



**Qorti tal-Magistrati (Malta)
Bhala Qorti ta' Gudikatura Kriminali**

Magistrat Dr. Doreen Clarke LL.D.

Today the 9th of January, 2017

**The Police
(Inspector Elton Taliana)**

vs

Catalin Gabriel Cirligeanu

Case No: 414/2016

The Court

Having seen the charges brought against Catalin Gabriel Cirligeanu holder of Identity Card with number 61288A.

Charged with having in these islands on the 6th of August, 2016 at about 02:45hrs and in the time before, from Havana Club in St. George's Street, St Julians, committed theft of five mobile phones of make 5S, Samsung, Huawei, Iphone and Iphone S, which theft exceeds two thousand and three hundred and twenty nine Euros and thirty seven cents (€2,329.37) which theft is aggravated by amount and time to the detriment of Maria De Brincat, Nina Aurelia Schwager and other persons.

Charged also with having on the 29th of June, 2016 at 01:30hrs from Havana Club in St George's Street, St Julians, committed theft of a mobile phone of make Plus One, which theft exceeds two hundred and thirty two euros and ninety four cents (€232.94) but does not exceed two thousand and three hundred and twenty nine Euros and thirty seven cents (€2,329.37) which theft is aggravated by amount and by time to the detriment of Abigail De Brincat.

Finally, charged with being recidivist after being sentenced for an offence by a judgment issued by the court of Magistrates (Malta) presided by Magistrate Dr A. Demicoli on the 16th of July, 2013 which judgment has become absolute.

Having seen the note of the Attorney General whereby the acts were transmitted to this Court in order for the defendant to be tried summarily in terms of the following provisions:

- 17, 31 and 533 of Chapter 9 of the Laws of Malta;
- 261(c)(f), 267, 270, 279(a), 280 and 281 of Chapter 9 of the Laws of Malta;
- 261(c)(f), 267, 270, 279(a), 280 and 281 of Chapter 9 of the Laws of Malta; and
- 49, 50 and 289 of Chapter 9 of the Laws of Malta.

Having seen that the defendant had no objection to the case being tried summarily by this Court.

Having seen that the defendant admitted to the charges of theft as qualified by time and value which exceeds two hundred and thirty two euros and ninety four cents (€232.94) but does not exceed two thousand and three hundred and twenty nine Euros and thirty seven cents (€2,329.37) in terms of section 279(a) of Chapter 9 of the Laws of Malta.

Having heard the evidence and the submissions of the parties.

Having seen the acts of the proceedings.

Having considered

The defendant is not contesting the charges of theft; what he is contesting, with regards to the first offence, is the aggravating

circumstance of value which exceeds the sum of two thousand and three hundred and twenty nine Euros and thirty seven cents (€2,329.37).

In fact from the evidence produced there is no proof that the items stolen exceed the said amount of two thousand and three hundred and twenty nine Euros and thirty seven cents (€2,329.37). Regarding the first charge Maria Debrincat said that her mobile phone, an iPhone 5S, cost around six hundred Euro when she bought it; and Nina Schwager, said that her mobile phone, a mini Samsung Galaxy S5 which she bought second-hand two years before, cost around four hundred fifty Swiss Francs. There is no evidence at all as to the value of the other mobile phones stolen by the defendant. Regarding the second charge Abigail Debrincat said that her mobile phone, a One Plus, cost around four hundred and eighty Euro when she bought it. In these circumstances it cannot be said that the value of the items stolen by the defendant in either of the two instances exceeds the sum of two thousand and three hundred and twenty nine Euros and thirty seven cents (€2,329.37).

Consequently the defendant is being found guilty of two instances of theft aggravated by time and value which exceeds the sum two hundred and thirty two euros and ninety four cents (€232.94) but does not exceed two thousand and three hundred and twenty nine Euros and thirty seven cents (€2,329.37).

The defendant is also being charged with being a recidivist; the relevant provisions of law quoted by the Attorney General are sections 49 and 50 as well as 289 of Chapter 9 of the Laws of Malta. The prosecution is basing this charge on a judgement dated 16th July 2013 whereby, after having been found guilty of theft, the defendant was condemned to twelve months imprisonment which were suspended for two years.

The defendant is not contesting the judgement of the 16th July 2013, neither is he contesting the fact that the offences subject of this present case were committed in the five year period following the expiration of the operational period of the abovementioned suspended sentence. He is however contending that the Court cannot apply both sections 50 and 289.

The Court however does not concur with his view. Recidivism is provided for in terms of section 49 of Chapter 9; section 50, read in

conjunction with sections 28F and 28A(5A) of Chapter 9 merely regulates the effect which that recidivism may have on the penalty depending on the circumstances provided for in those provisions [that is the circumstances provided for in sections 50, 28F and 28A(5A)]. Section 289, distinctly from sections 49 and 50, provides for the possibility of an increased penalty, at the Court's discretion, in case of a second or subsequent convictions for theft irrespective of when these judgements were given and the lapse of time between one and the other. Consequently for any one single act of theft the penalty may be increased in terms of section 289 if that person had previously been convicted of theft, and it may be increased further if, being a recidivist in terms of section 49, section 50 [taking into consideration sections 28A(5A) and 28F] also applies.

In this present case the defendant is being found guilty of having committed an offence after having been sentenced for an other offence; consequently he is recidivist in terms of section 49. The offences of which he is being found guilty by this present judgement were committed within the five year period stipulated in section 50. The defendant was convicted of theft in the judgement given on the 16th July 2013 and he is being found guilty of theft in terms of this present judgement. Consequently the defendant is guilty of being a recidivist in terms of section 49; both sections 50 and 289 may be applied in meting out the penalty.

There are various considerations to be had regarding the penalty to be meted out. The defendant is being found guilty of two instances of theft, consequently by application of section 17(b) of Chapter 9 of the Laws of Malta he shall be *sentenced to the punishment for the graver crime with an increase varying from one-third to one half of the aggregate duration of the other punishments*. Both instances of theft of which the defendant is being found guilty carry the same penalty, he must therefore be sentenced to the punishment for one of the offences with an increase varying from one third to one half of the duration of the punishment for the other offence.

In terms of sections 279(a) and 280(1) the penalty for theft aggravated by value [which does not exceed the sum of two thousand and three hundred and twenty nine Euros and thirty seven cents (€2,329.37)] and time is of imprisonment from five months to three years which cannot

be awarded in the minimum. In terms of section 20 the punishment must therefore include at least one-third of the difference between the minimum and the maximum. Consequently the minimum penalty to be awarded for one instance of theft is of sixteen months and the minimum penalty that may be awarded for the second instance of theft is that of six months.

Considering the nature of the offences and of the items stolen as well as the defendant's criminal record which carries only one other conviction the Court is convinced that it should not increase the penalty in terms of sections 50 and 289 and that it should mete out a penalty which is close to the minimum.

Wherefore the Court, after having seen section 49, 50, 261(c)(f), 267, 270 and 289 of Chapter 9 of the Laws of Malta, finds defendant guilty of the charges brought against him provided that with regard to the first two charges he is being found guilty of theft aggravated by time and value which does not exceed the sum of two thousand and three hundred and twenty nine Euros and thirty seven cents (€2,329.37) and condemns him to twenty two months imprisonment.

DR. DOREEN CLARKE
MAGISTRAT