



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

MAGISTRATE DR MARSE-ANN FARRUGIA LL.D.

Sitting held today Wednesday, 20th September 2023

**The Police
(Inspector Lydon Zammit)
(Inspector Stephen Gulia)**

vs

**Boban Smiljkovic
*Omissis***

The Court,

1. Having seen the charges brought against Boban Smiljkovic of 45 years, son of Zoran and Slobodanka, born in Serbia, on the 15th August 1978, without a fixed address and holder of Serbian Passport 012519593 and

Omissis

Charged with having on the 11th December 2020 between 18:00hrs and 18:30hrs from the establishment “The Convenience Shop” situated in Constitution Street, Mosta

1. Committed theft of cash money and top up cards, which theft is aggravated, by violence, means, amount which does not exceed two thousand and three hundred and twenty-nine euros and thirty-seven cents (€2,329.37), and by time, to the detriment of Kameswara Rao and/or Laken Farrugia and/or other person/s or any other entity
2. On the same date, time, place and circumstances without a lawful order from the competent authorities and saving the cases where the law authorizes private individuals to apprehend offenders, arrested, detained or confined Kameswara Rao against his will and with the intent of extorting money or effects, or of compelling her to agree to any transfer of property.

Boban Smiljkovic alone accused:

1. For having on the 11th of December 2020 between 18:00 hrs and 18:30hrs from the establishment “The Convenience Shop” situated in Constitution Street, Mosta at the time of committing a crime against the safety of the person or of theft, had on his person any arm proper or ammunition or any imitation thereof.
2. For having on the 4th November 2020 between 13:30hrs and 14:30hrs from “Ochid Flats” flat 6, Triq l-Imhalla, Naxxar, committed theft of objects, which theft is aggravated by means, amount which exceeds two thousand and three hundred and twenty-nine euros and thirty seven cents (€2,329.37) and to the detriment of Michael Orland and/or other person/s or any other entity.
3. For having on the 11th of January 2021 between 13:15hrs and 13:30hrs from building site 5, Triq il-Konventwali, San Pawl il-Bahar, committed theft of power tools, which theft is aggravated by means and to the detriment of Alexander Xuereb and/or other person/s or any other entity.
4. For having on the 26th of January 2021 between 14:00hrs and 20:00hr from the establishment “Trolees Supermarket” situated in Triq il-Merluzz San Pawl il-Bahar, committed theft of a backpack, which theft is aggravated by means and to the detriment of Claudio Pattavina and/or other person/s or any other entity.

5. For having on the 26th of February 2021 between 9:45hrs and 10:00hrs from the vehicle bearing registration number DCO268 that was parked in Triq l-Imdina Qormi committed theft of objects which theft is aggravated by amount which does not exceed two thousand and three hundred and twenty-nine euros and thirty-seven cents (€2,329.37) and by the nature of thing stolen to the detriment of Brian Anthony Christopher Azzopardi and/or other person/s or any other entity.

The Court was asked that in the case of a guilty plea it should order the accused to pay the expenses in regards of the experts and architects nominated in these procedures according to Article 533 of Chapter 9 of the Laws of Malta

The Court was asked to apply Articles 383, 384, 385, and 412C of Chapter 9 of the Laws of Malta, for the safety and protection of the persons mentioned herewith.

2. Having seen the note of referral for judgement of the Attorney General dated 19th January 2023, wherein he was of the opinion that there might result an offence (or offences) under the provisions of:

Boban Smiljkovic and *Omissis* together:

1. Articles 261(a)(b)(c)(f), 262(1)(a)(b), 263(b), 267, 270, 275, 277(b), 278, 279(a), 280, 281 of the Criminal Code, Chapter 9 of the Laws of Malta;
2. Articles 86, 87(1)(c)(e) of the Criminal Code, Chapter 9 of the Laws of Malta.

Boban Smiljkovic alone:

3. Article 55(a) of the Arms Act, Chapter 480 of the Laws of Malta;
4. Articles 261(b)(c), 263, 267, 278(1)(2), 279(b), 280 of the Criminal Code, Chapter 9 of the Laws of Malta;

5. Articles 261(b), 263, 278(1) of the Criminal Code, Chapter 9 of the Laws of Malta;
 6. Articles 261(b), 263, 278(1) of the Criminal Code, Chapter 9 of the Laws of Malta;
 7. Articles 261(c)(g), 267, 271(g), 279(a), 280(1) of the Criminal Code, Chapter 9 of the Laws of Malta;
 8. Articles 17, 31, 532A, 533 of the Criminal Code, Chapter 9 of the Laws of Malta
3. Having heard the defendant declare that he has no objection that his case is tried summarily.
 4. Having heard the evidence and having seen all the records of the case and the documents exhibited.
 5. Having seen the notes of submissions of the prosecution and of the defence

THE FACTS

6. The facts which gave rise to these proceedings are in brief the following:
 - (i) On the 11th December 2020 at around eighteen minutes past six in the evening (6.18p.m.), the Police were informed that an armed robbery had just taken place in “The Convenience Shop” situated in Constitution Street, Mosta. This armed robbery was committed by two male persons. From an analysis of the CCTV footages it transpired that these two men used a vehicle, which they parked in Triq Naqqax, Mosta. The Police noticed that the left tail light of this vehicle was not working properly.
 - (ii) On the 31st January 2021 at around half past ten in the evening (10.30pm), the Police noticed a Peugeot vehicle which the registration number FCC 271 coloured dark grey that was not working properly, just as the one used in the armed robbery. This vehicle was registered on Claudia Cremona, but when the police spoke to her,

she said that she had sold the car to her sister Antonella Carter Olivari, who actually accompanied Cremona to the Police Headquarters.

- (iii) Anontella Carter Olivari was arrested and during the interrogation she stated that she and her partner, the defendant, had an acute drug problem, and to sustain that habit she lends him her vehicle FCC 271, knowing that he will provide drugs. She told the Police that she suspected that the defendant used her vehicle to commit theft. She also told the Police that the previous night, the defendant had slept in her apartment in St. Paul's Bay, and that his clothes were all packed up in a luggage in her apartment.
- (iv) During the interrogation Carter Olivari was shown the CCTV footage of the armed robbery that took place in The Convenience Shop, and she immediately recognized the two thieves as being the defendant, holding a firearm, and a certain Metodia Popov.
- (v) The Police went to the apartment of Carter Olivari, and forced open the door in her presence, since Carter Olivari said that she does not have the keys. The defendant was inside and was arrested. During the search, the Police found various clothes, which they thought were used in the armed robbery.
- (vi) During the investigation of this armed robbery, the Police realized that the defendant was involved in another four thefts.
- (vii) The first theft took place on the 4th November 2020, when Michael Orland filed a report of theft of electrical and water fittings from a vacant residence, with the address Orchid Flats, flat 6, Triq l-Imhalla Naxxar. From the CCTV footage, the Police noticed the defendant existing the premises and carrying bags with the inscription Bridge Point, possibly filled with fittings, and go into a Hyundai Getz coloured white with registration number LEK 795, which was leased to Michael Carter, who is the husband of Antonella Carter Olivari. Carter Olivari told the Police that she was the one making use of that vehicle, and she had lent the car to the defendant, as she always did. According to the Police, in the CCTV footage of this theft, the defendant was wearing the same shoes that were used in the armed robbery of "The Convenience Shop" in Mosta.

- (viii) The report of the second theft was filed on the 11th January 2021 by Alexander Xuereb, who stated that some power tools were stolen from the building site situated in 5, Triq il-Konventwali, St. Paul's Bay. The Police analysed the CCTV footage, and according to them, the defendant could be seen entering and existing the premises. He also used the vehicle with registration number FCC 271, the same vehicle used in the armed robbery of The Convenience Shop, and was wearing the same pair of shoes used during the armed robbery.
- (ix) The third theft was reported on the 27th January 2021 by Claudio Patavino, who stated that on the 26th January 2021, whilst he was working at Trolees Supermarket, situated in Triq il-Merluzz, St. Paul's Bay, someone stole his backpack. The Police analysed the CCTV footage, and once again according to them, the person who stole the backpack was the defendant, because he was wearing the same pair of shoes and held the same red backpack used in the armed robbery.
- (x) On the 26th February 2021, Brian Anthony Christopher Azzopardi filed a police report, wherein he stated what whilst his vehicle, bearing registration number DCO 268, was parked in Triq l-Imdina, Qormi, he left it unattended for a few minutes whilst he made delivery. When he returned, he found out that his pouch and two mobile phones were missing. This pouch contained one hundred and fifty-five Euro (€155) cash, and several keys. During the investigation, it resulted that the thief used a vehicle bearing registration number LLY 164, a Toyota CHR, coloured silver, which was leased to Antonella Carter Olivari, who once again told the Police that she lent the car to the defendant. Some time later the same day, Carter Olivari went to the Qormi police station with the stolen pouch and mobiles. She told the Police that it was the defendant who stole the pouch.
- (xi) After his arrest, the defendant signed a declaration renouncing to his right to legal advice and assistance before and during the interrogation. During an audio-visual statement, he admitted he committed the armed robbery and the other four thefts.
- (xii) On the 4th March 2023, the defendant together with Metodija Popov, who was arrested separately, were arraigned in court, charged with the above-mentioned offences. Popov pleaded guilty to the charges brought against him, but the

defendant pleaded that he was not guilty, and hence the Police requested that the separation of the proceedings. Popov was sentenced to a term of eighteen (18) months imprisonment.

Considerations as regards to the Guilt of the Defendant

7. Before the Court considers the merits of the charges preferred against the defendant, the Court thinks that logically it should deal first with the plea raised by the defence in its note of submissions on the admissibility of the statement released by the defendant.

Preliminary Plea – The inadmissibility of the Statement

8. The defence raised the issue of the admissibility of the statement of the defendant for the first time in its note of submissions.
9. The defence states that the Prosecution failed to ensure that the defendant was fit for interrogation before the interrogation took place. The defence submits that the fact that the defendant needed medical assistance is evidently clear because of “his desperate use of drugs” as he admitted during the interrogation and from the fact that after the arraignment, he tested positive to the use of drugs, and instead of being kept in custody in the Corradino Corrective Facility, he was admitted to the Forensic Ward at Mount Carmel hospital. David Mellors, a representative of the Correctional Services Agency, stated that on the 4th March 2021 – the day, the defendant was admitted to prison – he tested positive to the use of morphine and cocaine.
10. On the basis of these facts, the defence is arguing that the defendant was not mentally fit for the interrogation, because he was under the proven influence of “desperate drug use”, and unable to understand and comprehend even his legal rights. It submits that in those circumstances, the Prosecution was obliged to request a doctor to examine the defendant, in order to confirm that he was fit for the interrogation. Hence, according to the defence the statement was taken unlawfully, and its contents should not be considered by this Court.

11. From the evidence in the records of the case, there is no doubt that the defendant was informed of all his rights at law, and this results clearly from the interrogation, where the Prosecuting Officer states: “... .. *You were given your legal rights and you were given a copy of this warrant of arrest*”. The defendant states “*Correct*”.¹ The Letter of Rights includes as one of the rights the right to consult a medical practitioner, as provided in Article 534AS(1) of the Criminal Code. Hence the distinction the defence tries to make between what it calls “legal rights” and “medical rights” is non-existent at law – the right to medical assistance is one of the legal rights of the suspect, in the sense that it is a right granted to him by law.

12. The defence is not alleging that the defendant was not given the Letter of Rights as prescribed in Article 534AS(3) of the Criminal Code. It is alleging that prior to the interrogation, although the inspector reminded the defendant of his right to legal assistance and to remain silent, he did not remind the defendant of his right to medical assistance and that when the defendant stated during the interrogation that he was “desperate for drugs”, the inspector was duty bound to suspend the interrogation, and request a doctor to examine the defendant to see whether he was fit for interrogation.

13. For the sake of clarity and to avoid any doubt, the Court points out that during the interrogation, the defendant never said that at that moment in time, i.e. during the interrogation, he was feeling “desperate for drugs”, but that on the day he committed the armed robbery he was desperate for drugs. In fact, the transcript of the interrogation is as follows:

“Inv. Off: Can you explain how you decided to go to this shop? This incident happened on the 11th December.

Susp: I didn’t decide that I was going to go there. I was desperate.

Inv. Off: You said you were desperate. Desperate for what?

Susp: Drugs.”²

¹ See fol. 79 of the proceedings.

² See fol. 86 of the proceedings.

14. Secondly, the Court points out that during the arraignment, the defence declared that it “does not object to the fact that the accused had been brought under arrest.”³ If the defence was of the opinion that the defendant was not fit for interrogation, and consequently possibly not even to attend court on that day, it should have alerted the Court to this fact, so that the Court could take the necessary action, including appointing an expert psychiatrist to examine the defendant *a tempo vergine*. Instead, the defence chose to do none of this, and allowed the proceedings to continue as usual, and this issue was only raised in the final note of submissions of the defence.

15. Thirdly, the committal proceedings - or inquiry – has the aim to collect all the evidence which is going to be presented during the trial by jury, and additionally that this evidence is preserved and is not lost due to the passage of time. The defence – like the Prosecution – in this exercise of what is called “discovery” – has the right to ensure that the evidence it intends to bring forward during the trial is preserved and this before it is too late and the evidence is lost or destroyed. This right is given to the defence in Article 405(5) of the Criminal Code.⁴ The accused did not exercise this right during the committal proceedings. Although he is now alleging that he was not mentally fit for interrogation because he was “desperate for drugs”, there is no evidence of this in the records of the case, and he only raised this issue at this late stage of the proceedings, namely in his note of final submissions.

16. The defence argues that the fact that after the arraignment he tested positive to drugs and he was not kept in custody in the Corradino Corrective Facility, but sent to the Forensic Ward at Mount Carmel Hospital, is evidence that he needed medical assistance prior to the interrogation. It is true that David Mellows testified that when the defendant was sent to prison he tested positive to morphine and cocaine.⁵ Dr Joseph Saliba, the psychiatrist of the Corrective Services Agency confirmed that the defendant was detained at the Forensic Ward between the 4th and the 10th March 2021 – that is immediately after

³ See fol. 7 of the proceedings.

⁴ Article 405(5) of the Criminal Code provides as follows: “*The provisions of the preceding sub-articles shall apply in the case of witnesses whom the accused may wish to examine or re-examine. In such case, the demand shall be communicated to the Attorney General. The court shall then cause the Attorney General or the Commissioner of Police to be notified of the day appointed for the hearing of the witnesses in order that they or any other officer under their charge may if they so desire, appear and cross-examine the witnesses.*”

⁵ See page 626 of the proceedings.

his arraignment.⁶ But he also stated that the defendant was referred to the Forensic Ward for methadone stabilization, because he had been tested positive for cocaine and opiates. Dr Saliba continued saying as follows: *“When a patient has been on opiates they get physically and psychology withdrawal symptoms so you need to stabilize them on methadone which is a medical replacement for opiates and heroine, so we have to find the equivalent dose of methadone that he would be stable on. [The stabilization on methadone] protects the ... symptoms things like cramps, diarrhea, nausea, shivers from physical withdrawal symptoms of opiates things.”*⁷ As regards the tests done at the Forensic Ward, Dr Joseph Saliba stated that *“we would have been looking at tremor, we would have been looking at blood pressure, we would have been looking at pupil size”* and he was treated for these symptoms.⁸ In his evidence, Dr Saliba nowhere states that the defendant was somehow mentally not fit or refers even remotely to his mental state. From his evidence it is clear that the defendant was referred to the Forensic Ward by way of procedure, once he tested positive for opiates, so that he could be stabilized on methadone to prevent the physical withdrawal symptoms of opiates, and not for any reasons related to his mental health.

17. There is also no evidence that before or during the interrogation, the defendant complained to the investigators that he was feeling sick. Article 355AS of the Criminal Code provides as follows:

“(1) The suspect or accused person shall, at his request, be allowed to consult a medical practitioner of his choice and, if such medical practitioner is not readily available, any other medical practitioner.

(2) Immediately upon arrest and without undue delay, the Executive Police or any other law enforcement or judicial authority shall inform the suspect or an arrested person of such a right.

⁶ See page 629 of the proceedings.

⁷ See page 630 of the proceedings.

⁸ See pages 633-634 of the proceedings.

(3) A record shall be kept that the suspect or accused person has been duly informed of such right by the Executive Police or by any other law enforcement or judicial authority.”
(the underlining was done by this Court)

18. There is no evidence in the records of the case, that upon his arrest the defendant requested medical assistance, and the defence is not even suggesting that he did so. As already stated above, from the audio-visual recording of the interrogation, it results that the defendant was informed of all his rights according to law.
19. From the records of the case, there is ample evidence that the investigators cautioned the defendant more than once on his right to remain silent, and the right to request legal assistance. There is no evidence that during the interrogation the defendant was not understanding what he was being told. The Court is of the opinion that the defendant was alert and had a normal level of orientation, he was understanding what was going on, and he answered in a lucid and coherent way all questions put to him. This results clearly from the audio-visual recording of the interrogation, which the magistrate presiding this Court has personally watched.
20. In the light of the above considerations, the Court concludes that the interrogation took place in conformity with the law. The defendant refused legal assistance out of his own free will. It does not result that during the interrogation, the defendant changed his mind and asked the Police to be assisted by a lawyer. Neither does it result that during his interrogation, he indicated that he was feeling sick or asked for medical assistance, or that he had some form of impediment – mental or physical – which rendered him vulnerable at that moment. Consequently, the Court is rejecting the plea of the defence that the statement was taken unlawfully, and whatever was stated in the statement is going to be considered as admissible evidence in these proceedings.⁹

⁹ See by analogy on similar facts the judgement **The Republic of Malta vs Fabian Catania** decided on the 21st. June 2023 by the Court of Criminal Appeal.

The Level of Proof required in Criminal Proceedings

21. In its note of submissions, the defence makes several submissions in the sense that the Prosecution did not manage to prove its case beyond any doubt, because no forensic experts were appointed. In order to avoid making unnecessary repetitions further on in this judgement, the Court is of the opinion that it should at the outset make reference to the judgement **Il-Pulizija vs Michael Ellul Vincenti**, decided on the 3rd October 2013, where the Court of Criminal Appeal (in its inferior jurisdiction)¹⁰ held as follows:

“Jinghad fil-bidu nett li mkien fil-Ligi ma tobbliga lill-Qorti li hija tkun certa minghajr ombra ta’ dubju dwar htija o meno ta’ akkuzat. Ic-certezza tinsab fir-Ren Divin u fl-akkuzat illi jaf cert x’gara u ma garax. Ghal fini ta’ gustizzja umana huwa bizzejjed illi dik il-prova tilhaq il-livell ta’ minghajr dubju dettat mir-raguni u cioe’ livell oghla mill-probabbli illi huwa bizzejjed biex jissodisfa xi tezi jew ohra tad-difiza.

Hemm ukoll il-provi cirkostanzjali illi johrogu minn dan il-process, provi illi huma wkoll importanti, adirittura impellenti ghall-prosekuzzjoni, li jwasslu ghal konkluzjoni wahda u wahda biss. Meta persuna tkun qieghda tikkonsidra sabiex taghmel reat, dina taghmel minn kollox sabiex tahbi l-operat u r-responsabilita’ taghha ghal dak ir-reat, u jista’ jkollok sitwazzjoni fejn ma jkollokx xhieda okulari, izda jkollok diversi indizji li kollha jwasslu ghand l-akkuzat bhala l-unika persuna illi seta’ kien fil-pozizzjoni illi jikkommetti r-reat in kwistjoni.”¹¹

22. The Court also makes reference to the judgement **Il-Pulizija vs Peter Ebejer**, decided on the 5th December, 1997, where the Court of Criminal Appeal (in its inferior jurisdiction¹²) states as follows:

“Ta’ min ifakkar hawnhekk li l-grad ta’ prova li trid tilhaq il-prosekuzzjoni hu dak il-grad li ma jhalli ebda dubbju dettat mir-raguni u mhux xi grad ta’ prova li ma jhalli ebda ombra ta’ dubbju. Id-dubbi ombra ma jistghux jitqiesu bhala dubbji dettati mir-raguni.

¹⁰ Per Judge Michael Mallia.

¹¹ See also in the same sense the judgement **Il-Pulizija vs Cyrus Engerer** decided on the 8th November 2014 by the Court of Criminal Appeal (in its inferior jurisdiction) per Judge Michael Mallia.

¹² Per Judge Vincent De Gaetano.

Fi kliem iehor dak li l-gudikant irid jasal ghalih hu li, wara li jqis ic-cirkostanzi u l-provi kollha, u b'applikazzjoni tal-buon sens tieghu, ikun moralment konvint minn dak il-fatt li trid tipprova l-prosekuzzjoni. Ghamlet sew infatti l-ewwel qorti li ccitat b'approvazzjoni l-isbjergazzjoni moghtija minn Lord Denning fil-kaz "Miller v. Minister of Pensions" [1974] 2 All E.R. 372 tal-espressjoni "proof beyond a reasonable doubt";

"Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence "of course it is possible but not in the least probable" the case is proved beyond reasonable doubt, but nothing short of that will suffice" (373-374)."

23. The Court is going to examine the evidence presented by the Prosecution in the light of what is stated in these two judgements.

The First Charge – Armed Robbery at The Convenience Shop in Mosta

24. In this incident, two masked individuals entered The Convenience Store in Constitution Street, Mosta on the 11th December 2020. One of them remained at the main entrance of the shop, whilst the other man went behind the counter armed with what appeared to be a gun, and demanded money from the shop assistant, namely Bhudiraju Kameswara Rao. From the CCTV footage exhibited, it resulted that after successfully robbing the store, the two men fled the crime scene using a vehicle of the make Toyota, which had a dark grey colour. In his evidence Bhudiraja Kameswara Rao, the shop assistant explained in detail how the theft took place and that one of the robbers pointed a gun towards the right side of his waist.¹³ He also stated that although the robber with the gun spoke to him in English, the two robbers were speaking between them in a language which was not Maltese. He stated that he had been living in Malta for the past three years, and that he was sure that they were not speaking Maltese. He also stated that since both robbers had a medical face mask on their face, he could not recognize them.

¹³ Fol. 125 of the proceedings.

25. In its note of submissions, the defence submitted that Bhaddiraju Kameswara Rao, who testified in these proceedings is not the same person who is the victim mentioned in the charge sheet, since the person indicated in the first charge is Kameswara Rao and not Bhaddiraju Kameswara Rao, who is clearly not the same person.
26. **Il-Pulizija vs Leone Agius** decided on the 23rd. June 2005, the Court of Criminal Appeal (in its Inferior Jurisdiction)¹⁴ held as follows:

“Illi kif gie ritenut minn din il-Qorti fil-kawza “Il-Pulizija vs. Martin Brincat” [30.4.2003] fejn gie konsidrat aggravju simili u fejn ma gietx indikata bi precizjoni it-triq fejn gara l-kaz, skond l-Artikolu 360 (2) tal-Kodici Kriminali, c-citazzjoni ghandha ssemmi car il-persuna mharrka w ghandu jkun fiha, fil-qosor, il-fatti tal-akkuza, bil-partikolaritajiet ta’ zmien u ta’ lok li jkunu jinhtiegu jew li jkunu jistghu jinghataw u l-importanti hu li bl-uzu tad-dicitura msemija fic-citazzjoni ikun bizzejjed biex l-appellant ikun jaf ta’ x’hiex ezatt kien qed jigi akkuzat. F’dik il-kawza l-aggravju kien gie respint ghaliex – bhal f’dan il-kaz - non si trattava ta’ xi belt jew rahal b’xi ramifikazzjoni kapillari tat-toroq, pjazez jew sqaqien li setghu talvolta johlqu xi dubju dwar fejn seta gara l-incident li kien qed jigi akkuzat bih l-appellant. Kien intqal ukoll f’ dik is-sentenza li konsidrat il-fatt li - bhal f’ dan il-kaz - l-appellant kien gie imwaqqaf minn ufficjal pubbliku li kellmu dak il-hin, aktar u aktar l-appellant ma kellux fejn jitfixkel dwar fejn suppost gara l-fatt li kien qed jigi akkuzat bih.”

27. Similarly, in this case, the defendant knew exactly the facts, and in particular the allegations regarding the armed robbery in question, with which he is being charged, even when he was questioned by the Police, and throughout these proceedings. There was never any doubt as to the identity of the sales assistant in the shop. Apart from the fact that he can be easily identified from the CCTV footage, Bhaddiraju Kameswara Rao also gave evidence before Dr. Katya Vassallo, the expert appointed in the inquiry *in genere*.¹⁵

¹⁴ Per Judge Vincent De Gaetano.

¹⁵ See page 35 of the *process verbal* at page 118 of the proceedings.

28. The fact that in the charge sheet the name of the sales assistant was not written in full in no way misled or deceived the defendant, who, as already stated, knew exactly what where the facts with which he was being charged. Nor does it mean as the defence tries to submit, that the victim indicated in the first charge is a different person from the person who gave evidence before this Court. The evidence of Bhaddiraju Kameswara Rao before this Court and before Dr Katya Vassallo was a consistent one, and corroborates what one sees happening when one watches the CCTV footage. So there can be no issue on the identity of the victim. In its submissions, the defence in no way indicated how this “variance” between what is stated in the charge sheet and the evidence prejudiced the right of the defendant to defend himself. Consequently, this submission of the defence is being rejected.
29. Laken Farrugia, the manager of The Convenience Store, stated that the amount which had been stolen amounted to eight hundred and seventy-eight Euro and twelve cents (€887.12).
30. PS1404 Dale Cassar presented a report containing a detailed timeline of the incident, which he did from the CCTV footages which were downloaded from different places.¹⁶ He also explained that the one of the rear lights of the vehicle used in the robbery was not working, and that helped him and the Police to identify the vehicle. From these footages as well as from the CCTV footages downloaded by the Dr Martin Bajada, the IT expert appointed in the relative inquiry *in genere*, it results that the theft took place at about 6.13pm, and outside it was dark.
31. Prosecuting Officer Inspector Stephen Gulia confirmed on oath that on the 31st January 2021, a number of Police officials were doing a patrol in Qormi and they noticed a vehicle having the same make and colour as the one used in this armed robbery and its left tail light was not working properly. This car had registration number FCC 271. From further investigation it resulted that the registered owner of this vehicle Claudia Cremona had sold it to her sister Antonella Carter Olivari, but Carter Olivari stated that the vehicle was actually used by her ex-boyfriend, the defendant in these proceedings. During her interrogation, Carter Olivari was shown the CCTV footages of the incident, and she told the Police that the two robbers were the defendant and his friend Metodija Popov. She

¹⁶ Dok DC1 a fol. 230 of the proceedings.

also stated that the defendant was the one holding the gun in the footage, whilst Popov was the one who stood near the door of the shop on the look-out. Both Claudia Cremona as well as Antonella Carter Olivari confirmed on oath before this Court what they told the Police.

32. The defence queries how did Carter Olivari manage to identify the defendant on the CCTV footage, if the thieves had their face covered. As already stated, the presiding magistrate has personally seen the footage, and in the footage the thieves have a medical face mask. Obviously someone who does not know them, will not be able to recognize them, but someone who knows them will be able to recognize them. The Court sees nothing extraordinary in the fact that Carter Olivari managed to recognize her boyfriend at the time and his friend, both of whom were wearing a face mask, as everyone was obliged to do during the covid pandemic.
33. PC1087 Roderick Degiorgio exhibited the clothes, shoes and a red and black backpack found during the search conducted when the defendant was arrested.¹⁷ He also exhibited a document compiled by himself, wherein he compares the clothing and backpack seized during the search with the ones used by the robber holding the gun in the CCTV footage.
34. The defence submits that no forensic tests were done to effectively prove that the clothes belonged to the defendant. The Court points out that according to the sworn evidence of several police officials, these clothes were seized during the search conducted when the defendant was arrested. These clothes can be easily compared to the clothes the thief holding what seemed to be a gun was wearing as seen in the CCTV footage. According to Article 650(1) of the Criminal Code, an expert can only be appointed where the examination of the person or thing requires "*special knowledge or skill.*" No special knowledge or skill is required to compare clothes and shoes. On the contrary, this is an issue of fact, which is to be determined by this Court. This Court after physically seeing the clothes and shoes exhibited, and the CCTV footage concludes that there can be no reasonable doubt that the clothes exhibited are identical to the clothes the thief holding what appears to be a gun is wearing in the footage.

¹⁷ See fol. 447 of the proceedings.

35. During the audiovisual interrogation,¹⁸ the defendant admitted that he was in a relationship with Antonella Carter Olivari, and that he used vehicle FCC 271 in order to commit this robbery. He explains that he committed this robbery because he was desperate for drugs, and that he did not have a real fire arm, but used a lighter which looked like a gun, and weighed about one kilo. He himself stated that “*seriously it looks like a gun*”.¹⁹ He stated that Metodija Popov assisted him in this robbery, but Metodija stayed near the door, whilst he went behind the counter and wielded the gun-shaped lighter to the shop assistant. He also stated that he took around €300 in cash and some mobile top-up cards, which he later threw away. The defendant also confirms that he was the one in the footage of the robbery, and that the bag and clothing seized during the search and that were presented by PC1087 Roderick Degiorgio during these proceedings, were in fact, the same items used in the robbery.
36. From the evidence submitted the Court is satisfied that the Prosecution managed to prove beyond reasonable doubt, the first charge of theft qualified by violence, means, amount and time preferred against the defendant.

The Second Charge – Illegal Arrest or Detention of Kameswara Rao

37. From the evidence submitted, and from the considerations made up, it is clear that during the armed robbery, the defendant deprived Kameswara Rao of his freedom of movement at gunpoint, in order to force him to hand over to him all the money in the shop. Kameswara Rao stated under oath both before this Court as well as before the expert Dr Katya Vassallo that the thief with the gun spoke to him in English.
38. The defence submits that it resulted that the firearm was not in reality a firearm, but a lighter, and Kameswara knew it was not a firearm. From the CCTV footage, the object in the hands of the defendant is very similar to a firearm, and the defendant was wielding it in his hands as if it was a firearm, even pointing it towards Kameswara’s waist. The Court has no doubt, that even if as the defendant admits in his interrogation, the firearm was in reality a lighter, his intention was that Kameswara thinks it is a firearm, and in

¹⁸ See Dok SG7 at fol. 37 of the proceedings, and the transcription exhibited as Dok NZ1 at fol. 77 of the proceedings.

¹⁹ See fol. 86 of the proceedings.

fact he succeeded into making Kameswara believe it is a firearm and compel him to hand over the money to him. The fact that in reality it was not a firearm, as the defendant states, is irrelevant – what is relevant is the intention of the defendant to make Kameswara believe it was a firearm, and that Kameswara believed him.

39. Kameswara was also unable to run away, since even if for the sake of argument he risked to escape from the defendant – which was something difficult to do, since the defendant was blocking the only entry point to the cashier’s desk, where he was standing, there was the other thief Metodija at the entrance of the shop.
40. In view of the above considerations, this second charge has been also proved according to law.

The Third Charge – Having at the time of theft, an arm proper or imitation thereof

41. In order to avoid unnecessary repetition, the Court makes reference to its considerations above on the fact that from the CCTV footage the object in the defendant’s hands was very similar to a gun, and Kameswara is objectively justified in believing it was a gun. In order to determine whether this object was very similar to a gun or otherwise is an issue of fact, and no special knowledge or expertise is necessary. If this object was not a gun, it was certainly a very close imitation thereof, as the defendant himself admitted during the interrogation.
42. RPC3018 Ismene Fenech confirmed on oath that that defendant is not licensed to keep any weapons according to law.²⁰
43. Hence this charge has been proven according to law.

The Fourth Charge – Theft from “Orchid Flats” Flat 6, Triq l-Imhalla, Naxxar

44. The defendant is also being charged of having on the 4th November 2020 between 13:30hrs and 14:30hrs stolen a number of electrical and water fittings from “Ochid Flats”

²⁰ See page 213 of the proceedings.

Flat 6, Triq l-Imhalla, Naxxar, to the prejudice of Michael Orland, and that this theft is qualified by means and amount.

45. In his evidence before this Court, Michael Orland explained how he found the door of his residence forced open, and found several electrical and water fittings missing.²¹ He also states that he was the one who bought these fittings.
46. In his report, the expert Dr Martin Bajada, appointed in the inquiry *in genere*, includes a number of stills showing the thief going into a car with the bags containing the stolen objects.²² The car is a Hyundai having registration number LEK 795. The thief in the stills can be easily identified from his face as being the defendant. He is also wearing the same shoes used in the armed robbery of The Convenience Shop.
47. Michael Orland also gave evidence before Dr Martin Bajada, and he presented four receipts of the items he found missing. These receipts are also included in Dr Bajada's report. Although there are some payments which have the word 'invoice on them' on a closer look of the documents it is clear that they were actually cash sales, because either the word 'cashsale' or simply 'cash' is also on the document. All the items in these receipts were bought a few weeks prior to the theft. The total value of the items stolen is four thousand seven hundred and ninety-five Euro and twenty two cents (€4,795.22).
48. Clive Sammut, the project manager of Michael Orland, also gave evidence before Dr Martin Bajada, and in substance confirmed what Michael Orland stated.
49. From the evidence in the records of the proceedings it results that the car used in this theft was registered on Victor Agius of "Pelican Garage" but leased to Michael Carter, Antonella Carter Olivari's husband, but it was actually used by Antonella.
50. In his audio-visual statement, the defendant admitted that he committed this theft and that subsequently he sold the stolen objects to several buyers. He also confirms that the car he used in this theft was used by Carter Olivari, who in her turn also allowed him to use it.

²¹ See fol. 122 of these proceedings.

²² See Dok MB2 a fol. 343 of the proceedings.

51. Hence, the Court concludes that this charge has also been proven beyond reasonable doubt.

The Fifth Charge – Theft from Building Site 5, Triq il-Konventwali, St Paul’s Bay

52. The defendant is also charged with having on the 11th January 201 between 13:15hrs and 13:30hrs stolen two power tools from the building site 5, Triq il-Konventwali, St Paul’s Bay, to the prejudice of Alexander Xuereb. This theft is qualified by means.
53. During his evidence,²³ Alexander Xuereb explained how he saw the thief walking from the building site to a vehicle with a bag. Some minutes later he discovered that a jigger and a grinder had been stolen from the building site. He stated that he forwarded the relative CCTV footage to the Police.
54. From the report of PS965 Maverick Camilleri²⁴, it results that from the CCTV footage provided by Xuereb, one could see a vehicle with registration number FCC 271 driving through Triq il-Konventwali, St. Paul’s Bay. This is the same vehicle used by the defendant in the armed robbery of The Convenience Shop. In the CCTV footage also presented by PS 965 Maverick Camilleri – and the presiding magistrate also personally saw this footage – one can clearly see the defendant opening the gate of the premises and going inside, stealing the power tools, and going out of the gate with them.
55. During his audio-visual statement, the defendant explains how he stole the power tools that were reported missing by Alexander Xuereb. Once again he confirms that he used vehicle with registration number FCC 271 to commit this theft. He also confirms that he stole one jigger and one grinder.
56. Consequently, the Court concludes that the Prosecution has managed to prove this charge beyond reasonable doubt.

²³ See fol. 144 of the proceedings.

²⁴ See Dok MC1 at fol. 561 of the proceedings.

The Sixth Charge – Theft from Trolees Supermarket, Triq il-Merluzz, St Paul’s Bay

57. The fourth theft with which the defendant is charged is a theft of a backpack from the establishment Trolees Supermarket situated in Triq il-Merluzz, St Paul’s Bay, to the prejudice of Claudio Pattavina. This theft took place on the 26th January 2021 between 14:00hrs and 20:00hrs and is qualified by means.
58. In his evidence,²⁵ Claudio Pattavina explained that whilst he was working at Trolees Supermarket, his backpack was stolen from the back of the supermarket. He also forwarded to the Police a CCTV footage showing the incident.
59. This CCTV footage was presented in Court by PS 965 Maverick Camilleri.²⁶ In this CCTV footage one can see a man stealing this backpack. PS 965 also presented a report²⁷ wherein he printed some stills from this CCTV footage and compared the shoes the thief was wearing and his red and black backpack with the shoes the defendant was wearing in the armed robbery of The Convenience Shop. The Court has no doubt that the shoes exhibited in these proceedings are identical also to the shoes the thief was wearing in this theft. These shoes are also identical to the shoes the defendant was wearing in the armed robbery of The Convenience Shop and the theft from the building site in Triq il-Konventwali, St Paul’s Bay.
60. The defence submits that persons are not identified from shoes or backpacks. Whilst, it is true that persons are not directly identified from shoes or backpacks, but the fact that a person is wearing identical shoes and using a very similar backpack in two separate thefts certainly constitutes indirect evidence – that is circumstantial evidence - which points univocally in one direction only, namely that the person who committed the two thefts is the same person.

²⁵ See page 658 of the proceedings.

²⁶ See fol. 558 of the proceedings.

²⁷ See fol. 561 of the proceedings.

61. Moreover, in the audio-visual statement, the defendant admits that he committed this theft, and identified himself in the CCTV footage.²⁸ He also remembered that the backpack had food inside, as Claudio Pattavina stated in his evidence.²⁹
62. In view of the above considerations, the Court concludes that this charge has also been duly proven according to law.

The Seventh Charge – Theft from Vehicle with registration number DCO 268 parked in Triq l-Imdina, Qormi

63. The fifth theft with which the defendant is charged is the theft of two mobile phones a pouch which various objects inside committed on the 26th February 2021 between 09:45hrs and 10.00hrs from a vehicle with registration number DCO 268, which was parked in Triq l-Imdina, Qormi, to the prejudice of Brian Anthony Christopher Azzopardi.
64. Brian Azzopardi explained under oath that he went to Qormi to do a delivery, and left the vehicle open. When he returned back, a few minutes later, he found his two mobile phones and a pouch missing. Amongst other things, the pouch contained one hundred and fifty-five Euro (€155). He also stated that later he was contacted by the Qormi Police Station and informed that the stolen objects had been returned. But he did not know who returned them to the Police. He also stated that the cash money was missing and one of the phones was returned damaged.³⁰
65. PS 560 Aaron Grech explained that the Police managed to get a CCTV footage from which they realized that the thief was driving a vehicle bearing registration number FQZ 864, which from further inquiries resulted that it was rented to Antonella Carter Olivari.³¹ When Carter Olivari was contacted, she told the Police that the defendant was using the vehicle. PS 560 Aaron Grech also stated that it was Carter Olivari who returned the stolen items to the Police.

²⁸ See fol. 107 of the proceedings.

²⁹ See fol. 445 of the proceedings.

³⁰ See fol. 179 of the proceedings.

³¹ See page 193 of the proceedings.

66. Antonella Carter Olivari stated under oath that after the Police contacted her on this incident, she contacted the defendant, and asked him if he did anything wrong.³² He admitted that he stole the pouch and mobiles and said that he was sorry. He met her and returned the stolen items back to her, and in turn she returned them to the Qormi Police station.
67. The defence submits that the evidence of Carter Olivari is not reliable and the Police failed to verify whether actually Carter Olivari contacted the defendant and whether it was actually the defendant who handed over the stolen items to her. The Court fails to see how the Police could have conclusively made these verifications mentioned by the defence. The issue boils down to whether Carter Olivari is a credible witness or not, and the Court, sees no reason why her version of the events should not be believed.
68. In his audio-visual statement, the defendant admits that he stole the pouch and the mobiles from the delivery truck. He confirmed that he was driving the vehicle with the registration number FQZ 864. He also stated that later Carter Olivari contacted him, and told him to return back the stolen items. He also admitted that he damaged one of the mobile phones.
69. Consequently, the Court concludes that this charge has also been duly proven according to law.

Considerations on Punishment

70. As regards to punishment, the Court took into consideration that during these proceedings, the defendant was found guilty of another aggravated theft and an attempted aggravated theft. Both thefts took place prior to the commencement of these proceedings. He was put under a probation order in one judgement, and he was condemned to eighteen (18) months imprisonment in the other judgement.

³² See fol. 61 of the proceedings.

71. In the audio-visual statement, the defendant admitted that he abused illicit substances and resorted to theft in order to be able to finance his habit. This also results from the evidence of Antonella Carter Olivari. There is no evidence in the records of the case that during these proceedings, whilst the defendant was being held under preventive arrest, he made any attempt to address this problem.
72. The defendant returned only some of the items mentioned in the fifth theft.
73. After taking into account the legal provisions in the case of concurrent offences and punishments and the theory of the formal or ideological concurrent of offences, the minimum punishment which can be meted out to the defendant is of twenty-five 25 months imprisonment and the maximum punishment is of sixteen years and a half (16.5) years imprisonment.

Conclusion

74. For these reasons, the Court decides as follows:
 1. after seeing the provisions of law listed in the note of referral for judgement of the Attorney General of the 19th January 2023, namely Articles 261(a)(b)(c)(f), 262(1)(a)(b), 263(b), 267, 270, 275, 277(b), 278, 279(a), 280, 281, 86, 87(1)(c)(e), Articles 261(b)(c), 263(a), 267, 278(1)(2), 279(b), 280, 261(b), 263(a), 278(1), Articles 261(b), 263(a), 278(1), 261(c)(g), 267, 271(g), 279(a) and 280(1) of the Criminal Code, Chapter 9 of the Laws of Malta and Article 55(a) of the Arms Act, Chapter 480 of the Laws of Malta, finds the defendant guilty of all the charges preferred against him.
 2. after taking into account all the circumstances of the case condemns him to the period of five (5) years imprisonment - but the period during which the offender was kept under preventive arrest only in connection with these proceedings, should be deducted from this period.

3. orders the convicted person to pay to the Registrar all the costs incurred in connection with the employment in the proceedings of all the experts, in terms of Article 533 of Chapter 9 of the Laws of Malta. These costs are to be paid within a period of six (6) months from when the Registrar of the Criminal Courts communicates to him the amount due by him. If the person convicted fails to pay this amount or part of it within the time herein prescribed, the amount, or any balance of it, will become immediately due and payable, and in default of payment thereof, the outstanding amount still due shall be converted into imprisonment at the rate established by law.

Magistrate

Deputy Registrar