



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

Magistrate Dr. Doreen Clarke LL.D.

Today, 26th day of August 2020

**The Police
(Inspector Joseph Xerri)**

vs

Joel Fosso Toche

Case Number: 12/2020

The Court,

Having seen the charges against Joel Fosso Toche, 30 years of age, son of Toche Christophe and Lucienne nee' Mongue, born in Cameroon on the 14th July 1989, residing at 25, Harmony Court, Triq il-Ħmistax ta' Awwissu, Mosta, holder of the Maltese ID Card Number 9001687A;

Charged with having on the 2nd February 2020 at around quarter to four in the morning (03.45hrs) in Triq Spinola, St. Julian's:

1. Assaulted or resisted by violence or active force not amounting to public violence, seargent 922 Valhmo Medati, a person lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority;

2. Reviled, or threatened, or caused bodily harm to any person lawfully charged with a public duty, being seargent 922 Vahlmor Medati, constable 744 Joseph Bajada and constable 793 Samuel Muscat, while in the act of discharging their duty or because of them having discharged such duty, or with intent to intimidate or unduly influence them in the discharge of such duty;
3. Disobeyed the lawful orders of any authority or of any person entrusted with a public service, namely seargent 922 Vahlmor Medati, constable 744 Joseph Bajada and constable 793 Samuel Muscat, or hindered or obstructed such persons in the exercise of their duties, or otherwise unduly interfered with the exercise of such duties, either by preventing PS 750, PC 744 and PC 941 from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons;
4. Attempted to use force against the person seargent 922 Vahlmor Medati, constable 744 Joseph Bajada and constable 793 Samuel Muscat with intent to insult, annoy or hurt such person or others;
5. Uttered insults or threats towards seargent 922 Vahlmor Medati, constable 744 Joseph Bajada and constable 793 Samuel Muscat, or being provoked, carried his insult beyond the limit warranted by the provocation;

Charged also with having on the same day at around half past three in the morning (03.30hrs) in Triq San Ġużepp, St. Julian's: -

6. Reviled, or threatened, or caused bodily harm to any person lawfully charged with a public duty, being seargent 750 Terry-James Mallia, constable 744 Joseph Bajada and constable 941 Ryan Agius Said, while in the act of discharging their duty or because of them having discharged such duty, or with intent to intimidate or unduly influence them in the discharge of such duty;
7. Disobeyed the lawful orders of any authority or of any person entrusted with a public service, namely seargent 750 Terry-James Mallia, constable 744 Joseph Bajada and constable 941 Ryan

- Agius Said, or hindered or obstructed such persons in the exercise of their duties, or otherwise unduly interfered with the exercise of such duties, either by preventing PS 750, PC 744 and PC 941 from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons;
8. Attempted to use force against the person seargent 750 Terry-James Mallia, constable 744 Joseph Bajada and constable 941 Ryan Agius Said with intent to insult, annoy or hurt such person or others;
 9. Uttured insults or threats towards seargent 750 Terry-James Mallia, constable 744 Joseph Bajada and constable 941 Ryan Agius Said, or being provoked, carried his insult beyond the limit warranted by the provocation;
 10. Wilfully disturbed the public good order or the public peace;

Charged also with having on the same date, times and circumstances in these islands:

11. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the whole or any portion of the plant Cannabis, which drug was found under circumstances denoting that it was not intended for his personal use;
12. Had in his possession the psychotropic and restricted drug (ecstasy) without a special authorisation in writing by the superintendent of Public Health;
13. Committed these offences in, or within 100 metres of the perimeter of, a school, youth club or centre, or such other place where young people habitually meet.

The Court was requested to issue a Protection Order against the accused to provide for the security of PS750 Terry-James Mallia, PS922 Vahlmor Medati, PC744 Joseph Bajada, PC793 Samuel Muscat and PC941 Ryan Agius Said, or for the keeping of public peace or for the purpose of

protecting the injured party or other individuals from harassment or other conduct which will cause a fear of violence in terms of article 412C of Chapter 9 of the Laws of Malta.

The Court was also requested, in case of guilt, to also apply articles 383, 384 and 385 of Chapter 9 of the Laws of Malta in addition to any punishment it deems fit to provide for the security of PS 750, PS 922, PC 744, PC 793 and PC 941.

The Court was also requested to apply section 533(1) of Chapter 9 of the Laws of Malta, as regards to the expenses incurred by the Court appointed experts.

Having seen the Order of the Attorney General issued in terms of section 102A(2) of Chapter 31 of the Laws of Malta and the Order of the Attorney General issued in terms of section 22(2) of Chapter 101 of the Laws of Malta for this case this case to be tried summarily by this Court sitting as a Court of Criminal Judicature.

Having heard the evidence adduced by the prosecution.

Having seen that during the sitting held on the 2nd of July 2020¹ the defendant admitted the charges brought against him and confirmed this admission of guilt even after having been given time to reconsider his plea.

Having seen the pre-sentencing report drawn up by the probation officer.

Having heard the submissions of the parties.

Having seen the acts of the proceedings.

Having considered

That the defendant admitted all the charges brought against him; these are consequently sufficiently proven. Defendant also declared that he is not contesting the fact that the four sachets contain cannabis and that the yellow pill is ecstasy².

¹ Ref minutes at folio 78.

² Ref minutes at folio 70.

With regards to the penalty to be meted out the Court took into consideration on the one hand the nature of the offences of which the defendant is being found guilty and the nature and the quantity of the substance found. On the other hand the Court took into consideration defendant's clean conviction sheet. The Court also took into consideration the recommendations made by the probation officer in the pre-sentencing report.

The court also considered that in reality the first ten charges refer to one single incident which started at 03.30hrs in St Joseph Street St Julian's and ended at 03.45hrs in Spinola Road St Julian's. In view of this the offences listed in these charges may be considered as continuous offences in terms of section 18 of Chapter 9 of the Laws of Malta. Consequently the penalty for these offences should be that stipulated for the first charge which may be increased by one or two degrees at the Court's discretion.

The Court further considered that in terms of section 17(b) of Chapter 9 of the Laws of Malta, and since the defendant is being found guilty of more than one crime liable to punishment restrictive of personal liberty, he must 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. Consequently the Court must impose the penalty stipulated for the eleventh offence, which penalty must be increased by one degree in view of the aggravating circumstance mentioned in the second proviso to section 22(2) of Chapter 101 of the Laws of Malta, with another increase varying from one third to one half of the punishments stipulated for the other offences (the first ten charges taken as continuous offences, and the 12th charge).

Wherefore the Court, after having seen sections 18, 95, 96, 338(dd)(ee), and 339(1)(d)(e) of Chapter 9 of the Laws of Malta, sections 40A, 120A(1)(a) and 120A(2)(b)(ii) of Chapter 31 of the Laws of Malta and Regulation 5 of Legal Notice 22 of the year 1985, and sections 8(d), 22(1)(a), 22(2)(b)(i) and the second proviso of section 22(2) of Chapter 101 of the Laws of Malta and Regulation 9 of Legal Notice 292 of the year 1939, on his admission finds defendant guilty of the charges brought against him and condemns him to **fourteen (14) months**

imprisonment and a fine of four thousand and five hundred Euros (€4,500).

The Court is ordering **the forfeiture, in favour of the Government of Malta, of the sum of six hundred Euro and eighty cents (€600.80)** exhibited as Dok JX8,

In conclusion the Court is also ordering **the destruction of the drugs and other objects exhibited as Document JX7** once this judgement becomes final and executive, under the supervision of the Registrar, who shall draw up a *proces verbal* documenting the destruction procedure. The said process verbal shall be inserted in the records of these proceedings not later than fifteen days from the said destruction.

**DR. DOREEN CLARKE
MAGISTRAT**