concludes that that Court could have reached that conclusion reasonably and legally.

In other words, this Court does not replace the discretion exercised by the First Court in the evaluation of the evidence, but makes a thorough examination of the evidence to determine whether the Court of first instance was reasonable in reaching its conclusions. However, if this Court concludes that the Court of first instance could not have reached the conclusion it reached on the basis of the evidence produced before it, than that would be a valid – if not indeed a cogent reason – for this Court to disturb the discretion and conclusions of the Court of first Instance (confer: “inter alia” the cases **Il-Pulizija vs. Raymond Psaila et.**<sup>5</sup> ; “**Ir-Repubblika ta' Malta vs.**

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<sup>4</sup> See **Il-Pulizija vs Antoine Saliba** decided by the Court of Magistrates on the 2<sup>nd</sup> September, 2019.

<sup>5</sup> Decided by the Court of Criminal Appeal on the 12<sup>th</sup> May, 1994.

George Azzopardi<sup>6</sup> ; “Il-Pulizija vs. Carmel sive Chalmer Pace”<sup>7</sup>; “Il-Pulizija vs. Anthony Zammit”<sup>8</sup> “Il-Pulizija vs Julian Genovese”<sup>9</sup> and others.

This Court also refers to what was held by LORD CHIEF JUSTICE WIDGERY in “R. v. Cooper” ([1969] 1 QB 276) (in connection with section 2 (1) (a) of the Criminal Appeal Act, 1968) :-

*“assuming that there was no specific error in the conduct of the trial, an appeal court will be very reluctant to interfere with the jury’s verdict (in this case with the conclusions of the learned Magistrate), because the jury will have had the advantage of seeing and hearing the witnesses, whereas the appeal court normally determines the appeal on the basis of papers alone. However, should the overall feel of the case – including the apparent weakness of the prosecution’s evidence as revealed from the transcript of the proceedings – leave the court with a lurking doubt as to whether an injustice may have been done, then, very exceptionally, a conviction will be quashed.” (Confer also : BLACKSTONE’S CRIMINAL PRACTICE (1991) , p. 1392)*

In the judgments Il-Pulizija vs Anthony Debono<sup>10</sup> Il-Pulizija vs Noel Borg<sup>11</sup> Il-Pulizija vs Brian Barbara<sup>12</sup> Il-Pulizija vs Therese Attard Flores<sup>13</sup> and others, all make reference to the case in the names Ir-Repubblika ta’ Malta vs. Ivan Gatt<sup>14</sup> where it was held that the exercise to be carried out by this Court in cases where the appeal is based on the evaluation of the evidence, is to examine the evidence, to see, even if there are contradictory versions – as in most cases there would be – whether

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<sup>6</sup> Decided by the Court of Criminal Appeal on the 14<sup>th</sup> February, 1989.

<sup>7</sup> Decided by the Court of Criminal Appeal on the 31<sup>st</sup> May, 1991.

<sup>8</sup> Decided by the Court of Criminal Appeal on the 31<sup>st</sup> May, 1991.

<sup>9</sup> Decided by the Court of Criminal Appeal on the 31<sup>st</sup> July, 2008.

<sup>10</sup> Decided by the Court of Criminal Appeal on the 3<sup>rd</sup> September, 2021.

<sup>11</sup> Decided by the Court of Criminal Appeal on the 23<sup>rd</sup> September, 2021.

<sup>12</sup> Decided by the Court of Criminal Appeal on the 23<sup>rd</sup> September, 2021.

<sup>13</sup> Decided by the Court of Criminal Appeal on the 14<sup>th</sup> October, 2021.

<sup>14</sup> Decided by the Court of Criminal Appeal on the 1<sup>st</sup> December, 1994.

any one of these versions could be freely and objectively believed without going against the principle that any doubt should always go in the accused 's favour and, if said version could have been believed and was evidently believed by the jury, the function, in fact the duty of this court is to respect that discretion and that evaluation of the evidence.

This Court has accordingly evaluated the evidence, including the testimonies of the witnesses who testified anew with a view to establishing whether the Court of first instance could have legally and reasonably decided the way it did. Since the case against the co-accused is still *sub judice*, the Court will not make reference to her statement released to the police or her testimony given before the First Court. The Court makes reference to the judgment in the names **Il-Pulizija vs Omisses, Anthony Galea**:<sup>15</sup>

*“Id-difiza tal-imputat sostniet li l-istqarrija tal-ko-imputat ma hiex ammissibbli bħala prova f’din il-kawża. L-artikolu 658 huwa pjuttost ċar fir-regoli li jistabbilixxi dwar meta u fejn stqarrija ta’ ko-akkużat hija ammissibbli bħala prova favur jew kontra ko-akkużat ieħor, u f’liema kontest ko-akkużat jista’ jixhed fil-konfront ta’ ko-akkużat ieħor.*

*Dak enunċjat fl-Artikolu 636(a) u (b) tal-Kodiċi Kriminali, u anke minn ġurisprudenza tal-Qrati tagħna juru fejn ix-xhieda tal-ko-akkużat ma tikkostitwixxi ebda prova, la kontra u lanqas favur l-akkużat jew l-akkużati l-oħra, u b’hekk mhux ammissibbli bħala tali.*

*Din ir-regola hija desunta a contrario sensu minn dak li jipprova l-paragrafu (b) tal-artikolu 636, fis-sens li l-ko-*

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<sup>15</sup> Decided by the Court of Magistrates as a Court of Criminal Judicature on the 25<sup>th</sup> March 2019.

*akkuzat isir xhud kompetenti fir-rigward ta' ko-akkuzat, biss wara illi l-kaz fil-konfront tiegħu ikun gie definittament deciz.*

*Fil-kaz odjern, il-kaz kontra l-ko-akkuzat Gilbert Galea ghadhu mhux deciz. Id-difiza ssostni li hawn tapplika r-regola indikata, u b'hekk dak kollu li qal il-ko-imputat mhux ammissibbi fil-konfront ta' xulxin.*

*Il-Qrati tagħna kellhom l-opportunità li jippronunzjaw ruħhom fuq dan il-principju f'diversi kazijiet fosthom Sua Maesta r-Re vs Carmeo Cutajar ed altri,. Qorti Kriminali 18 ta' Jannar, 1927; Il-Pulizija vs Toni Pisani Appell Kriminali 11 ta' Novembru, 1944; Il-Maesta tiegħu r-Re vs Karmenu Vella, Qorti Kriminali 3 ta' Dicembru, 1947; The Police vs Alfred W. Luck et, Appell Kriminali 25 ta' April, 1949; Ir-Repubblika ta' Malta vs Faustino Barbara, Appell Kriminali 19 ta' Jannar, 1996; Il-Pulizija vs Nasher Eshtewi Be Hag et, Appell Kriminali 2 ta' Frar, 1996; Il-Pulizija vs Carmelo Camilleri u Theresa Agius, Appell Kriminali 11 ta' Lulju, 1997, u r-Repubblika ta' malta vs Domenic Zammit et Appell Kriminali 31 ta' Lulju, 1998, Ir-Repubblika ta' Malta vs Ian Farrugia, Qorti Kriminali Digriet Datat 22 ta' Dicembru, 1998.*

*Din ir-regola giet interpretata u estiza mill-gurisprudenza biex anki tkopri kazijiet fejn persuni li jkunu akkuzati bl-istess reat imma fi procedure separati ma jkunux meqjusa bhala xhieda kompetenti u producibbli kontro ko-akkuzati jew ko-imputati ohrajn, hliet meta lprocess tax-xhud ikun gie deciz definittament.*

*Il-Qorti tal-Appell Kriminali fis-sentenza fl-ismijiet "Il-Pulizija vs Omissis u Saada Sammut" spjegat li:*

*“Hekk di fatti kien gie ritenut mill-Qorti Kriminali b’Digriet tat-22 ta’ Dicembru, 1998 fil-kawza “Ir-Repubblika ta’ Malta vs. Ian Farrugia”. Dik il-Qorti, f’dak id-Digriet, wara li ghamlet riferenza ghallgurisprudenzahemm citata, rriteniet li persuna li tkun akkuzata, kemm bhala komplici kif ukoll bhala koawtur, bl-istess reat migjub kontra dak l-akkuzat liehor ma tistax tingieb bhala xhud favur jew kontra dak l-akkuzat liehor sakemm il-kaz taghha ma jkunx gie definittivament deciz u li dan il-principju japplika sija jekk dik il-persuna tkun giet akkuzata fl-istess kawza tal-akkuzat l-iehor – b’ mod li jkun hemm “koakkuzati” fil-veru sens tal-kelma – u sija jekk tkun akkuzata fi proceduri separati. Il-bazi ta’ dan il-principju hu l-argument “a contrario sensu” li jitnissel mill-paragrafu (b) tal-Artikolu 636 tal-Kodici Kriminali. Konsegwentement dik il-Qorti kienet iddecidiet li dak ix-xhud li kien akkuzat bhala ko-awtur bl-istess reat li bih l-akkuzat kien jinsab akkuzat, ma hux kompetenti li jixhed, qabel ma l-kaz tieghu jghaddi in gudikat. (Ara ukoll fl-istess sens Digriet tal-Qorti Kriminali fil-kawza “Ir-Repubblika ta’ Malta vs. Brian Vella” [4.2.2004] u ohrajn.) L-unika eccezzjoni ghal dir-regola hi proprju dik kontenuta fl-art. 636 (b) li tirrendi tali xhud kompetenti biex jixhed ghalkemm ikun imputat talistess reat li fuqu tkun mehtiega x-xhieda tieghu, meta l-Gvern ikun wegħdu jew tah l-impunita’ sabiex hekk ikun jista’ jixhed.”*

*Il-Qorti tagħmel referenza ukoll għad-digriet imsemmi fid-decizjoni appena kwotata liema digriet ingħata fit-22 ta’ Dicembru 1998 fil-kawza “Ir-Repubblika ta’ Malta vs. Ian Farrugia”, fejn il-Qorti Kriminali qalet hekk:*

***“Il-gurisprudenza hi cara fuq dan il-punt: persuna li tkun akkuzata, kemm bhala komplici kif ukoll bhala ko-awtur, bl-istess reat migjub kontra akkuzat iehor ma tistax tingieb***

*bhala xhud favour jew kontra dak l-akkuat l-iehor sakemm il-kaz taghha ma jkunx gie definittament deciz. Dan il-principju japplika sia jekk dik il-persuna tkun giet akkuzata flistess kawza tal-akkuzat l-iehor - b'mod li jkun hemm "ko-akkuzati" filveru sens tal-kelma - u sia jekk tkun akkuzata fi proceduri separat."*

The appellant released a statement to the police on the 2<sup>nd</sup> May 2021. He was given all his rights according to law and chose not to consult with a lawyer or to have a lawyer present during the interrogation. He stated that he was in Malta on holiday and confirmed that he did not wish to inform his embassy regarding his arrest. Asked what had happened that morning, the appellant said that he was walking with his friend Paula and they were drunk. They saw a security car and pretended to destroy it until the old man started to take a video of them. He said that the old man got aggressive and started to give punches. They had to defend themselves and now the man has seven broken bones. He said that he knew how to fight better than himself because he was a boxer. He said that he did not damage the car and would like to see the said damages. Shown the damages, he stated that these were not done by himself or his friend. The appellant stated that his actions were to be considered as self-defence. Told by the Inspector that he and his friend beat the victim and returned kicking him, he stated that that he saw him lying on the ground surrounded by people and he was afraid for him and he did not put him on the floor. He said that the victim punched him first so his action was self-defence. He insisted that he did not manage to punch him back and his friend did not assault the alleged victim. He stated that he never hit the man and he does not know how he fell. He never kicked him in the ribs and he would never kick an old man. Asked whether it was true that he told the police on his way to the lock-up that he would even punch an old lady if he had to, he replied that this was complete nonsense. Asked about his injuries on his fists and palm he said that they were due to him being on the ground, because he was aggressive and punching him. He never managed to touch his face. He agreed



with the Inspector when he recapitulated that what was tangible was that an old man was recovering in hospital with seven (7) broken ribs and according to the latter and a witness, he was assaulted by the appellant and his friend after trying to film them damaging government property. Also, tangible were the damages on the car. On the other hand, the appellant himself is insisting that he was acting as he was damaging the car but he wasn't, the old man started to film him and he asked him to stop, the old man assaulted the appellant and he acted in self-defence without hitting him and in the act of self-defence he got injured. Lastly, he concluded his statement by asking whether the alleged victim was ok.

**Inspector Jonathan Cassar**<sup>16</sup> testified on the 12<sup>th</sup> May, 2021 where he said that on the 2<sup>nd</sup> May, 2021 at around 6.30am they received a call that in Triq il-Kbira, St. Julians there was a fight between some individuals. They found Ivan Gauci laying on the floor and unable to move and also unable to give his testimony. A witness with the name Katerina Fiorini explained to the police that Mr. Gauci was beaten up by a male person and she also provided them with a description and in fact some minutes later both the accused were apprehended. The police managed to gather that both the accused damaged a Civil Protection vehicle bearing registration number GVN-700 and whilst they were damaging the vehicle Mr Ivan Gauci approached them and was filming them damaging the vehicle and basically a fight ensued and he was beaten up. It transpired later that he had suffered from seven broken ribs but was not in danger of loss of life.

Both the accused released a statement on the 2<sup>nd</sup> May, 2021. Mr Hamill was taken to the health centre and he was certified as suffering from slight injuries, bruises on his knuckles. The CCTV shows that Mr. Gauci was approached by the two accused. Mr Hamill took Mr. Gauci's phone and a fight ensued. However, the fight which was visible on the footage would barely cause any injuries to any of them. From the footage, one can see that in a place which is not captured by the footage Mr. Ivan

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<sup>16</sup> Fol. 38 of the acts of the case.

Gauci left and he was approached by the two individuals and what happened is unknown because it was not captured in the footage. The witness Ms. Fiorini saw Mr. Hamill kicking Mr. Gauci but the latter stated that he was beaten up by both the accused.

Cross-examined by the defence, he stated that the footage came from a certain Joanne Cassar.

**Catherine Fiorini**<sup>17</sup> testified on the 12<sup>th</sup> May, 2021 and said that on the 2<sup>nd</sup> May, 2021 she heard crying and shouting and so she looked out in the street from her bedroom window overlooking Main Street St. Julians. It was about 6.30am and she saw a tourist who got hold of a Maltese guy from his back and with his arm he was holding him from the neck and hitting as hard as he can. He was hitting his face and the top part. After hitting him, he left and this guy went to go down the road to the front where he lives and the tourist followed him, gave him another good hiding, dropped him on the ground and kicked him as hard as he could. Asked by the Court whether she had seen all this herself, she replied 'Not all. Half of it. In the end. But the police told me what was happening'. She confirmed that she witnessed all the first part and was on the street for the second part. She missed a bit of the second part because she went out of the house. She stated that she only saw the two men fighting and that the girl did not do anything.

Ms. Fiorini<sup>18</sup> testified once again on the 18<sup>th</sup> August, 2021. She stated that the girl was standing under her window and was just looking at the fight. When she left the bedroom window the elderly man was walking home and when she went out of the house, the victim was lying on the floor and there was no more fighting. She stated that she did not call the police herself.

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<sup>17</sup> Fol. 56 of the acts of the case.

<sup>18</sup> Fol. 360 of the acts of the case.

On the 1<sup>st</sup> September, 2021 Ms. Fiorini<sup>19</sup> testified once again and stated that she saw the incident happening in front of her. She was one storey high. She saw the way he held him and the way he was hitting him. She could hear the person crying and shouting and she started shouting as well and telling him 'if you are not going to go away I am going to call the police!' she stated that she knows the victim as he lives three doors away from her. She confirmed that she did not see how the incident had started. She did not see the victim pulling the accused to the floor. She stated that the victim could not do anything.

**Donald Tabone**<sup>20</sup> testified on the 21<sup>st</sup> June,2021 where he stated that he was appointed as a court expert to analyse the contents of the USB disc and also to extract some stills. He presented his report to the Court.

**Ivan Gauci**<sup>21</sup> testified on the 21<sup>st</sup> June, 2021 where he stated that he was walking in the morning between 7.00am and 8.00am and he heard some banging and so he looked around and saw two people, with the man kicking the car. He told them 'Please will you stop it!' and he kept kicking it. He got his mobile out, went near them and started taking pictures of them. The man was telling the woman not to look at him but he managed to take some photos. The man managed to take his mobile and he was going away with it. He tried to stop him, but he just pulled his hand up both of them and the man managed to sit on three steps and I took my mobile from him. He saw the woman coming aggressively towards him and he pushed her so that he could leave and all of a sudden, he got a brick hit on his head. When he turned round, he hit him again on his face and threw him on the floor. The man was the one who hit him first. When he fell on the ground, the man started kicking him in the face. When he put his head down, he saw the woman's shoes going into his stomach and then he was kicking him all over. Somehow, he managed to get hold of his leg because of his two knee replacements he couldn't get up from the floor when he fell.

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<sup>19</sup> Fol. 379 of the acts of the case.

<sup>20</sup> Fol. 88 of the acts of the case.

<sup>21</sup> Fol. 224 of the acts of the case.

He was telling them to let him go and in turn he will not go to the police. The man did not listen to him and somehow, he got loose and started walking fast but the man followed him and got hold of him again. He threw him on the floor, hitting him and kicking him again. He stated that he was in a lot of pain and was screaming. He got up and he left him on the floor. He confirmed that the incident took place in Main Street, St. Julians. During the fight they also damaged his reading glasses.

Mr Gauci<sup>22</sup> testified once again on the 1<sup>st</sup> September, 2021 and he confirmed that when he first saw the accused, they were about two to three metres away from him and they were walking away. Asked whether he pulled the accused to the floor he replied that he grabbed his shirt, pulled him and sat down on the three steps. He just wanted to grab his mobile and he did. As he turned around to go, the woman was approaching him aggressively and he pushed her. As soon as he did, he hit him on his neck. He punched him and as soon as he turned around, he punched him again on his face. He threw him on the floor and started kicking his head with their shoes. He saw the woman shooting in his stomach when he tried to cover his face and head. He stated that the accused wanted to kill him not hurt him because the first time he hit him enough.

**PC 2415 Chloe Marie Bonello**<sup>23</sup> testified on the 5<sup>th</sup> July, 2021 and said that she was present for the statement of Paula Romero Fernandez and recognised the signatures. She also stated that she was present when Ms Fernandez renounced to her right to legal assistance.

**Dr. Mario Scerri**<sup>24</sup> testified on the 5<sup>th</sup> July, 2021 and stated that he was instructed by the Court to examine Ivan Gauci and he examined him on the 1<sup>st</sup> July, 2021. He stated that Mr Gauci suffers from chronic bronchitis and emphysema and so this toppled

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<sup>22</sup> Fol. 385 of the acts of the case.

<sup>23</sup> Fol. 290 of the acts of the case.

<sup>24</sup> Fol. 292 of the acts of the case.

him over. By time he will be fine but he is still in pain. Due to his age bones take longer to heal and the muscle takes longer to calm down.

Dr. Scerri<sup>25</sup> testified once again on the 1<sup>st</sup> September, 2021 where he stated that he confirmed at hospital that the alleged victim really sustained fractures of his ribs and he also confirmed that he suffers from COPD, chronic obstructive airway disease. The fracture was compatible to blunt trauma which is any insult to the body brought about by something which is not sharp and which is not pointed. In this case a fall contributes to blunt trauma. He said that the injuries which the victim sustained are compatible with a fall because the ribs were broken in two pieces and that would be compatible with a fall. If the alleged victim received a blow, probably the fracture would be a single blow. The alleged victim sustained two fractures in two ribs and so every rib sustained two fractures and probably it is due to the fall.

**Dr. Francesca Spiteri**<sup>26</sup> testified on the 5<sup>th</sup> July, 2021 and stated that she is a doctor working within the Emergency Department at Mater Dei. She confirmed the medical certificate issued by herself and stated that Mr. Gauci's injuries are classified as grievous.

**Karen Cremona**<sup>27</sup> testified on the 5<sup>th</sup> July, 2021 and stated that she was a manager at the Land Transport Directorate within the Authority for Transport Malta. she confirmed that the vehicle bearing registration number GVN 700, white Peugeot 308 is registered on the Civil Protection Department and it has been so registered since 9<sup>th</sup> September, 2009.

**Dr Kenneth Falzon**<sup>28</sup> testified on the 5<sup>th</sup> July, 2021 and he stated that he's a doctor and was working at the Floriana Health Centre. He said that he examined Ms

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<sup>25</sup> Fol. 377 of the acts of the case.

<sup>26</sup> Fol. 303 of the acts of the case.

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<sup>28</sup> Fol. 311 of the acts of the case.

Fernandez two times. The first time he found a laceration on her right small finger and the second time she returned complaining of pain and an injury on her right temple. The second time round she stated that the old gentleman hit her. The first time she told him that she had no injuries. He stated that she was wobbly, slurring her words and did not look sober but he did not have any tests to confirm his observations.

**Natalino Agius**<sup>29</sup> testified on the 9<sup>th</sup> July, 2021 and confirmed the report he drew up upon estimating the damages of the civil protection department vehicle. The Civil Protection Department had asked him to compile the said report.

**Dr Mark Debrincat**<sup>30</sup> testified on the 9<sup>th</sup> July, 2021 and stated that he is a medical doctor working at the Floriana Health Centre. He said that he examined Ronan Clyde Hamill and noticed two abrasions, one under the thumb and one between the left second and third knuckle. He confirmed the certificate that was drawn up by himself and the contents therein.

**PS 2189 Amy Mawdsley**<sup>31</sup> testified on the 9<sup>th</sup> July, 2021 and stated that on the 2<sup>nd</sup> May, 2021 she was on duty at the St. Julians Police Station and around 6.45am she received a call that there was an argument going on in Main Street St. Julians amongst three people. She did not report on site but the report was drawn up by herself. She stated that PS 1440 was in charge of people at the site. She recognised the two defendants because they were brought to the station and she was there compiling the report.

**PS 1440 Sergio Spiteri**<sup>32</sup> testified on the 9<sup>th</sup> July, 2021 and stated that on the 2<sup>nd</sup> May, 2021 at around 6.34am they received a call that there was an argument going on in

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<sup>29</sup> Fol. 330 of the acts of the case.

<sup>30</sup> Fol. 332 of the acts of the case.

<sup>31</sup> Fol. 334 of the acts of the case.

<sup>32</sup> Fol. 342 of the acts of the case.

Main Street St. Julians. He reported on site and found Ivan Gauci shouting in pain. He told them that he had an argument with two persons and they ran up the road. He stayed with Mr Gauci until the ambulance came for him and other police officers went to look for the defendants who he recognised in Court. Inspector Cassar then told him to take the defendants to the lock-up for further investigation.

He explained how Mr Gauci told him that his attackers where a female and a male. The female was wearing a white skirt and long boots with heels. They both ran up the road, where the other police officers found them. Mr Gauci told him that they were kicking the car.

**Joanne Cassar**<sup>33</sup> testified on the 9<sup>th</sup> of July 2021 and stated that it was a Sunday morning about 5.00am- 5.30am and they were woken up by a lot of screaming in Main Street, St. Julians. She saw two youngsters kicking an old man and she took her CCTV to the police station. She confirmed the CCTV she handed the police and remarked that the time on the CCTV is about an hour out. Lastly, she confirmed that she is the owner of the cameras, one overlooking Main Street and one overlooking Carmel Street.

**PC 987 Donald Joseph Sultana**<sup>34</sup> testified on the 18<sup>th</sup> Augus, 2021 and stated that he recognises the statement of Mr Hamill and the signatures on it. He also recognised the document for the refusal of legal assistance and the signatures on it.

**Ronan Clyde Hamill**<sup>35</sup> testified on the 9<sup>th</sup> September, 2021 and said that everything happened on the 2<sup>nd</sup> May at around 6.30 – 7 when he and his friend Paula were returning to the hostel. They were happily dancing and a car stopped right next to them. A man pulls down the window and gives him a ten euro (€10.00) note and drives away. The excitement was unreal so the behaviour was childish and kicked

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<sup>33</sup> Fol. 346 of the acts of the case.

<sup>34</sup> Fol. 358 of the acts of the case.

<sup>35</sup> Fol. 407 of the acts of the case.

the car overexcited with emotions and Paula did too. The elderly person was watching them and he came towards them. He took some photos of them but told Paula to keep walking and everything would be fine. He kept on taking pictures or videos. He was not sure whether he is taking the phone out of his hand or try to pull his hand away so he does not have the camera in his direction. He falls on the ground because the elderly person pushed him and the latter also fell on the ground. The elderly person started being aggressive towards Paula. This is how he got injured.

The elderly person did not want to get into a verbal conversation but a violent one. They were holding each other and he fell on the ground from the punch and he got another punch on the floor. Paula was trying to separate them. The elderly person then went away and picked his glasses up. At that point he knew that he was going to the police station and he wanted to go too as he also had something to say against him. As he ran back, the elderly guy turned around thinking that he wanted to fight with him. He took his shoulder and they fell on the ground together. He went on the elderly person while he was on the ground and he was trying to calm him down. He got up and left, he turned around and the elderly guy was still lying on the ground and so at that moment he knew that he was acting. He thought that he was acting because there was no violence between them. They left and turned a corner in the street but he knew that the police were after them and that they would not believe their story.

### **Considers;**

It is very much apparent that the Court here is faced with conflicting evidence. It true that in the eventuality of conflicting evidence the court should proceed to acquit the



accused but as was held in the leading case in the names Il-Pulizija v Charles Ducker<sup>36</sup> the court may believe some and discredit others it held the following:-

*"Conflicting evidence per se, does not necessarily mean that whoever has to judge may not come to a conclusion of guilt, whoever has to judge may, after consideration of all the circumstances of the case, dismiss one version and accept as true the opposing one."*

It is likewise true that according to article 638(2) of Chapter 9 of the Laws of Malta *"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."* The appellant in his statement to the police stated that he and his friend pretended to hit the car. However, when he testified before the First Court, and this can also be verified from the CCTV footage, both the appellant and his friend did actually kick the car. In his statement, the appellant also insisted that he did not manage to punch the alleged victim, more so he stated that he never hit the man and he does not know how he fell. However, this is not true as can clearly be seen from the CCTV footage.

While it is true that there are some glimpses of the fight which do not show in the footage, the mannerisms of the appellant and how the argument actually developed makes this Court believe that the testimonies of the alleged victim and Ms Fiorini are more plausible than that of the appellant. Mr. Gauci indeed defended himself quite well, however this Court can never agree with the appellant that he was provoking him and his friend. He was only taking pictures as evidence of the appellant's wrongdoing when kicking and damaging the civil protection's car. Such actions are surely deplorable and unacceptable in our society and cannot be considered as *joie de vivre!*

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<sup>36</sup> Decided by the Criminal Court of Appeal on the 19th May 1997.

## Considers further;

The Court now comes to the appellant's last ground of appeal relating to excessive punishment. As has been stated in the case in the names The Police vs William Anthony Adams:<sup>37</sup>

*'It is not the function of this Court as a Court of appellate jurisdiction to disturb the discretion of the First Court as regards the quantum of punishment unless such discretion has been exercised outside the limits laid down by the law or in special circumstances where a revision of the punishment meted out is manifestly warranted.'*

The appellant also objects that he should pay the alleged victim compensation for damages. It must be emphasised that the First Court in its judgment ordered that the total amount of six thousand euros (€6,000) should be paid by the appellant and his friend, the co-accused, in solidum. Here, this Court disagrees with the First Court in the sense that in penal law the co-accused cannot be held liable to pay for damages in solidum. Furthermore, the Court is not bound to explain the amount of damages being awarded to the alleged victim. In fact, Article 15A of the Criminal Code states the following:

*'15A. (1) In addition to any punishment to which the person convicted of an offence may be sentenced, the Court may order the offender to make restitution to the injured party of any property or proceeds stolen or knowingly received or obtained by fraud or other unlawful gain to the detriment of such party by or through the offence, or to pay to such party such sum of money as may be determined by the Court as compensation for any such loss as aforesaid or for any damages or other injury or harm,*

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<sup>37</sup> Decided by the Court of Criminal Appeal on the 26<sup>th</sup> February, 2019.

*including, only in the case of crimes affecting the dignity of persons under Title VII of Part II of Book First and of willful crimes against the person subject to a punishment of imprisonment of at least three years under Title VIII of Part II of Book First up to a maximum limit of ten thousand euro (€10,000) or up to such maximum limit as the Minister responsible for Justice may by regulations establish both with regard to the maximum amount and about the method of computation depending on the case, moral harm and or psychological harm, caused to such party by or through the offence, and any such order may include both a direction to make restitution and, or, to pay as aforesaid. The order shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure.'*

Moreover, in the case in the names **Il-Pulizija vs Marius Camilleri**<sup>38</sup> reference was also made to Article 532A of the Criminal Code and Article 24 of the Probation Act:

16. Is-seba' u l-ahhar aggrawju huwa dwar l-ordni tal-ewwel Qorti li biha obligat lill-appellant ihallas s-somma ta' €1,912.90 rapprezentanti danni kagjonati lill-kwerelant. Lewwel argument minnu mressaq jorbot mal-aggrawju tieghu dwar il-prova ta'titolu tal-vettura fit-tielet aggrawju izda dan issa huwa deciz u ghalhekk mhux applikabbli. L-argument inoltre illi l-ewwel Qorti ghamlet din l-ordni fit-termini tal-artikolu 532A tal-Kodici Kriminali u l-artikolu 24 tal-Kapitolu 446 meta dawn ma humiex applikabbli. L-artikolu 532A tal-Kodici Kriminali jipprovi hekk:

Id-disposizzjonijiet tal-artikolu 24 tal-Att dwar il-Probation ghar-rigward tas-setgha li ghandha l-qorti li tordna lill-hati jhallas id-

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<sup>38</sup> Decided by the Criminal Court of Appeal on the 29<sup>th</sup> November, 2021.

danni ghandhom ukoll mutatis mutandis japplikaw kull meta jigri li persuna tinghata sentenza wara li tkun instabet hatja ta' delitt.

17. L-artikolu 24 tal-Kapitolu 446 li ghalih jirreferi l-artikolu 532A tal-Kodici Kriminali jipprova hekk:

Meta Qorti taghmel ordni ta' probation, ordni ta' servizz fil-komunita', ordni ta' probation u servizz, ordni ghal liberazzjoni kondizzjonata jew meta tillibera lil xi hati ghal kollox tista', minghajr pregudizzju ghall-poter li ghandha dwar l-ispejjez taht l-artikolu 380 u 533 tal-Kodici Kriminali, tordna lill-hati jhallas daww id-danni ghal xi feriment jew b'kumpens ghal xi telfien hekk kif il-qorti jkun jidrilha li jkun l-aktar ragonevoli.

18. Issa mill-kliem "feriment" u "kumpens ghal xi telfien" fl-artikolu appena riprodott wiehed jista' jifhem illi l-kumpens li qorti tista' tordna huwa ristrett ghal daww il-kazijiet fejn hemm offizi fuq il-persuna u daww il-kazijiet fejn tista' tinghata xi forma ta' soljeo minhabba, ezempju serq ta' oggett li qatt ma kien rikoverat. Harsa, izda, lejn id-dibattiti parlamentari ta' meta kien diskuss l-Abbozz ta' ligi Numru 69 tal-2006 li kien eventwalment promulgat fl-Att XVI tal-2006, il-hsieb tal-ministru li ppilota l-abbozz kien li fil-Kodici Kriminali tkun introdotta forma ta' kumpens ghall-vittmi ta' reati serji bhalma kien gia ezistenti fl-Att Dwar il-Probation u fil-Kodici Kriminali f'kaz fejn tista' tinghata sentenza sospiza. Fost dawn ir-reati ssemma dak ta' serq u ta' frodi. Id-dibattitu huwa wiehed twil (seduta 383 tat-23/5/2006 u seduta 83 tal-11/7/2006) u ma jindirizzax direttament dak li kellu jkun is-suggett ta' kumpens izda l-hsieb jidher li kellu jkun introdott sistema fejn vittma ta' reat ma ghandhiex tghaddi minn proceduri dubblici billi tirrikorri quddiem il-Qorti Civili ghall-kumpens tat-telf taghha. Il-Qorti tifhem illi minn

*dak propost kellu jkun eskluż kumpens għal-reati ta' natura involontarja;*

The appellant refers to regulation 12 of Subsidiary Legislation 9.12, and states that any amount so fixed in virtue of article 532A, shall be paid by the Claims Officer without the need of any assessment. Subsidiary Legislation 9.12 was promulgated through the enabling clause of Article 698 of the Criminal Code which stipulates that:

*698. (1) The Minister may make regulations to establish a scheme for the compensation of victims of crime under such conditions and restrictions and subject to such considerations and qualifications as the Minister may provide and to establish a fund to finance such a scheme.*

*(2) Without prejudice to the generality of subarticle (1), any scheme established under this article:*

*(a) may be of general application extending to all crimes or may be limited to such crimes as may be specified in the regulations;*

*(b) may provide that compensation by Government to the victim shall only be payable when the victim has exhausted all remedies available to him against the offender for the payment of damages suffered by the victim;*

*(c) may provide for a ceiling on the amount payable to any individual victim or group of victims by way of compensation under the scheme.*

*(3) The Government shall be subrogated in the rights of the victim against the offender for the payment of any sums received by the*

*victim from the Government in accordance with any scheme established by regulations under this article.*

Furthermore, Regulation 11(b) of the aforementioned subsidiary legislation provides that:

*'No compensation will be paid under the Scheme where: the Claims Officer is of the opinion that the offender is not indigent or unless proof has been produced that legal action to claim compensation has proved to be fruitless'*

It is important to highlight that it is the accused who shall pay for the said damages and no one else. However, if the accused fails to compensate the victim and all legal action proved to be fruitless, the latter may resort to this scheme as established by Subsidiary Legislation 9.12. Therefore, it may be concluded that Subsidiary Legislation 9.12 is not applicable here since a definite judgment has not yet been delivered and so undoubtedly it cannot be argued that legal action to claim compensation has proved to be fruitless.

Moreover, there is no doubt in this case that the punishment awarded to the appellant by the First Court falls within the parameters of the law. Furthermore, when one considers the seriousness and the gravity of the case that left an elderly person injured just because he tried to take photos of individuals damaging government property. This Court does not permit such bullying behaviour and consequently thinks that the punishment awarded by the First Court is justified.

Consequently, this Court confirms the judgment of the First Court where it found the appellant guilty of the charges brought against him and condemned him to four (4) years imprisonment and to a fine of one hundred Euro (€100). This Court is however revoking the part of the judgment whereby the accused was ordered to pay the victim six thousand euro (€6,000) in damages and the costs incurred in

connection with the employment in the proceedings of all the experts, in terms of Article 533 of Chapter 9 of the Laws of Malta *in solidum* and instead condemns the appellant to pay the amount of four thousand euros (€4,000) in damages in favour of Mr. Ivan Gauci and also pay half of the costs incurred in connection with the employment in the proceedings of all the experts, in terms of Article 533 of Chapter 9 of the Laws of Malta.

(ft) Consuelo-Pilar Scerri Herrera

Judge

True copy

Nadia Ciappara

Deputy Registrar