



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

**MAGISTRATE DR.  
JACQUELINE PADOVANI**

Sitting of the 28<sup>th</sup> January, 2010

Number 402/2003

**THE POLICE  
INSPECTOR KEVIN FARRUGIA  
INSPECTOR SIMON GALEA  
VS  
TRISTAN SCOTT HAYNES**

The Court, having seen the charges brought against Tristan Scott Haynes, British National age 34 years, born in England on the 26<sup>th</sup> June 1968, son of Halen and Susan Cockhill, and currently residing at 126, Fleet Street, Gzira (Malta) holder of Passport No. 703205310.

With having on the 10<sup>th</sup> May 2003 at St. Andrews Road Swieqi limits of Bahar ic-Caghaq at about 22.00 hours;

1. Without the intent to kill or to put the life of any person in manifest jeopardy, caused harm of a grievous nature on the persons of David Shephard having ID Card No 216446M as certified by Dr. Nicola Camilleri at St.

Lukes Hospital and Reuben Briffa having ID Card No 259373M as certified by Dr. T. Mizzi of Griza Health Centre in breach of articles 214 and 218 of Chapter 9 of the Laws of Malta;

2. Without the intent to kill or put the life of any person in manifest jeopardy caused harm of a grievous nature on the persons of Joseph Attard having ID Card No 188447M and of a slight nature on Marianne Attard having ID Card No 216247M both certified by Dr. W. Sawicki in breach of articles 214, 216 and 221 of Chapter 9 of the Laws of Malta;

3. Through imprudence, carelessness, unskilfulness in his art or profession, or non-observance of regulations, caused damages on motor vehicle make Ford Sierra with registration number CAD 914 belonging to Joseph Attard ID Card No 188447M;

4. Wilfully disturbed the public good order or the public peace by shouting and fighting.

5. Obstructing the flow of traffic.

The Court may, where it deems it expedient, in order to provide for the safety of individuals or for the keeping of the public peace, in addition to, or in lieu of the punishment applicable to the offence, require the offender to enter into his own recognizance in a sum of money to be fixed by the Court.

The Court may, deal with the accused to be a recidivist after being sentenced from the Court of Appeal which has become absolute.

Having heard the evidence on oath.

Having examined all exhibited documents and all the record of the proceedings.

Having seen the articles listed by the Attorney General at page 446 of the proceedings by virtue by which articles this Court may pronounce itself as to the guilt or otherwise of the accused.

Informal Copy of Judgement

Having seen the note in the record of the proceedings of the 20 July 2004 (at page 706) where the accused had no objection to being adjudicated by this Court.

Having seen the applications of the Commissioner of Police for the issue of a part three arrest warrant against the accused Tristan Scott Haynes.

Having seen the consent of Attorney General for the issue of a part three warrant in respect of the same accused.

Having seen the decrees of this Court exceeding to the same request and the issue of an alert in the Schengen information system with respect to the same Tristan Scott Haynes.

Having seen all the extradition proceedings of the British Court.

Having seen the note of the Attorney General of the 17<sup>th</sup> April 2009 to the effect that “***the crimes for which Haynes was extradited are solely those relating to grievous bodily harm caused to David Shaphard and Joseph Attard.***” (vide page 924)

Having seen the notes of final submissions of the complainants of the 21<sup>st</sup> October 2009.

Having seen the notes of submissions of the accused Tristan Scott Haynes of the 4<sup>th</sup> of November 2009.

Deliberates:

Inspector Simon Galea prosecuting officer (vide page 15 et sequitur Maltese version – page 203 the English translation) gave evidence on oath to the effect that on the night between the tenth (10) and the eleventh (11) May 2003, the prosecuting officer was informed by police sergeant 1131 Justin Camilleri that two (2) persons had been admitted to St. Luke’s Hospital, one of them being David Shephard who was in danger of losing his life. The prosecuting officer stated that Reuben Briffa who

happened to be passing from St. Andrews Road, Bahar ic-Caghaq also filed a police report to the effect that he was a witness to a collision between two (2) cars on that road, that he saw a person lying down on the road and that he stopped his car to give what assistance he could. Briffa informed the police that as he tried to lift the person who was lying on the road off the ground, the accused started to hit him. Reuben Briffa informed that police that after he had been hit in the face, that is blows directed to his upper lip, Reuben Briffa grabbed a stone and threw it, however he did not hit anyone. Reuben Briffa handed in a medical certificate which indicated that his injuries were of a grievous nature.

Police Inspector Galea informed the Court that police sergeant 1131 carried on his investigations and found that Joseph and Mary Attard also suffered injuries in this incident and therefore he informed the duty Magistrate, Magistrate Dr. Consuelo Scerri Herrera who conducted an inquiry and appointed various experts including Dr. Edward Zammit Louis, architect Valerio Schembri and Mr. Cardona.

The prosecuting officer informed the Court that Mary Shephard testified on oath as did Joseph Attard in the inquiry. The prosecuting officer informed the Court that Joseph Attard said that the accused had got out of his vehicle and started to fight with Mr. Attard and that David Shephard got out of his car and tried to intervene, to stop the fight. The prosecuting officer stated that on the same night Shephard, together with Mr. Attard, went on site to try and identify the exact position of the incident and in fact they found evidence of blood and broken glass. They continued with the inquiry the following morning. The prosecuting officer stated that in the mean time he had asked for the assistance of police Inspector David Saliba and police Inspector Jeffery Cilia from the CID in order to conduct a search for the whereabouts of the accused. The accused was found at three o'clock in the morning and was arrested. The police Inspector Galea stated that there was divergences as to the exact place where the collision had taken place, stating that David Shephard and

Joseph and Mary Attard were alleging that the incident took place at the site where the spectacles were found on the ground whilst the girlfriend of the accused stated that the collision had actually happened further along the road where in fact a pair of glasses belonging to Mrs. Victoria Mifsud (who was in the car together with the accused) were found.

Inspector Simon Galea stated that he therefore questioned Mr. Briffa who informed him that the collision in fact had taken place in the vicinity of the site indicated by Shephard and Attard.

The prosecuting officer stated at page 239 that David Shephard and his friend Joseph Attard were driving from Bahar ic-Caghaq towards St. Andrews.

Following the collision David Shephard said that he saw Joseph Attard and another person fighting in the middle of the road. He said he got out of the car and tried to break up the fight. However the accused punched him and he became dizzy and the accused kept on hitting him using martial arts until he fell to the ground. At one point in time David Shephard remembered that somebody stopped and helped him. After that he remembered nothing else.

Inspector Simon Galea informed the Court that criminal proceedings against Mr. Reuben Briffa and again Joseph Attard were being instituted.

Inspector Simon Galea exhibited Doc. SG – judgement of the Court of Appeal dated 24<sup>th</sup> March 1995.

At page 242 Inspector Simon Galea confirmed that Reuben Briffa had suffered injuries of a grievous nature. Asked to explain the injuries suffered by David Shephard, Inspector Simon Galea stated that he was in a danger of loss of life and that a medical certificate was issued by Dr. Camilleri. With reference to Mr. Attard, Inspector Simon Galea stated that Mr. Attard was injured badly around his eye. In cross examination Inspector Galea confirmed that the fight between the accused and Joseph Attard and

David Shephard was subsequent to the collision. Inspector Galea confirmed that he did not accompany the accused on site during the preliminary investigations but during the Magisterial Inquiry. The Court Expert Architect Valerio Schembri undertook the task of drawing up the plans of the site of the collision as given the Attards and Shephard and as given by the accused.

The record of the proceedings conducted in the inquiry were exhibited as Doc. MC (vide page 29). At page 31 of the proceedings Dr. Edward Zammit Louis exhibited his report marked as Doc. EZL at page 33 et sequitur.

Police Sergeant 1131 Justin Camilleri in the evidence at page 70 et sequitur (which was translated into English and is found at page 224 of the Proceedings), stated on oath that a certain Reuben Briffa has filed a police report on the 10<sup>th</sup> of May 2003 at around a quarter to eleven in the evening. He stated that whilst he was driving his vehicle in St. Andrews Road towards the direction of Paceville, he realised that the road ahead was in fact completely blocked by two (2) cars. Briffa also told the police sergeant that he also realised that a fight had broken up between some men.

Police Sergeant Camilleri testified that Briffa told him that he stepped down from the car to try and assist a man who was lying in the middle of the street and as he was assisting this man, another man, probably of English nationality, approached him and assaulted him. Police Sergeant Camilleri informed the Court the Reuben Briffa had given him a medical certificate regarding his injuries. Briffa also added that there were other persons who were injured in this incident who had been admitted into hospital. Police Sergeant Camilleri informed the Court that he immediately went to Casualty Unit at St. Luke's hospital where he found that three (3) other persons, that is: Mr. Joseph Attard, his wife Mary Attard and David Shephard were also suffering from injuries sustained during this incident.

PS Camilleri stated that he spoke to Dr. Nicole Camilleri who informed him that David Shephard was in danger of dying. Police sergeant informed the Court that Reuben Briffa had given the registration number of the vehicle that was being used by the person who assaulted him and the police had therefore been able to trace this to the accused. The Police Sergeant Camilleri informed that Court that Briffa in fact had suffered grievous injuries in this incident as certified by Dr. T. Mizzi at Gzira Health Centre.

Police Sergeant Camilleri testified that he had also spoken to Joseph Attard and Mary Attard whose faces were injured. Their medical certificates were marked and exhibited as Doc. PS 1, PS 2 and PS 3 whilst the police report was being marked and exhibited as Doc. PS 4.

Dr. Sawicki Wojgdek, doctor on duty at the casualty department of St. Luke's Hospital, confirmed that on the night of the 10<sup>th</sup> May 2003 he examined Marianne and Joseph Attard and confirmed the certificated exhibited and marked as Doc. PS 2 and PS 3. He stated that Marianne Attard was found to be suffering from a couple of bruises on her face and that Joseph Attard had a bruise on his face and a lacerated wound on his left eyebrow which needed to be sutured. The injuries were classified as slight save complications.

Dr. Nicole Camilleri at page 86, a medical doctor at St. Luke's Hospital Casualty Department stated that she was on duty on the night of the 10<sup>th</sup> of May 2003 and that she had examined David Shephard who was semi-conscious. Dr. Nicole Camilleri stated that after being subjected to a CT Scan it resulted that David Shephard had suffered a contusion of the brain and a fracture of the eighth rib. The patient was in danger of in loss of life for a couple of hours however he regained consciousness thereafter. Dr. Nicole Camilleri exhibited Doc. NS at page 94, a medical certificate of David Shephard.

Joseph Attard gave evidence at page 95 in the Maltese language which was translated in English and may be

found at page 248 at the record of the proceedings. Joseph Attard stated on oath, that on the night in question, which was a Saturday evening at around nine to nine fifteen, he was driving his car at St. Andrews Road when he decided to overtake the car in front of him. He flicked the light and tried to overtake this car and after a few seconds the car in front of him braked. However nothing happened and both cars kept on driving. Joseph Attard stated that after some time he again decided to overtake this car so he flicked his lights again and tried to overtake it. He said he felt a bump on his side and he reduced his speed. The car in front of him overtook him on the inner lane (on the left hand side) and stopped in front of him (vide page 252). The driver of the car ahead of him, came out of the car and Joseph Attard also got out of the car. Joseph Attard told the driver of the car in front that he had two (2) disabled persons in his car, however the driver who was identified as the accused, did not listen to him and started to hit him. At page 255 Joseph Attard stated that he had addressed the accused in Maltese. Joseph Attard stated that the accused punched him at least three (3) times on the left side of his face near his eye. (vide page 255). Joseph Attard stated that following this, he lost consciousness for a few moments and fell on the bonnet of his car. In fact the bonnet had three (3) dents and there was also damage on the right mudguard and on the left side. Joseph Attard stated that he tried to get away from the accused and went to the back of the vehicle. After this he was hit twice by the accused. He remembered his face was covered in blood and that he had seen his friend lying across the road. Mr. Attard stated that the accused was moving like a boxer and that he was inviting him to fight. Joseph Attard stated that the accused had punched him several times. Joseph Attard also stated that David Shephard had stepped down from the car to try to intervene and stop the fight. He had tried to support Attard and then tried to stop the accused. However Attard did not see how David Shephard got injured. All that he remembers was that he saw David Shephard lying on the floor. Attard saw another person who had stopped his car to try and help David Shephard as there were cars were passing very close to where he

was lying on the road. The person who stopped to help David Shephard was also assaulted by the accused.

He stated that, in the mean time David Shephard's wife remained in the car, trying to calm down her sister Pauline Ciantar, who suffers from downs syndrome as she was terrified and was crying. As David Shephard came out of the car to try and stop the fight, followed by Mary Attard (Joseph's Attard wife). Joseph Attard also stated that the accused also hit his wife. Joseph Attard stated that this might have been done accidentally because he did not see it happen. He was only told about this by his wife after the incident. Joseph Attard stated that he sustained injuries to his face and that his injuries needed one (1) suture. (vide page 262). Joseph Attard exhibited a medical certificate marked as Doc. JA and two (2) photographs marked as Doc. JA 1 and Doc. JA 2. Joseph Attard stated on oath that he remembered hearing a voice of a girl shouting "*stop it*" for three (3) consecutive times and that this voice was coming from the direction of the car which had been used by the accused. Joseph Attard denies having hooting unnecessarily before he made the overtaking manoeuvre. He denied making any obscene gestures in the direction of the accused and he simply stated that he overtook in a prudent manner. He stated at page 65 that the accused came directly over to him and he did not say anything to him before he assaulted him. Joseph Attard confirmed that he accompanied the police on the site where the collision had taken place to try and identify the exact location of the collision. Joseph Attard could only confirmed the location of the collision as a result of the discovery of the broken glasses of Mary Attard on site.

In cross examination Joseph Attard stated that he was driving a Ford Sierra which had four (4) doors, however one of the back doors had a child lock to protect Pauline Ciantar who suffered from downs syndrome. Joseph Attard stated that David Shephard was sitting at the back near the door which did not have the child lock. He confirmed that traffic was congested on that day as it was Mother's Day. Joseph Attard stated that he had tried to

overtake the accused and in fact flicked his lights however the accused braked suddenly and therefore he did not overtake him. He stated that there was a double continuous white line and that when he tried to overtake him the second time he flicked his lights, did not use his indicator and when there was no on coming traffic, he overtook the accused. Joseph Attard stated that did not believe he crossed the double continuous white line. (page 272 – 273) As he was overtaking, Joseph Attard stated that he felt a bump but he could not say whether he had hit the car of the accused or whether the car of the accused hit his car. Joseph Attard explained at page 287 that the collision was more in the sense of a car brushing against another one rather than crashing into each other. At page 282 Joseph Attard again reiterated that he was not sure whether he hit the accused or whether the accused hit his car. Joseph Attard stated that as he was slowing down, the accused overtook his car from the inner lane and stopped in front of him. Joseph Attard stated that the accused got out of his car first and that he then followed him by getting out of his car.

Joseph Attard stated that he tried to explain to the accused that he had two (2) disabled persons in his car, however the accused immediately assaulted him and did not give him an opportunity to utter another word. Joseph Attard denied that he immediately grabbed the accused by the neck and attacked him. He said that David Shephard did not get out of the car with him. In fact Joseph Attard stated that David Shephard suffers from epilepsy and should not become agitated and that he had told David Shephard to remain in the car and that he was going to sort the matter on his own. (vide page 286). Joseph Attard stated that when he went out of the car, he was just gesticulating like a normal person. Joseph Attard denied again that he grab the accused by the neck. Joseph Attard at page 289 denies that he blamed the accused for the incident because he did not exactly know how the collision occurred. Mr. Attard repeated that he had addressed the accused in Maltese and that he had no reason to be angry about the incident that is the collision. Joseph Attard stated that it was the accused who was

angry about the incident and in fact he had address Mary Shephard with obscene language. (vide page 292). Mr. Attard tried to defend himself when the accused was hitting him but even though he tried hitting him, he believed that he may have only hit him once. (vide page 294). Joseph Attard stated that he saw Mr. Shephard lying on the ground and he only noticed this, as he was trying to escape the accused by running behind the car. He confirmed that he did not see the accused hitting David Shephard at any time. Mr. Attard stated that he was hit again by the accused after he discovered Mr. Shephard lying on the ground. He stated that he could not see very well because he was bleeding from his wounds and the blood was seeping into his eyes blurring his vision.

At page 298 Mr. Attard has stated that it was the accused who left the site of the collision first and after that, Mr. Attard got into the car and drove off into the direction of St. Luke's Hospital. He stated that David Shephard was unconscious at the back of the car and he knew he had a cut on his head. As they were proceeding in the tunnel of Regional Road, he accidentally met the accused on the road, however he was afraid to overtake him. He hooted his horn, however the accused drove in the middle of the road even though he knew that there was an emergency, since Joseph Attard had the hazard lights on and was hooting the horn. When he arrived in hospital he told the policeman on duty what had happened. Joseph Attard stated that in the car that was being used by the accused, there was an elderly woman with a walking stick and a girl. Joseph Attard denied that he started this incident, he denied getting out of his car and assaulting the accused. At pages 303 – 312, Joseph Attard confirmed the evidence he gave during the inquiry.

Mary Anne Attard at page 313 confirmed the evidence of her husband Joseph Attard, that is the application of the brakes by her husband Joseph Attard before the overtaking manuvre, the subsequent overtaking manoeuvre and the collision. She stated that following the collision there was a car which was stationary in front of

them, an English man emerged from it and approached their car. It was at this stage that her husband Joseph Attard got out of the car. Mary Anne Attard stated that she heard Mary Shephard utter the words: "*he is going to kill him, he is hurting him, he is hitting him,*" after which she asked David Shephard to go and assist her husband. Mary Anne Attard stated that she was sitting in the rear seat of the car. After David Shephard left the car, she got out of the car to assist her husband and she heard David Shephard tell the English man to "*leave my friend alone.*" Thereupon the accused punched him.

Maryanne Attard stated that it was at this moment that she asked the English man to leave him alone after which the accused punched her on her left eye. Maryanne Attard recognised and identified the accused present in this Court Room as the person who assaulted her. Maryanne Attard at page 318 stated that the accused kicked David Shephard on Shephard's left side in the region of his ribs and he did this a second time whereupon David Shephard fell down to the ground. After this, the accused assaulted Joseph Attard whilst Attard was trying to run away from him by circling the car. The accused grabbed him and slammed him down on the bonnet.

Maryanne Attard stated that at this point in time she tried to push the accused away from her husband and she heard a woman cry out to the accused "*stop it, stop it*" and this came from the direction of the car that the accused was using. Maryanne Attard stated that in the car of the accused there was also an elderly lady with a walking stick. (vide page 321) Maryanne Attard stated that when the vehicles stopped behind each other, the vehicle of Joseph Attard was on the inner lane and that when David Shephard fell to the ground he fell on the left rear side of Joseph Attard's car. She stated that cars were passing very close to where David Shephard laid on the ground and she was afraid that he was going to get run over.

At one point in time a certain Mr. Briffa came to help them. However, she did not see the accused hit Mr. Briffa since

she was concentrating on David Shephard as the cars were passing very close to where he laid. Maryanne Attard stated at page 324 that when she was in hospital she realised that she had lost her glasses and these were found when they were accompanied by the police on site during the Inquiry with the Court Experts. Maryanne Attard confirmed the evidence that she gave during the inquiry. Maryanne Attard said that when Joseph Attard was driving to hospital after the incident, the accused was driving right in front of them, driving in the middle of the road. Her husband Joseph Attard started to beep the horn, however the accused kept obstructing their line of traffic. He also made an obscene gesture in their regard. (vide page 330)

Mary Shephard at page 332, wife of David Shephard confirmed that she was in the car which was being driven by Joseph Attard. Following the collision Mary Shephard stated that Joseph Attard went out of the car with the intention of explaining to the accused what had happened. She reiterated that the accused immediately punched Joseph Attard. (vide page 335) Mary Shephard stated that after the first punch Joseph Attard collapsed. After that the accused threw him down on the bonnet and hit him in his eyes and face. Mary Shephard stated that she did not move because fear paralyses her. She said that her sister Pauline, who suffers from Downs Syndrome had started to cry. Mary Shephard stated that David Shephard approached the accused and Mary Attard also intervened, however the accused hit David Shephard who fell to the ground. At this stage she tried to get out of the car to assist her husband David Shephard who suffers from epilepsy and she remembers addressing the accused to inform him that her husband suffered form epilepsy and that the accused responded with obscene language. (vide page 337)

Mary Shephard stated that she tried to lift her husband because the cars were passing very close to were he laid on the ground and she was afraid that he could be run over. She stated that at one point in time she saw Mr.Briffa who was also bleeding, however she did not see

how Mr. Briffa got hurt. After this, they all got into the car and Mr. Joseph Attard drove to hospital. On the way there the accused was driving ahead of them and tried to block their way and made obscene gestures in their regard (vide page 339). Mary Shephard stated that when Reuben Briffa tried to help David Shephard, he told the accused to leave him alone because he was an old man and that a fight ensued.

At page 345 Mary Shephard confirmed the evidence that she had given in the inquiry. In the inquiry Mary Shephard stated that she had not seen the manner in which Reuben Briffa had got hurt, but that she was told after the incident that the accused had assaulted him and his teeth were knocked off (vide page 347).

Reuben Briffa at page 350 stated that on the day in question, he was driving in his car when he noticed two (2) stationary cars in front of him, a man on the floor and cars passing very close to where this man was lying so he decided to go down and give assistance. As he helped his man to get to his feet, another man approached him and Briffa told him "*leave him, he is old.*" Briffa stated that the accused answered with obscene language and punched him in his teeth. Briffa ran towards the pavement, found a stone with which he tried to defend himself. Briffa identified the accused as being the man who assaulted him. As a consequence Briffa stated that he lost two (2) front teeth and that his dentist Dr.De Gray, issued a certificate. The medical certificate by Dr.De Gray was exhibited and marked as Doc. RB. (vide page 356)

Reuben Briffa stated that David Shephard was lying on the ground near the front passenger seat and that he was unconscious. He stated that as he was helping David Shephard, the accused approached David Shephard "*to keep on hitting him.*" (vide page 358) It was at this point that Reuben Briffa addressed the accused with the words "*leave him poor man, because he is old.*" (vide page 358) Reuben Briffa stated that he saw another man by the name of Attard who was also hurt, his eyes were blooded and he was holding his face with his hands. Reuben

Briffa stated that he did not see any injuries on the accused who was acting like “*a boxer on a ring, hopping like as if he was challenging you.*” (vide page 359)

Reuben Briffa confirmed that he did not at any time assault the accused in any way. Reuben Briffa confirmed that he showed the police and the Court experts where he believed the collision had taken place. Reuben Briffa confirmed the evidence that he gave in the inquiry and the police report that he made at the police station.

At page 375 Francis Rodenas gave evidence as regards the bail proceedings.

At page 391 architect Valerio Schembri exhibited Doc. VS. At page 394 a report together with the annexed plans and confirmed that authenticity of the said report.

Victoria Mifsud at page 414 gave evidence in Maltese and the translated testimony can be found at page 465 et sequitur. Victoria Mifsud stated that it was her seventy fourth (74) birthday and that the accused and her grand daughter Ramona had taken her out to dinner at a Chinese restaurant in Bugibba. (vide evidence at page 465A) As they were heading slowly in traffic, Victoria Mifsud heard and felt two (2) bumps which were not strong and the accused who was driving the car stopped to see what had happened and noticed that the car had been hit. Victoria Mifsud stated that the accused got out of the car and approached the other car and that all she knows was that she heard screaming and that Ramona got out of the car. Victoria Mifsud stated that she did not leave the car because she could not remove her seat belt. At page 469 Victoria Mifsud stated that she did not hear anything. Later on in the evidence, she said “*cars going by and I was waving in order to try and stop them. Prosecution: Why did they have to stop them? Victoria Mifsud: Because I could hear them fighting.*”

At page 470 Victoria Misfud stated that when she finally managed to extricate herself from the seatbelt, she got out of the car. However there was a lady dressed in black

who told her that everything was over and to get inside the car. She said that at this stage the accused and Ramona got into the car and she saw the other car rush past. (vide page 470) Victoria Mifsud stated that Tristan was scratched all over and that Ramona also was bruised. “*Somebody threw her on the bonnet, they pushed her.*” (vide testimony at page 471) Victoria Mifsud also stated that she saw “*a stone passing over us, the size of a small loaf of bread.*” (vide page 471) However she was not in a position to state who had thrown this stone. At page 472 Mifsud stated that this stone had been thrown in Tristan’s direction by somebody who was wearing a red shirt. However she was not sure of this. Victoria Mifsud stated that the accused was a good man and that he “*even medicates my wounds.*” (vide page 474). At page 475 Victoria Mifsud confirmed the evidence that she gave in the inquiry wherein she had stated that she had not been a witness to the fight because she could not remove her seatbelt and that when she finally managed to do this, the fight was completely over.

In cross examination she stated that immediately following the collision, the accused got out of the car. However he did not appear to be aggressive. She also confirmed (at page 477) that she heard a lot of voices and that Tristan was speaking in English however the others were speaking in Maltese. Victoria Mifsud stated that she did not notice the car of the complainants after the incident and neither did she see the accused make any obscene gestures.

Ramona Rodenas gave evidence at page 425. The translated testimony lies at page 483 et sequitur. Ramona Rodenas stated that she was the accused girlfriend of four (4) years and that on the date in question, it was Mother’s day and the accused had taken her out together with her mother and her aunt. Ramona Rodenas stated that whilst they were on the Coast Road at Bahar ic-Caghaq, a car overtook them “*he tried to scare us off the road . . . it seems that this person tried to bump into us on purpose*” (vide testimony at page 485) and that a

collision ensued. She stated that the damages of the accused were, on the right hand side of the car, in the front between the mudguard and the bumper. She stated that there was no pique between the drivers, however she does remember that the breaks were used and however there was no horn blowing or any verbal communication between the drivers. She stated that she was sitting behind the driver, the accused and that following the collision the accused got out of the car to check what had happened. *“And exactly when he started to walk towards their side, I got out after him. They were fighting Tristan and somebody else.”*

At page 488 Ramona Rodenas stated that by the time she had got out of the car, *“they were already fighting Tristan and the person of the other car.”* (vide testimony at page 488) Whilst the accused and the driver of the other car were fighting, another lady got out of the car and she tried to stop the fight together with the witness (Ramona Rodenas). At this point in time, another man came out of the car *“and there was a confusion, they were two (2) against one (1) at that time.”* Ramona Rodenas stated that the women were trying to stop the fight and to calm down the situation. At page 489, Ramona Rodenas stated that she saw a man lying on the ground, however the accused was not near him. She said that when the man collapsed on the ground, the situation calmed down a bit. After this a car stopped and a man came out and approached the man who was lying on the ground. *“And he started shouting and screaming like a mad person and I do not know what he was saying to Tristan. There was a tree and he got this stone; and when I say a stone, it is a big stone. God forbid it had hit anyone. And basically he told us: I will throw this stone at you. And he threw it.”* (vide testimony at page 489 and 490). However no one was hit. Ramona Rodenas (at page 491) was not in a position to say how the man lying on the ground collapsed and that at this point in time, the accused was on the other side of the car. Ramona Rodenas stated (at page 492) that the car of the complainants was close to the continuous white line and that the accused car was much more to the left. She stated that another car had stopped and a man with

glasses came out of the car whom they had never seen before. He was furious and acted like a mad man. **At page 497 Ramona Rodenas confirmed that everybody seemed to have been injured “there was blood on everyone.”** This man used foul language (vide page 500). Ramona Rodenas (at page 500) confirms the evidence that she had given in the inquiry. At page 503 Ramona Rodenas in the evidence given during the inquiry stated that there was no name calling or obscene gestures during the incident and that she did not report anything to the police “*because we felt we were right and we did not register the vehicle’s registration number.*”

At page 504 Ramona Rodenas denied that the accused was versed in martial arts or that he attended classes in these Arts. She denied that he had any certificates or diplomas in this discipline. She stated that the accused is a very careful driver. Ramona Rodenas stated that she was trying to block the driver of the other car’s way so that he would stop attacking the accused (vide testimony at page 508). At page 510 Ramona Rodenas denied that she assaulted anyone. She also denied that Victoria Mifsud assaulted anyone. At page 511 she stated that the accused Tristan was only defending himself. She stated that when they got home, the accused had “*a bite here and he was punched.*” Asked about the injuries suffered by the other persons involved in this fight, Ramona Rodenas (at page 512), states that she was aware that one (1) of the men had four (4) fractured ribs. Asked whether she saw the accused kicking anybody, Ramona Rodenas stated “*not that I know of.*” (vide testimony at page 513)

Dr. Robert De Gray at page 448 confirmed the certificate exhibited (at page 194) in the record of the proceedings as his own. He stated that Mr.Reuben Briffa had lost his right central incisor and that his lateral incisor was very loose and had to be pulled out, (vide page 448) and that his injury was compatible with blunt trauma. He classified the injuries as grievous at page 449 and that the cost of dental replacement of the teeth would be LM 260.

PC 453 Brian Cassar at page 451 exhibited his report Doc. SA at page 453 et sequitur.

Anthony Felice at page 523, a panel beater confirmed the estimated damages sustained on car CAD 914 and that is to the tune of 65 Maltese Liri (vide Doc. X - at page 532). He stated that the damages sustained were on the bonnet of the car and the side and that the dents were rather small.

David Shephard gave evidence in Maltese at page 535 et sequitur and the translated evidence lies at page 552 et sequitur. David Shephard stated that on the date in question his friend Joseph Attard was driving along the Bahar ic-Caghaq Road, Attard overtook another car and the other car crashed into him and parked in front of him (vide testimony at page 533). David Shephard stated that Joseph Attard got out of his car when he saw the other driver approaching him whilst he went out to look at the damages that the other car sustained. *“And all of a sudden I saw him (the accused), like Bruce Lee, the movements of Bruce Lee, kung fu hitting, boom, boom, boom, boom. I saw my friend like a skinned rabbit. Blood, his face could not be seen. I told him: stop hitting him. He turned on me and did the same to me. Kung fu movements. He gave me two (2) blows in the head, he made me dizzy. He turned suddenly, he raised his legs and kicked me in my chest. Some three (3) kicks. He hit me everywhere.”* (vide testimony at page 553 and 554)

David Shephard stated that he lost consciousness and that he only regained consciousness when he was in hospital. He stated that he had fractured ribs and internal injuries in the groin and in the abdomen. David Shephard stated that he was sitting on the rear seat of the car because he suffers from epilepsy. He also stated that his wife Mary Shephard, her sister Pauline Ciantar and Joseph Attard's wife was also in the car. David Shephard said at page 557 that when he got out of the car, Joseph Attard was sprawled on the bonnet of his own car and that his face was covered in blood. David Shephard stated that he told the accused to stop hitting his friend and that was when the accused turned onto him.

In cross examination David Shephard stated that they had been travelling from Birzebbuga on the Coast Road and that Joseph Attard was driving. At page 563 et sequitur David Shephard confirmed that they were proceeding on the Coast Road and that Joseph Attard was behind the car driven by the accused by about fourteen (14) feet. He stated that when Joseph Attard decided to overtake, he switched on the indicator and pulled on the right hand side to overtake. David Shephard at page 556 denied that Joseph Attard had to break hard at any moment prior to the overtaking manuvre. He confirmed that the accused stopped his car and that Joseph Attard also stopped the car to see the damages, if any on his car. He said that the accused overtook them again and stopped the car in front of them.

David Shephard denied that when Joseph Attard got out of his car he was in an aggressive mood. At page 574 Shephard stated that he got out of the car to hear what was being said, however when he approached Joseph Attard, he found him covered in blood. He addressed the accused and told him "*leave my friend, stop hitting him.*" That was when the accused turned on to him. David Shephard (at page 577) stated that when he got out of the car and walked towards the bonnet of the same car, he found that Joseph Attard was already sprawled on the bonnet and covered in blood. David Shephard stated that he did not see how the fight started (vide page 578).

David Shephard (at page 579) denied that he insulted the accused in any manner. Asked about the third person who arrived on the scene of the incident, David Shephard stated that by this time he was already unconscious.

Brian Farrugia at page 586 on behalf of the director of traffic, confirmed that the car IMP 099 Fiat Punto grey was registered in the name of Ramona Rodenas identity card number 24477M and that the car CAD 914 Ford Sierra white was registered in the name of Joseph Attard identity card number 188447M. He exhibited Doc. BF at page 588 and 589.

Tania Briffa at page 593 gave evidence in Maltese and the translated testimony lies at page 654 et sequitur. She stated that she was driving with her husband Reuben Briffa together with her father, her sister and three (3) children in Bahaq ic-Caghaq where she saw two (2) stationary cars and a man lying on the floor. She said that her husband and father went out of the car to give assistance to this man. She said that as they were giving assistance to the man, she saw two (2) other men fighting each other, and that all of a sudden her husband got hit in the mouth. Tania Briffa stated that it was the accused who hit her husband Reuben who had gone to assist the man who was sprawled on the floor.

Tania Briffa stated that she remained in the car at all times and that she realised that her husband's face was covered in blood as her husband was approaching the car after the incident. Thereafter they went to the Gzira policlinic. Tania Briffa said that she never saw a stone in her husband's hands and neither did she see him gesticulating or shaking his fists at anyone. Tania Briffa at page 671 stated that she had never seen any of the persons involved in the incident before in her life.

Saviour Briffa gave evidence in Maltese (at page 608 and the translated testimony lies at page 634 et sequitur). Saviour Briffa stated that he was in the company of his two (2) children Mariella and Reuben and their children along the Coast Road, when Reuben, who was driving, saw two (2) stationary cars and some people fighting. Reuben also saw an old man who was lying unconscious on the floor and decided to stop the car to help him. Saviour Briffa stated that when his son Reuben decided to assist the elderly gentleman, he also got out of the car to assist. He stated that when Reuben picked this man from the ground, an English man approached him, grabbed him from the neck, punched him, as a result of which, Reuben Briffa lost two (2) teeth. Saviour Briffa stated that he did not see or hear his son address the English man before this had happened and neither was he gesticulating.

Saviour Briffa stated that the only thing that he heard was a woman crying out the words “*stop it, stop it.*” (vide testimony at page 640) Saviour Briffa confirmed that he had never seen any of the people involved in this fight before in his life. Saviour Briffa stated that his son Reuben Briffa did not come to the aid of the man who had collapsed on the ground because he had recognised him. He simply wished to assist him. Saviour Briffa stated that after his son Reuben Briffa was injured, he took him to the police station and to the policlinic. Regarding the “stone” that Reuben Briffa allegedly threw in the direction of the accused, Saviour Briffa stated that this was not a stone but a clump of soil. He stated that the clump of soil that was thrown landed two (2) or three (3) meters away from the accused. Saviour Briffa stated that there were another two (2) ladies who were running about and crying and that there was another man who was also covered in blood. Saviour Briffa stated that after the English man had hit his son Reuben and after Reuben had thrown the clump of soil, the English man left and got into his car. Saviour Briffa (at page 648 and 649) denied that the accused punched Reuben Briffa **after** he threw the clump of soil.

Mariella Briffa gave testimony in Maltese (at page 630 and the translated testimony lies at page 674 er sequitur). Mariella Briffa, daughter of Saviour Briffa and sister to Reuben Briffa confirmed the evidence of Reuben Briffa and Saviour Briffa, identified the accused as the person who assaulted her brother Reuben Briffa. She stated that before the accused hit her brother, she had seen him going around the car after another man and hitting. Mariella Briffa stated that when the accused hit Reuben Briffa, he broke two (2) of his teeth. She stated that her brother Reuben Briffa had only approached the man who was lying on the floor in an effort to pick him up and put him near his car. She denied seeing Reuben Briffa throwing anything in anybody’s direction. Mariella Briffa denied that Reuben Briffa was gesticulating and waving his hands about.

Dr. Marilyn Casha (at page 606) confirmed that Mr. David Shephard was admitted to the High Dependency Unit at St. Luke's Hospital and that before he gave evidence before the Court Expert Dr. Zammit Louis, she had informed him of David Shephard's condition as a patient and that he was competent to give evidence. Dr. Marilyn Casha confirmed the testimony she gave during the inquiry.

Robert Cardona (at page 618) exhibited Doc. XRC that is a report regarding the blood swabs taken from the scene of the incident.

Professor Godfrey Laferla, Chairman of the Department of Surgery at St. Luke's Hospital, at page 687 testified that David Shephard was admitted via the casualty department on the tenth (10) of May two thousand and three (2003) at 22.26 hours. He said that David Shephard was conscious when he was admitted in the casualty department and said that he was allegedly involved in a fight. He said that he was injured at the back of his head, that he was hit hard on the left flank and was complaining of gastro pain and a headache. David Shephard was nauseous and further investigation resulted in a small contusion on the left side of his head, however this did not cause a shift of the brain. However a scan of the abdomen showed that Briffa was bleeding internally and there was a fear that his spleen had been ruptured. Further investigation confirmed bleeding within the spleen, however there was no rupture. The injuries were classified as grievous and life threatening. Professor Laferla confirmed that the injuries sustained by David Shephard were compatible with those sustained in a fight or from a fall.

Dr. Tania Mizzi at page 692 confirmed Doc. PS 1 at page 74 and confirmed the referral of Reuben Briffa to a dentist.

Inspector Pio Pisani at page 693 confirmed the judgement Police vs. Tristan Haynes (at page 21 of the proceedings). He confirmed that he was the prosecuting officer in that case and confirmed the identity of Mr. Haynes.

PS 36 Sergio Azzopardi (at page 694) confirmed Doc. SA, his report, and confirmed that he was a scene of crime officer appointed at the incident.

The accused tendered as evidence (at page 721 et sequitur) an stated that he was thirty six (36) years old and that he had been living in Malta, though not continuously, for a period of about ten (10) years. He said he was married and separated and have a nine (9) month old baby from a relationship with his girlfriend Ramona Rodenas. He stated that on the day in question, he had taken out his girlfriend's grandmother out for supper as it was also Mother's Day and they had gone through Bugibba for a Chinese meal. Rodenas's grandmother was an elderly who suffered from diabetes and had limited mobility. As they were travelling in Rodenas car with the accused driving on the Coast Road near the Splash and Fun park, the car in front of him braked and therefore the accused did likewise and he noticed that the car behind him has screeched to a halt and had skidded. They proceeded towards St. Julians in the line of traffic as it was rather congested being Mother's Day. As they reached the White Rocks Holiday Complex, the accused observed that the car behind him overtook him and as it was doing this overtaking maneuver, it bumped into the front right side of his car.

The accused stated (at page 726 and 727) that he believed that the driver of the other car had actually crossed the double white lines to do the overtaking maneuver. At page 727 the accused stated that he stopped his car immediately and that Mr. Attard also stopped behind his car "*behind my car about fifteen (15) or twenty (20) meters,*" (vide page 727) both drivers having gone out of their cars to examine the damage on their respective cars. The accused stated that on this part of the road there were no street lights and it was dark, the only light available being their own headlamps and the headlamps of the cars in on-coming traffic. At page 728 the accused stated that he only suffered slight damages to his car. After that, "*we walked towards Mr.Attard who*

*was walking in my direction*". At page 729 the accused stated that Mr. Attard, the driver of the car that crashed into him, "*was making a noise and with his hands in the air like he was screaming and things like this.*" The accused stated (vide page 730) that he asked Mr. Attard what he was shouting about and that Mr. Attard responded by grabbing him around the neck and pulled him down. He stated that he managed to push his face away thereupon Mr. Attard bit his finger and punched him in the face. In the mean time, Ramona had got out of the car but her grandmother was still in the car.

The accused stated that a man and a woman also got out of Mr. Attard's car and started to fight with him, and that he now knows them to be Mr. Shephard and Mrs. Attard. The accused (at page 731 stated) that Mr. Shephard and Mrs. Attard were on his back hitting him from behind. He said that Ramona tried to intervene and break up the fight. The accused stated that Mr. Attard was punching him so he punched him back. The accused stated that after that the fight just stopped and it was calm with Ramona and Mrs. Attard pushing back the men to stop them fighting. The accused added that Mrs. Attard told him that the police were on the way and that he should go into his car and that is what he did. However he realised that Ramona was still outside the car, so he went back for her, when another men "*another big man, very big man was shouting, screaming his head off, coming into my direction.*" (vide testimony at page 732) The accused stated that his man was "*swearing his head off*" and acting "*completely crazy.*" Thereafter accused responded using foul language. This third man picked up a rock and told him that he was going to smash his face and that he was going to kill him. "*He tried to put the rock into my head.*" (vide page 732) The accused stated that he heard Ramona screaming "*stop it, stop it*" and that he punched this man in his mouth and that he did this almost automatically because he was frozen with fear. He stated that at this point in time, he saw a man, who he later recognised as Mr. Shephard, lying on the ground next to his car. The accused stated "*he did not fit into the picture of everything, he just, he did not make sense who this*

*man that was lying there, like whether he was involved in another fight, there or what was happening, it just did not come into the picture. It doesn't make sense what this man was doing there.*" (vide testimony at page 733) The accused stated that Mrs. Attard kept on pushing him back and telling him that the police were on their way and that this was when he got into the car and left. The accused stated that in the meantime the traffic was still moving, with cars passing from the inner side of the stationary cars. The accused stated that he was six (6) feet tall, but weighed only sixty nine (69) kilos, was extremely thin and not very healthy. The accused stated that Mrs. Attard was trying to push him back towards in the direction of his car whilst Ramona was trying to restrain Mr. Attard from attacking him again. The accused stated that the fight happened in front of Mr. Attard's car. The accused stated that after the incident with Mr. Briffa was over, they went into the car and drove into the direction of St. Julians. The accused stated that when they got to the traffic lights near St. Julians, he noticed a car that was driving extremely fast with the hazard lights on, that he thought that it was the police at first, however after that he believed that perhaps there were more men coming to fight with him, so when he reached the tunnels, he turned left towards the building that housed the Independent Newspaper. However this car continued on the main road. It was at this point in time, that he noticed that his necklace was missing and this necklace had sentimental value so they turned back to the site of the collision. He found his necklace and returned home.

Mr. Scott Haynes (at page 737) stated that he did not file a police report because he had not written down the number plate of the other vehicle. The accused stated that he intended to talk to Ramona's uncle who was a police sergeant the next morning, however when they got home, Ramona's father phoned up and informed them that the accused was being asked to go to the police station. The accused stated that he went to the police station between two o'clock and three o'clock in the morning and that he was taken to the policlinic where a doctor attended to his injuries. At page 740 the accused stated that he had

abrasions around his neck and back. The accused stated (at page 742) that he did not know how Mr. Shephard got injured. He added that the police were alleging that Briffa was in danger of dying and that he (the accused) was responsible for that.

In re-examination the accused denied that Mr. Attard's car was ever in front of his during this incident. He also stated that it was incorrect to state that two (2) cars could safely drive on the Coast Road without crossing the double white line because the width of the road does not permit this. At page 743 however, he said that at the site of the collision, two (2) cars could actually pass because of the width of the road; that however the traffic was heavy and all the cars were driving in the middle of the carriage way, so that, in that sense, overtaking without crossing the double white lines was impossible. The accused stated that he was the only man with the group of persons travelling in his vehicle and that, there were Mr. Attard and Mr. Shephard with their respective wives in the other vehicle apart from Reuben Briffa.

Mr. Scott Haynes denied that Mr. Shephard collapsed after he (the accused) attacked him (vide page 755). Asked how Mr. Attard sustained his injuries, the accused said that he did not know, however Mr. Attard himself had stated that he fell on the bonnet of his car not as a result of the blows that the accused dealt him, but because of the fact that Mr. Attard was physically attacking him the whole time (vide page 755 - 756). The accused stated that with regards to Mr. Reuben Briffa, this man just approached him shouting, screaming and swearing and that the accused responded by using foul language, at which point in time Reuben Briffa picked up a large stone and threatened to kill him. At page 758 the accused was asked whether he was afraid and he felt himself in danger at any point in time, the accused responded in the affirmative at the time when Reuben Briffa approached him with the rock in his hand and threatened to kill him. However, later on, the accused stated that he was also afraid when he was attacked by Mr. Attard and the others. In fact he stated that he was both shocked and scared

(vide page 759). The accused also stated that he windsurfs and swims. Asked whether he practiced martial arts, the accused (at page 759) stated: “*no, I do not practice any martial arts, no I do not practice any martial arts.*” However asked whether he ever participated in martial arts, the accused replied in the affirmative and stated that this is a discipline “*in doing karates which is like a dance movement.*” (vide page 759). At page 760 however the accused admitted that he had reached a black belt level in martial arts. Asked by the Court how Mr. Shephard was injured, the accused (at page 761) replied that he did not know. Asked again by the Court, the accused said that before Mr. Reuben Briffa came on the scene there was no other man involved in the fight except for Mr. Attard and Mr. Shephard. The accused stated that he had a medical certificate regarding his own injuries which consisted of a scratch on the top of his hand which did not require any suturing and some scratches on his back. He confirmed that he had no black eyes and no broken bones.

At page 763 the accused stated that he could have elbowed Mr. Shephard when Mr. Shephard was hanging on to his back. The accused stated that he had a sedanterly job and was not physically a strong person. The accused stated (at page 766 and 767) that he had three (3) children to support and that they were in a difficult financial position.

Dr. Brian Flores Martin (at page 777) exhibited an affidavit together with a copy of the certificate relating to the accused’s injuries and gave testimony in English at page 778. He stated that when he examined the accused he found him fully conscious and cooperative. He had bruises on the nape of his neck, a small scratch over the bridge of his nose and scratches over his right knuckles and bruising over the lower abdomen. He had a small cut at the left hand small finger and that these injuries were classified as being injuries of a slight nature. He confirmed the certificate exhibited at page 777. Dr. Flores denied that he gave the accused a tetanus injection.

At page 929, Architect Joseph Bugeja stated that he went on the site of the incident and he could confirm that cycle lanes were marked out in the relevant road and that there was only one (1) continuous line in the middle of this road. He stated that his findings were made on the first (1) of May two thousand and nine (2009). He also exhibited XJB1, 2 and 3 which are plans drawn to scale and a survey map together with three (3) images. He reiterated that the width of the road was between thirteen (13) meters and thirteen point five (13.5) meters in all.

Architect David Vassallo gave his evidence in Maltese at page 958 and the translation lies at page 962. Architect Vassallo confirmed that he was an architect with the Network Infrastructure Directorate at that ADT and that he confirmed that the cycle lanes indicated to him on the Coast Road, precisely in the site marked out (at page 410) of the Architect's Schembri report in fact were laid down in the year two thousand and six (2006) but he was unable to give a precise date.

Architect Audrey Testaferrata De Noto gave evidence in Maltese at page 967 and the translated testimony lies at page 972. She confirmed that she was an Architect working with the Transport Authority and that the cycle lanes marked out in Route A1, that is, the site shown at page 410 in Architect Valerio Schembri's report, where in fact laid down in two thousand and six (2006), however she could not inform the Court as to the precise date when the lanes were established. She stated that this route always had a continuous white line in the centre dividing the two (2) carriage ways. She confirmed that the road had always had one (1) lane on two carriage ways and that when they decided to establish the cycle lanes, they left the markings of one (1) lane per carriage way as it had originally been planned. Architect Testaferrate De Noto confirmed (at page 979) that there was only one (1) continuous line and not a double continuous line dividing the carriage way on Route A1 because a double continuous line presupposed that each carriage way had a double lane which was not the case. In this case each carriage way had only one (1) lane. She confirmed that

each carriage way had to be no narrower than 3.4 meters and that the carriage way in this particular site in Route A1 was 6.2 meters wide per carriage way.

Marianne Attard (at page 992) produced by the Defence, gave testimony in Maltese (at page 992 et seq., translated versions stands at page 1164) she stated that prior to the overtaking maneuver, the accused had braked and that her husband had stopped the car. When he was overtaking, Marianne Attard felt an impact and stopped the car. She confirmed that the accused also stopped the car ahead of Joseph Attard. Marianne Attard stated that she could not really describe the overtaking maneuver executed by her husband as she was in the middle of the rear seat. When the maneuver was happening, she felt the car vibrate or shake slightly and her husband stopped the car (vide page 1169 and 1170) She did not know whether her husband had switched on the indicator prior to the overtaking maneuver. At page 1177, Marianne Attard did not know who was at fault in the collision that ensued, following the overtaking maneuver. She stated that after her husband, Joseph Attard, left the car, she heard Mary Sheperd say words to the effect that Maryanne Attard should get out of the car because, "He is going to kill him." (vide page 1181) and therefore she got out of the car, following Mr. David Shephard, to help her husband. She confirmed that Mr. David Shephard addressed the accused with words to the effect that he should leave his friend alone, that he walked towards the accused who was standing in front of their car. Mr. David Shephard was a couple of feet away from the accused, in front of the bonnet of their car. Asked to verify the exact position of the accused and whether Marianne Attard and David Shephard were standing behind the accused, Marianne Attard stated (at page 1191) that the accused was looking at Mr. Attard. However she was most uncertain. At page 1193 and 1194, Marianne Attard said that the accused was looking in their direction, at page 1196 that she put her hand on the accused's arms and asked him "Why are you doing this?". At page 1199, Marianne Attard said that her husband held the accused so that he would not approach his car and told him in

Maltese that they had a handicapped woman in the car. She said that she addressed the accused in Maltese because they did not know, at the time, that he was English. At page 1202, Marianne Attard stated that no one held the accused and that she only held his arm momentarily to ask him why he was doing this. She said that her husband did not hold the accused because he was badly injured and bleeding from wounds to his head. Marianne Attard said that when she asked the accused (at page 1204) why he was doing this, the accused elbowed her, hitting her on the side of her head. Marianne Attard, confirmed (at page 1206) that the accused kicked Mr. Shephard and threw him on the floor and that whilst this was happening, Mr. Attard moved to the side of the car. At page 1208, Marianne Attard stated that her husband remained in the same place near the car and that the accused kicked Mr. Shephard when the latter had only told him to leave his friend alone. She added that when Mr. Shephard collapsed on the floor, the accused kicked him twice. Marianne Attard (at page 1212) stated that Mr. Shephard collapsed near the back passenger seat. Marianne Attard (at page 1213 and 1214) stated that the accused appeared to be dancing as he was hitting the man. At page 1216 to 1218, Marianne stated that the accused had already hit her husband before she got out of the car and that when she was out of the car the accused threw her husband on the bonnet of the car. Marianne Attard (at page 1222) stated that she suffered a bruise on her left eye and on her forehead. She stated (at page 1223) that the bruising first occurred on her forehead and then settled on her left eye. At page 1225 till 1227 Marianne Attard stated that even though she was still afraid, she attempted to stop the accused in view of her husband's injuries and as well on those of Mr. Shephard. At page 1229, Marianne Shephard stated that the accused went back to his car on his own accord and she remembered telling the accused that the Police were on their way. At page 1232, Marianne Attard stated that when she was elbowed by the accused and was hit on her forehead she did not feel dizzy and remained up-standing. Marianne Attard (at page 1234 and 1235) did not

remember whether she was standing in front of the accused's car at any time.

Mary Shephard (at page 1236), produced by the Defense, tendered her evidence, in Maltese (at page 1014 – the translated version being at page 1236 et. seq.) confirmed that Joseph Attard was driving towards St. Julians, the coast road, and that he overtook the accused in the normal fashion (vide 1238) i.e. from the outer lane. She stated that the cars were following each other. After the overtaking maneuver, the accused overtook Joseph Attard from the inner lane “at full speed” (page 1241) and stopped in front of them. Even though she heard the others saying that they felt an impact, Mary Shephard said that she did not feel anything. She said that Mr. Attard saw the accused get out of his car and approaching them and therefore Mr. Attard got out of his car. Mrs. Shephard stated that the accused did not allow Mr. Attard to talk to him and hit him repeatedly with his fist and raised his legs. Mrs. Shephard stated that she saw Mr. Attard bleeding and that the accused was using martial arts (vide page 1246). At page 1249, Mary Shephard stated that she froze and could not get out of the car because of her sister's medical condition. She added that she saw the accused throw Mr. Attard on the bonnet and hit him again. Mary Shephard stated that she had exclaimed that the accused was going to kill Joseph Attard and that, after that, her husband David Shephard and Marianne Attard got out of the car. She stated that the accused was looking towards David Shephard and Marianne Attard whilst Mr. Attard was on the bonnet (vide page 1253). She said (at page 1258) that the accused hit Mrs. Attard with his hand and fist and that he attacked her husband with his legs. She confirmed that David Shephard had his ribs broken as a result of the aggression. After Mary Shephard's testimony in the inquiry was read out to her, Mary Shephard still confirmed that she saw the accused hitting Marianne Attard with his fist. Mary Shephard did not know how many kicks her husband received from the accused, she said that even after her husband collapsed on the floor, the accused continued kicking him (vide page 1263 and 1264). Mary Shephard stated that at this point in time

Marianne Attard told the accused that the Police were on their way and that the accused went towards his car. She stated that when Marianne Attard asked the accused why he was acting in that manner, the accused addressed her in obscene language (vide page 1269). She said that they tried to get David Shephard inside the car and that a certain Reuben Briffa stopped to assist them. She confirmed that she did not previously know Mr. Briffa and that Briffa tried to talk to the accused, however the accused assaulted him and hit him on the mouth and teeth. She confirmed (at page 1274) that her husband had collapsed on the left hand side of the car, nearer to the back passenger's seat.

Joseph Attard (at page 1062 – translated version lies at page 1071) stated that he did not know the reason why the accused had applied the brakes prior to the overtaking maneuver. He stated that he was in no hurry and that he had been driving for over forty (40) years. He confirmed (at page 1073 and 1074) that he stepped out of the car to see what happened as one normally does in a car accident. He said that he did not check his car and that he was not angry following the collision. He stated that he was three (3) steps away from his car when the accused met him. Attard confirmed that after he received the first punch he ended up sprawled on the bonnet of his car but that the accused kept hitting him even though he tried to escape from his clutches. He said that there were dents on the bonnet and the mudguard of his car and that these dents were the results of his head bashing against them. He said that he would have received more blows, had not David Shephard intervened to stop the fight. He stated that the fight between the accused and himself lasted for about one and a half minutes. He stated that he heard a lady's voice crying out, "Stop it," that after Mr. Briffa came to Mr. Shephard's aid, the accused stopped running after him (Attard) and that at this moment in time he was not near the accused. Joseph Attard stated (at page 1083 and 1084) that when the accused went out of his car he did not touch him or assault him. Asked whether he had grabbed the accused by the neck and had bitten his finger and punched on the nose, Joseph Attard stated that he

was only trying to escape from the accused, does not remember either punching or biting the accused but that he could have bitten his finger.

David Shepard (at page 1091 translation in Maltese – the translated version at page 1104 et. seq.) stated that he did not remember on which side of Mr. Attard's scar sustained damage, as he was being assaulted. He stated that he did not know who was to blame for the collision (vide page 1106). Mr. David Shepard stated that he had been standing outside the car, for a couple of minutes, examining the damages of the car, when he realized that Mr. Attard was being beaten up. He remembers telling the accused to leave Attard alone and thereafter the accused assaulted him. Mr. Shepard did not remember who else was outside of the car, but confirmed that he did not lay a hand on the accused. He said that he remembered that the accused hit him on his face and that he raised his legs "like kung-fu fighters", that he received several punches to his chest beside being kicked. At page 1116, David Shepard did not remember how many kicks were inflicted on his chest, tummy, ribs and groin. He remembered that he collapsed and fell to the floor. He did not remember on which side of the car he collapsed. He stated that, following his injuries, he had to have dental treatment on five (5) teeth and that he suffered the effects of the beating for an entire year following the incident (vide page 1121). He said that his teeth became loose and started to ache two (2) months after the incident.

Deliberates:

Following the extradition proceedings, this Court may only take cognisance of the first and second charge brought against the accused and that these two charges were further limited to the alleged greivous bodily harm to David Shepard and Joseph Attard.

The examination of evidence, matters relatively to the credibility of witnesses shall therefore be focused on and

limited to the said limited charges. The Court therefore shall refrain from entering into the merits of who was to blame for the collision or examine the exact location of the collision, the question of the presence of a single or double continuous white line or cycle lanes of the coast road at Bahar ic-Caghaq, or evaluate the charges relating to the injuries allegedly sustained by Marianne Attard and Reuben Briffa. All such matters and charges stand in abeyance until such time, if ever, that the accused submits voluntarily to the jurisdiction of these Courts in the future.

The evidence in this case and the evaluation of the credibility or otherwise of the witnesses are crucial, since the complainants are alleging a case of uncontrolled road rage practiced on two elderly men, whilst the accused cites that he was acting purely in self defence.

Article 637 of the Criminal Code, that is, Chapter 9 of the Laws of Malta, lays down the guiding principles in matters relating to the credibility of witnesses:

*“Any objection from any of the causes referred to in articles 630, 633 and 636, shall affect only the credibility of the witness, as to which the decision shall lie in the discretion of those who have to judge of the facts, regard being had to the demeanour, conduct, and character of the witness, to the probability, consistency, and other features of his statement, to the corroboration which may be forthcoming from other testimony, and to all the circumstances of the case.”*

The testimony of Joseph Attard, a tempo vergine, before the Court-appointed Expert Dr. Zammit Louise is perhaps the most incisive. At page 41, he states that following the collision, he saw the accused get out of his car and walk over in his direction. Attard stepped out of the car and addressed him stating he should not have effected that manoeuvre in view of the fact that two of his passengers were disabled. The accused responded by punching him on his left eye and whilst Attard tried to avoid further blows by waving his arms about, but the accused threw

him on the bonnet of Attard's car and kept hitting him. Attard tried to escape from the accused by moving around the car but to no avail (vide page 41)

Joseph Attard's evidence (at page 255 et seq.) is consistent with the above, however more detailed, in that Attard stated that he was punched three (3) times on left side of his face and left eye before he collapsed on the bonnet of his car; that the accused was moving like a boxer, challenging him to fight. At page 41 and at page 260, Joseph Attard confirms that he did not see how David Shephard was injured but he saw him lying unconscious on the ground. He confirmed this in cross examination at page 295. At page 1071 et seq., Joseph Attard stated that after the accused punched him, he ended up sprawled on the bonnet of his car whilst the accused kept on hitting him even as he tried to run away from him.

The above simply do not, in any way, equate with the six (6) versions (vide note of final submissions of the accused at page 1143) that the defence alleges Joseph Attard gave nor are the six (6) 'versions' given by the defence in the note of submissions at page 1145, **necessarily different** versions. Joseph Attard stated repeatedly, albeit in different words and expressions, that after the first assault, he tried to escape from the accused by moving around the car, that he did not see the assault on David Shephard but saw him lying on the ground; that after this, the accused caught up with him and assaulted him again.

The Court cannot, in any way, uphold that the different "versions" given by Attard give rise to any of the "situations" mentioned at page 1143 (bottom marked number 1) and page 1144 and this for several reasons. With regard to "situation 1", the defence claims that Joseph Attard says that the accused approached him with a clenched fist and that therefore he could not also say he might have bitten his finger. This Court finds that the defence conveniently selects these instances and seems to forget that Attard says he was punched several times (after seeing the clenched fist), that he tried waving

his hand about to defend himself, that he did not remember biting the accused's finger but that it might have happened as he was defending himself.

Similarly, "situation 2" (page 1144) is a hypothesis of how the dents may have occurred but the Court has no expert evidence on the tactile strength of the metal of a Ford Sierra nor was the Court presented with expert opinion by a physicist who explored the force required to create such dents.

The Court furthermore fails to see any "situation" with regards to paragraph 3 and 4 of pages 1144 of the note of submissions of the accused. The evidence tendered by Attard shows that he was never floored, but that he was repeatedly punched and ended up sprawled on the bonnet of his car. After landing on the bonnet of his car he lost consciousness for a few seconds. However **before** landing on the bonnet of his car and after receiving the first blow, Attard tried to defend himself.

Similarly the Court does not find anything peculiar in the fact that Mr. Attard's momentary loss of consciousness, did not result in his collapse. Evidently, the width of the Ford Sierra bonnet was sufficient to support the weight of Joseph Attard

The Court refers the matter of dents on the bonnet of the Sierra to its pronouncement with regard to lack of expert evidence on this issue.

Moreover, with regard to question two (at page 1142), the Court refers the defence to the report of the serologist Robert Cardona and the **seven blood swabs** taken from various sections of the Ford Sierra CAD 914 (vide page 621 to 629).

As to the third question posed by the defence in its note of final submissions (at page 1144), again the Court fails to see what question is being posed. The evidence shows that Attard testified that David Shephard and his wife

Marianne Attard came out of the Sierra to support Attard and intervened in an effort to stop the fight.

David Shephard tried “*to hold*” (as in stop) the accused. Attard repeatedly stated that he never saw the accused hitting his wife. Attard rementions hearing Shephard saying words to the effect that the accused should leave his friend alone. Joseph Attard states that he lost consciousness for **a few seconds**. This may be the reason for his not having seen the assault on his wife and Shephard; and the reason why his wife, the Briffas and David Shephard failed to notice Attard’s transient loss of consciousness.

The evidence tendered by David Shephard at the inquiry (at page 48) is to the effect that he got out of his car, after Attard, because Marianne Attard told him that a fight had ensued and he went to try and break up the fight. However in his testimony (at page 552) Shephard states that he followed Attard out of the car to see the damages to the car when all of a sudden he saw the accused attacking Attard viciously. He then told the accused to stop hitting his friend and it was at this stage that the accused assaulted him, hitting him twice on the head and then kicking him in kung-fu style in his chest, abdomen and groin, after which he lost consciousness, only regained it in hospital. Shephard stated that by the time he reached the front of the vehicle, Joseph Attard was covered in blood and sprawled on the bonnet of his own car. Shephard stated that he did not see **how** the fight between the accused and Shephard started. In his last testimony Shephard confirmed that he did not lay a hand on the accused and that he was hit in the head, received several punches to the chest and was kicked (like kung-fu fighters) in the chest, abdomen, ribs and groin until he collapsed on the ground.

The Court finds that the testimony of David Shephard does not provide **the four versions** mentioned at page 1150 in the note of submissions of the accused, the only

minor inconsistency being the stage at which Shephard got out of his car – i.e. whether he went out to see the damages sustained by the cars, or whether he got out of the car following Marianne Attard's alert that the accused was fighting with Mr.Attard.

The accused gave his testimony in the Inquiry (at page 46) stating that Attard was the first to get out of his car and that he grabbed him from the neck, bit his finger and punched his face, and whilst a second man "was on his back" (page 46), a third man joined the fray:-

**"the three of them were all on me. I was defending myself and I hit them in the process of doing so."**

In his testimony (at page 727), the accused said that following the collision he immediately stopped his car and got out to inspect the damages to his car which were slight, whilst Attard was walking towards him screaming, shouting and gesticulating (page 729). The accused asked him what he was shouting about and was immediately grabbed by the neck and pulled down. Whilst the accused was attempting to push his face away, Attard bit his finger and punched him in the face. Another man and woman assaulted him (page 730) whilst his girlfriend tried to break up the fight. He said: *"I was punching back and I was trying to get the people off my back and I was punching with Mr. Attard who was punching me as well."* After that, *"The fight just stopped, it was very calm."* (page 731) Mrs. Attard and Ramona managed to stop the fight with Mrs. Attard stating that the Police were on their way (page 731). As he was entering the car, he noticed that Ramona was still behind so he turned back, when a "very big man" came screaming and swearing at him. This man got hold of a large stone and told the accused that he was going to kill him and *"tried to put the rock into my head"* (page 732) whereupon the accused punched this man in the mouth.

The accused stated (at page 734) that he was six (6) feet tall. At page 720, Mr. Shephard declared that he was five

feet eight inches (5'8") tall, Attard five feet ten inches (5'10"), five feet eleven inches (5'11") tall.

In spite of Victoria Mifsud's colorful testimony, the Court notes that, a tempo vergine, during the Inquiry, Mifsud stated that following the collision, the accused and Ramona Rodenas got out of the car, she heard a lot of shouting and that by the time she had managed to release herself from the seat belt, **the fight was over** (vide page 44).

In the Inquiry (at page 45) Ramona Rodenas stated that following the collision, the accused got out of his car and walked towards Attard's car. A lot of shouting ensued and another man got out of Attard's car. Ramona Rodenas therefore got out of the accused's car to calm down the situation but she did not succeed because the two of them started to punch each other. A woman tried to hold the accused while Ramona tried to hold the other man. In the meantime another car stopped and a man went near a person who was lying on the floor. This man and the accused started challenging one another. After this the former took hold of a stone and threw it at the accused but did not hit him. Thereupon the accused punched him.

In her testimony before this Court, Ramona Rodenas stated that following the collision, the accused walked towards the other car and she went out:  
*"after him. They were fighting Tristan and somebody else."*

Ramona stated that she saw a man lying down on the ground but that the accused was not near him. Subsequently another car stopped and a mad man approached Tristan, grabbed a big stone, threatened him with it and, in fact, threw it. She stated that the accused was not proficient in martial arts and denied he had diplomas or certificates relating to this discipline.

Deliberates:

The version proffered by the accused at the inquiry is to the effect that, following the collision, Attard, for no apparent reason, grabbed him in a head lock, bit his finger and punched him whilst Shephard was on his back and a third man was also assaulting him and that he defended himself by punching back his aggressors.

This differs totally from the version given by the accused before this Court, where Attard, acting like a lunatic, was the aggressor, aided by Mrs.Attard who was clinging to his back whilst Shephard apparently collapsed for no reason other than, presumably, an ill-timed epileptic fit. In the version given before this Court, the third man, Briffa, appeared **after** the fight had broken up and that, acting like a complete lunatic and, for no apparent reason, Briffa threatened the accused with, and actually threw a stone at his head; the accused responding by punched him in the face.

The Court finds that both versions differ utterly from that given by Rodenas in the Inquiry: wherein she said that initially the accused was fighting with **two** men. Furthermore both versions differ from the evidence given by Rodenas before this Court wherein she stated that *"they were fighting Tristan and somebody else"*. The Court notes that Rodenas was echoing the accused's version of events as given by him in the Inquiry. Rodenas, however, later on, in her testimony **before this Court**, confirms that Mr.Shephard was already lying down on the ground and nowhere near the accused. She adds that yet another mad man stopped his car, threatened and, actually, threw a stone at the accused for no apparent reason.

These versions are devoid of credibility and have no semblance of the truth, apart from the fact that they are uncorroborated by independent witnesses i.e. the Briffas - who were simply passers-by who stopped their car to assist an unconscious man who was in danger of being run over by oncoming traffic. The Court makes reference to the compelling, mature and precise testimony of Saviour Briffa whose evidence completely negates the assertions made by the accused that he was assaulted,

simultaneously, by three men. Saviour Briffa asserts that it was the accused's assault that injured Attard and Briffa.

The Court notes that Ramona Rodenas, who was proficient in both the English and the Maltese language and who immediately realized that the complainants were not English speaking, had cried out, "*Stop it*" repeatedly. The Court believes that these words were addressed to the accused.

Indeed, the Court, fails to see how the accused – allegedly set upon by three men, two of whom were lunatics, could have emerged from such a vicious assault, with a few scratches to his back and on his knuckles, and a small cut (not a bite mark – vide certificate of Dr. Flores Martin) on his little finger.

The Court finds that the version of events, given by the accused and his girlfriend Rodenas, not only lacks credibility but are highly improbable and simply do not bear up. These versions are contradicted by all the complainants and most importantly by independent witnesses on fact of **vital** importance. The Court, therefore concludes that the versions given by David Shephard and Joseph Attard, with a few exceptions on matters of mere detail, are credible and dependable.

The plea of self defence:

*According to Article 223 of the Criminal Code; "No offence is committed when a homicide or a bodily harm is ordered or permitted by Law or by a lawful authority or is imposed by actual necessity, either in lawful self-defence or in the lawful defence of another person."*

According to Maltese Jurisprudence, the plea of self defence may be successfully in terms of Article 223 if the accused proves on a balance of probability, that his acts were "*imposed by actual necessity*" of self-defence:

**"Kem m fid-dottrina, kif ukoll fil-gurisprudenza taghna, hu ormai stabbilit li biex wiehed jista' jinvoka din l-**

iskriminanti, l-agressjoni subita trid tkun ingusta, gravi u inevitabli. L-element ta' inevitabilita' jigi nieqes meta wiehed, minflok ma jevita l-inkwiet ossia l-glied li jara gej meta dan jista' b'mod ragonevoli jigi hekk evitat, imur minghajr raguni valida jikkonfrontah, b'mod li jipprecipita hu stess il-konfront fiziku." (vide **Pulizija vs. Augusto Augularo** App. Krim. decided on the 26<sup>th</sup> of August, 1998 per Chief Justice Dr. Vincent De Gaetano.)

Indeed Lord Justice Wiagery in *R. vs. Julien* 1969 1 WLR 839 states:

***"It is not ... the Law that a person threatened must take to his heels and run in the dramatic way suggested by Mr. McHale; but what is necessary is that he should demonstrate that he is prepared to temporise and disengage and perhaps to make some physical withdrawal and that that is necessary as a feature of the justification of self defence is true, in our opinion, whether the charge is a homicide charge or something less serious."*** (at page 843)

It is this Court's considerate opinion, that the accused not only failed utterly to demonstrate **any**, if not "**some** physical withdrawal" but that as a black belt practitioner of a martial arts discipline, he engaged two elderly men, one significantly smaller than him in stature, in an uncontrolled display of his art of fighting.

It is pertinent to note that the accused tried to conceal his black belt achievement from the Court. Indeed after having denied it repeatedly (a denial which was also echoed by his girlfriend Ramona Rodenas) the accused was cornered into admitting that he was indeed so well versed in a fighting art that he was a black belt. It is universally understood that one of the cardinal principles of martial arts is the ability to extricate oneself from a

perceived danger without inflicting harm to oneself and to others.

The Court, therefore, rejects the plea of self defence proffered by the accused.

The Court must necessarily pass on to examine the extent of the injuries sustained by Attard and Shephard in the light of Article 214, 216 and 218 of the Criminal Code:

**Article 214:** *“Whosoever, without intent to kill or to put the life of any person in manifest jeopardy, shall cause harm to the body or health of another person, or shall cause to such other person a mental derangement, shall be guilty of bodily harm.”*

**Article 216 (1):** *“A bodily harm is deemed to be grievous and is punishable with imprisonment for a term from three months to three years –*

- (a) *if it can give rise to danger of –*
  - (i) *loss of life; or*
  - (ii) *any permanent debility of the health or permanent functional debility of any organ of the body; or*
  - (iii) *any permanent defect in any part of the physical structure of the body; or*
  - (iv) *any permanent mental infirmity;*
- (b) *if it causes any deformity or disfigurement in the face, neck, or either of the hands of the person injured;*
- (c) *if it is caused by any wound which penetrates into one of the cavities of the body, without producing any of the effects mentioned in article 218;*
- (d) *if it causes any mental or physical infirmity lasting for a period of thirty days or more; or if the party injured is incapacitated, for a like period, from attending to his occupation;*
- (e) *if, being committed on a woman with child, it hastens delivery.”*

**(2):** *“Where the person injured shall have recovered without ever having been, during the illness, in actual*

*danger of life or of the effects mentioned in subarticle (1)(a), it shall be deemed that the harm could have given rise to such danger only where the danger was probable in view of the nature or the natural consequences of the harm.”*

**Article 218 (1):** *“A grievous bodily harm is punishable with imprisonment for a term from nine months to nine years –*

*(a) if it causes any permanent debility of the health or any permanent functional debility of any organ of the body, or any permanent defect in any part of the physical structure of the body, or any permanent mental infirmity;*

*(b) if it causes any serious and permanent disfigurement of the face, neck, or either of the hands of the person injured;*

*(c) if, being committed on a woman with child, it causes miscarriage.*

**(2):** *Any debility of the health or any functional debility of any organ of the body, and any mental infirmity, serious disfigurement, or defect shall be deemed to be permanent even when it is probably so.*

**(3):** *The punishment for the offences referred to in subarticle (1) shall be that established in article 312(2) if the bodily harm is committed by means of any explosive fluid or substance.*

The injuries sustained by Joseph Attard were severe bruising to his left eye and a laceration over his eyebrow which needed one suture. Dr. Sawicki affirmed that these were injuries of a slight nature save complications.

However the correct application of Article 216(1)(b) of Chapter 9 of the Laws of Malta is that enunciated by Chief Justice Dr. De Gaetano in **Pulizija vs. Francis Dingli** (App. Krim. Decided on 12<sup>th</sup> September, 1996):

*“Ghal finijiet ta’ l-Artikolu 216 (1)(b) jekk hemmx sfregju jew le hija kwistjoni ta’ fatt rimessa ghal gudikant tal-kas (f’dan il-kas il-Magistrat) u dan kien perfettament intitolat li jasal ghal konkluzjoni differenti*

*minn dak li wasal ghaluha l-Espert tal-Qorti. L-appellant donnu qed jippretendi li biex il-Qorti tiddeciedi jekk offiza iggibx sfregju fil-wicc o meno, irid jghaddi certu zmien halli wiehed jara l-effett li thalli l-ferita in kwistjoni fil-wicc. **Dan mhux korrett** (enfasi ta' din il-Qorti) kif gia ntqal, ghall-finijiet ta' l-Artikolu 216(1)(b) sfregju anki ta' ftit granet, per ezempju sa kemm is-suturi jew ponti jkunu ghadhom f'posthom, jammonta ghal offiza gravi ghalkemm wara li jghaddi aktar zmien, il-marka ma tkunx tikkwalifika bhala sfregju."*

In the light of the above mentioned tenet, upheld by the Criminal Court of Appeal and in view of the photographs exhibited by Joseph Attard i.e. Doc.JA1 and Doc.JA2 (at page 138), the Court is of the opinion that the injuries sustained by Joseph Attard caused a disfigurement of his face, albeit one that lasted for a number of days.

The injuries sustained by David Shephard were of a more serious nature. These injuries were confirmed by Dr. Nicole Camilleri at Casualty (vide page 86 et seq.) who verified that David Shephard was admitted to hospital in a semi-consistent state, that a CT Scan showed a contusion of the brain which was rendered more serious owing to the medication that had been prescribed to Shephard, which medication "would have led to bleeding." (vide page 91). She stated that he was in danger of losing his life for one to two hours following his admission to hospital.

Indeed Dr.Marilyn Casha (page 606) confirmed that he was admitted in the High Dependancy Unit of St.Luke's Hospital. Dr. Nicole Camilleri also confirmed that Shephard suffered a fracture to his eight rib.

Professor Godfrey Laferla further explained in detail the injuries sustained by Shephard, stating that further CT Scans and ultra sound examinations confirmed that Shephard **was bleeding internally within the spleen, though the spleen itself was not ruptured.** Asked to classify the injuries he stated categorically:

***“Quite greivous because a rupture of the spleen is always considered as a life threatening injury. Fortunately in this case the blood cloth remained confined within the spleen itself, but had that ruptured, it would certainly have necessitated a surgical intervention to save the life of the patient.”***  
(vide page 688)

This Court, therefore, rejects the assertions made by the defence in its note of submissions at page 1157, wherein it was stated that David Shephard was never in danger of losing his life and finds to the contrary.

The Court therefore is of the opinion that the injuries sustained by David Shephard fall within the parameters delineated by Article 216(1)(i) of Chapter 9 of the Laws of Malta as far as his internal injuries are concerned and within the remit of Article 216(d) of Chapter 9 of the Laws of Malta in relation to his fractured rib.

The Court however, after having examined the evidence of Professor Laferla, wherein he categorically denied that there was any permanent debility of the spleen and wherein he confirmed that David Shephard made a full recovery, is of the opinion that Article 218 of the Criminal Code, which provides for the most serious and grievous kinds of bodily harm, does not apply to the case.

Therefore this Court finds the accused, Tristan Scott Haynes, guilty of the first charge brought against him, limitedly to the grievous injuries sustained by David Shephard; guilty of the second charge brought against the accused Haynes, limitedly to the grievous injuries sustained by Joseph Attard and after having seen Articles 214, 216(1)(a)(i), 216(1)(d), Article 216(1)(b) of the Criminal Code, Chapter 9 of the Laws of Malta, condemns the accused to a period of imprisonment of four (4) years from which period of imprisonment shall be deducted the time the accused spent in preventive custody.

Informal Copy of Judgement

The nature of the injuries and the ferocity of the assault precludes the Court from considering any other form of punishment save that of actual imprisonment.

The Court reserves judgement relating to the other changes brought against the accused until such time that he voluntarily submits to the jurisdiction of this Court and therefore adjourns the case sine die.

**< Partial Sentence >**

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