



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

MAGISTRATE NATASHA GALEA SCIBERRAS B.A., LL.D.

Case Number: 741/2021

**The Police
(Inspector Jean Paul Attard)**

vs

**Mitchel Ricardo Antonius Virginia
(Dutch Identity Card number IH2451841)**

Today, 14th February 2022

The Court,

Having seen the charges brought against the accused **Mitchel Ricardo Antonius Virginia**, son of Gerald and Wilhemina nee` Timmers, currently homeless, holder of Dutch Identity Card with number IH2451841, born in Uden, Netherlands on 2nd April 1994;

Charged with having, between 24th November 2021 at around eleven in the evening (23:00 hrs) and 25th November 2021 at around two o'clock in the morning (2:00 hrs) in St. Julian's, Malta:

1. Committed a theft of various things globally amounting to four hundred eighty euro (€480) to the detriment of Giuseppe Giudice and Melissa Ruggiero, which theft is aggravated by amount, which amount does not exceed two

thousand, three hundred twenty nine euro and twenty seven cents (€2,329.27),
by time and means;

*(Art. 261(b),(c),(f), 263, 264, 266, 270, 278, 279(b), 280 of Chapter 9 of the
Laws of Malta)*

2. Committed a crime of a voluntary nature during the operative period of a
suspendend sentence given by Magistrate Dr. C. Farrugia Frendo LL.D. on
24th November 2021;
(Articles 28A and 28B of Chapter 9 of the Laws of Malta)
3. Became a recidivist by a number of judgements of the Court of Magistrates,
which judgements have become res judicata;
(Articles 49, 50 and 289 of Chapter 9 of the Laws of Malta)
4. And during the month of November 2021 between the 24th and 26th lead an
idle and vagrant life in the locality of St. Julian's.
(Article 338(w) of Chapter 9 of the Laws of Malta).

Having seen that upon his arraignment, during his examination in terms of law, the
accused declared that he had no objection to his case being dealt with summarily and
that he pleaded not guilty to the charges brought against him;

Having also seen the consent of the Attorney General in terms of Section 370(4) of
the Criminal Code for this case to be dealt with summarily;

Having also heard the accused, in the course of the sitting held on 10th December
2021, plead guilty to the charges brought against him, which guilty plea he
confirmed after the Court, in terms of Section 453(1) of the Criminal Code,
explained to him the consequences of such plea and after having given him sufficient
time to reconsider his plea and to retract it;

Having seen all the records of the case;

Having heard the submissions made by the Prosecution and the defence with regards
to the punishment to be meted out.

Considers that:

In the present case, the accused is being charged with having committed the offence
of aggravated theft on the night between 24th November and 25th November 2021.
As stated above, he pleaded guilty to the charges brought against him. Yet, from the

records of the proceedings, the Court has serious doubts as to whether the mentioned offence actually took place on the night indicated in the charges. In this respect, the Court notes that during the testimony given by Giuseppe Giudice in the sitting of 27th November 2021, the Prosecuting Officer asked the witness about what happened between the night of 25th and 26th November 2021 and the said witness explained how he had left his hotel room at about 10:30 p.m. and returned at 3.30 a.m., referring also to the items that had gone missing from the said room. Likewise, in the said sitting, witness Melissa Ruggiero testified in connection with the events of the night of 25th and 26th November 2021 following the reference made to her to the said night by the Prosecuting Officer.¹ The Court further notes that from the accused's statement of 26th November 2021, it results that the said accused was questioned by the Investigating Officer about the night between 25th and 26th November 2021. Thus, the said Officer questioned the accused about his whereabouts "*during the night of 25/11/2021 to 26/11/2021*", about what he was wearing "*during the night of 25/11/2021 – 26/11/2021*" and if he knew anything about the theft from Room 308 in St. Julian's Bay Hotel "*during the night of 25/11/2021 – 26/11/2021*". In addition, to the question as to whether there was anything that he wished to add, remove or change from his statement, the accused answered *inter alia* that "*last night is a blur to me*" [emphasis of the Court] thus referring to the night between the 25th and 26th November 2021, considering that his statement was taken on 26th November 2021 at 18.10 hrs.²

Furthermore the Court notes that although the application filed by the Commissioner of Police on 27th November 2021 refers to the date of the accused's arrest as 25th November 2021³, which would imply that the theft could not have occurred on the night between 25th and 26th November 2021, yet the declaration of the accused refusing legal assistance, also signed by the said accused, refers to the accused having been arrested on 26th November 2021 at 2:45 p.m.⁴

Thus, notwithstanding the fact that the accused has filed a guilty plea in this case, considering the above and considering that the theft charge refers to the night between the 24th and 25th November 2021, the Court has a reasonable doubt as to the guilt of the accused in respect of the offence as indicated in the first charge.

Section 360(2) of Chapter 9 of the Laws of Malta states that:

¹ *Vide* a fol. 17 and a fol. 20 of the records of the proceedings.

² *Vide* accused's statement a fol. 13 and 14 of the records.

³ *Vide* a fol. 5 of the records.

⁴ *Vide* a fol. 15 of the records.

“The summons shall contain a clear designation of the person summoned and a brief statement of the facts of the charge together with such particulars as to time and place as it may be necessary or practicable to give ...”.

In its judgement of 19th November 2015 in the case **Il-Pulizija vs Andre` Falzon**, the Court of Criminal Appeal referred to another judgement given by the said Court, as differently presided, on 18th October 2005 in the case **Il-Pulizija vs John Mary Briffa**, where the appellant had been charged with offences that allegedly took place at around 7.30 p.m., whereas the evidence brought referred to an incident that had occurred at around 7.30 a.m.. In that case, it was held that:

“L-imputazzjoni ghalhekk kif impostata qed tirreferi ghal xi haga li allegatament grat tnax-il siegha wara u l-ewwel Qorti hekk sabet lill-appellant hati. Mill-provi ma jirrizultax li gara xi incident fil-hin indikat fl-imputazzjoni u ghalhekk l-appellant ma setax jinsab hati kif fil-fatt insab. Il-frazi “ghall-habta ta” tindika hin approssimattiv u tinkludi hin vicin dak imsemmi fl-imputazzjoni izda zgur mhux tnax-il siegha wara. Il-prosekuzzjoni qalet li huwa ovvju li dan kien zball dattilografu. Jekk inhuwa hekk, il-prosekuzzjoni kellha tiehu hsieb taghmel jew titlob il-korrezzjoni opportuna tempestivament.”

In **Il-Pulizija vs Andre` Falzon**, in which case the accused had also filed a guilty plea before the Court of Magistrates as in the present case, after referring also to other judgements which confirmed this same principle⁵, the Court continued as follows:

“Stabbiliti dawn il-principji dottrinali u applikati ghall-kaz in ezami huwa car allura illi l-appellanti kellu jigi illiberat mill-akkuzi kif dedotti kontra tieghu billi dawn jirreferu ghal perijodu ta’ zmien differenti minn dak li fih sehew l-allegati fatti li wasslu ghall-imputazzjoni odjerna. Illi allura billi l-Prosekuzzjoni naqqset milli tinduna b’dan l-izball u tirrettifikah fil-hin opportun, u billi l-Avukat Generali huwa issa fi stadju ta’ appell prekluz milli jitlob il-korrezzjoni mehtiega biex tigi sanata l-akkuza, ma hemmx dubbju illi l-imputazzjonijiet kif dedotti kontra l-appellanti ma jistghux jissussistu billi fid-data indikata fl-akkuza l-appellanti ma ikkommettiex ir-reati lilo addebitati.”

It is therefore clear in this case, that since the theft charge refers to the night between the 24th November 2021 and 25th November 2021, whereas the records of the

⁵ **Pulizija vs Warren Piscopo** and **Pulizija vs Rita Theuma**, both decided by the Court of Criminal Appeal on 19th October 2011.

proceedings refer to the facts leading to the said charge as having occurred on the night between the 25th November 2021 and 26th November 2021, the accused cannot be found guilty of the offence of theft as charged.

Clearly, once the second charge depends on the first, given that the accused is not being found guilty of the offence of theft, neither can he be found guilty of the second charge, which requires the finding of guilt in respect of an offence punishable with imprisonment in terms of Section 28B of the Criminal Code.

By means of the third charge the accused is also being charged with being a recidivist in terms of Sections 49, 50 and 289 of the Criminal Code. In this respect, the Court must first consider the fourth charge in terms of which the accused is being charged with the contravention under Section 338(w) of the Criminal Code, namely that during the month of November 2021, between the 24th and 26th, he led an idle and vagrant life in St. Julians, to which he also pleaded guilty. Since there is no evidence in the records of these proceedings which suggests otherwise, the Court deems that this charge has been proved to the degree required by law. Once the accused is being found guilty of this contravention, he is also being found guilty of being a recidivist in terms of Section 49 of the Criminal Code, to which he also pleaded guilty, but not in terms of Sections 50 and 289 of the said Code, once the elements required under these provisions of law do not subsist.

Considers further:

For the purpose of the punishment to be inflicted, the Court took into consideration the criminal record of the accused, from which it results that on 24th November 2021, he was found guilty of aggravated theft, in respect of which he was sentenced to one year imprisonment suspended for three years.

It is also taking into consideration the testimony of the Probation Officer Joanna Farrugia, the nature of the offence of which the accused is being found guilty, and more importantly, that the accused has been in preventive custody since his arraignment on 27th November 2021.

Conclusion

For these reasons, the Court after having seen Sections 49 and 338(w) of the Criminal Code, finds the accused **Mitchel Ricardo Antonius Virginia** not guilty of the first and second charges as brought against him and of the third charge in so far as this refers to Sections 50 and 289 of the Criminal Code and acquits him thereof, but finds him guilty of the third charge in so far as this refers to Section 49 of the

Criminal Code and of the fourth charge and condemns him to an admonition in terms of law.

Natasha Galea Sciberras
Magistrate