



The Court of Magistrates (Malta)

As a Court of Court of Criminal Judicature

Magistrate Dr. Nadine Sant Lia

B.A., LL.M(Kent), LL.D; Barrister at Law (England & Wales)

The Police

(Inspector Gabriel Kitcher)

vs

Benjamin Maria F. Sauerborn

Today the 3rd of October 2024

The Court after having seen the charges in respect of Benjamin Maria F. Sauerborn, born on the twelfth (12) of February 2001 in Switzerland, holder of a driving license issued by the United Kingdom with the number SAUER002121BM9BF 75 and without a fixed address in these Islands.

And I accuse him: that on the 11th of June 2024, around eleven twenty in the morning (11:20 a.m.) as well as in the days and months before, from the establishment "Chain Supermarket", located in Bastion Street in Fgura:

1. With several acts made by him, even if at different times, that violate the same provision of the law, which were made with one resolution, which acts are considered as one crime, called a continuous crime, he committed simple theft to the detriment of the entity Chain Market Ltd. and/or of other entities, which entity is represented by Pierre Mallia I.D. 20281M and / or other persons.

And more so that on June 11, 2024, in these Islands:

2. He carried out of any premises or its surroundings any knife or sharp or pointed instrument of any kind without having a license or permission from the Commissioner of Police.

This Honourable Court, in case of guilt, is kindly requested to apply the provisions of Articles 15A and 28H *et sequitur*, of Chapter 9 of the Laws of Malta, with regard to the offender paying damages in terms of the same Articles 15A and 28H *et sequitur*, of Chapter 9 of the Laws of Malta;

This Honourable Court is furthermore kindly requested to provide for the safety of Pierre Mallia by issuing a protection order against the defendant in accordance with Article 412C of Chapter 9 of the Laws of Malta, and in case of guilt, is requested to provide for the safety of the offended person in terms of Article 382A, 383, 384, 385 and 412D of Chapter 9 of the Laws of Malta;

Finally, this Honourable Court is kindly requested to sentence the accused in case of guilt for the payment of costs related to the appointment of the experts and/or *periti* in the proceedings as contemplated in article 533 of the Cap. 9 of the Laws of Malta;

Having seen that during the examination of the defendant in the sitting of the 12th June 2024 done in accordance with article 392(1) of the Criminal Code, the defendant pleaded not guilty to the second charges against him but entered a guilty plea for the first charge.¹

Having seen that during the sitting of the 27th June 2024 the defendant entered a guilty plea in respect of the second charge proffered against him and this after the Court repeatedly gave him the opportunity to seek legal advice from his legal counsel and after the Court was authorised to proceed nonetheless²;

In view of the defendant's declaration, the Court warned him in the most solemn manner of the consequences arising out of his guilty plea and granted him a reasonable time within which to retract such guilty plea should he so wish. After the Court granted this time to the accused, and after giving him the option to seek advice from his legal counsel, the accused reiterated that he is guilty as charged.

In view of this declaration, duly reiterated, the Court has no option but to find the accused guilty as charged in accordance with article 392A of Chapter 9 of the Laws of Malta and could proceed to deliver judgment against him.

Having seen that there exist no valid reasons in accordance with article 392A(3) of Chapter 9 of the Laws of Malta for the Court to doubt the validity of such plea of admission, or that the accused is not guilty of the crimes with which he is charged. Therefore, the crimes are sufficiently proven.

¹ Page 5-6 act of proceedings

² Page 41 act of proceedings

Having seen the records of the proceedings as well as the documents filed together with the charge sheet and the particular circumstances of this case;

Having heard submissions by the parties on the punishment;

Having Considered

The facts of the case

This case concerns theft done by the defendant from Chain Market Ltd.

Having considered

The punishment

The Court in its deliberations concerning the punishment took note of the following factors:

- The admission of the defendant. The defendant admitted in the first sitting the first charge and the second charge in a following sitting whilst the prosecution was still putting forward its evidence. Therefore, the defendant should benefit from the fact that he registered an admission during the early course of proceedings and this shall serve in his favour in the circumstances of the cases. This is in line with the principles espoused in local case law that by registering an early plea, the Court is saved from entering into unnecessary expenses as well as administratively be able to expedite matters quicker. The Court here makes reference to the cases **Ir-Repubblika ta' Malta vs. Nicholas**

Azzopardi³, *Il-Pulizija vs. Emmanuel Testa*⁴, as well as legal scholars ARCHBOLD *Sentencing Guidelines 2021*⁵ and BLACKSTONE'S *CRIMINAL PRACTICE*⁶ on this point.

- Article 142(1) tal-Criminal Justice Act 2003 in England establishes five principles that should be considered when calibrating the appropriate punishment:

(a) the punishment of offenders (b) the reduction of crime (including its reduction by deterrence) (c) the reform and rehabilitation of offenders (d) the protection of the public (e) the making of reparation by offenders to persons affected by their offence.

- The prosecution in its submissions to the Court on the appropriate penalty to be considered, reiterated that it was requesting an alternative to imprisonment which the defence agreed to.

The Court is not bound to apply the proposed terms of punishment by the prosecution or the defence, even when there is an agreement between the two sides.

The Court however notes that the proposed or suggested punishment is within the legal parameters and can be considered.

- The parties also informed the Court that the defendant suffered from alcoholism and therefore the Court should consider giving him a Treatment Order to assist him dealing with this problem.

³ Qorti Kriminali deciza 24 ta' Frar 1997

⁴ Qorti tal-Appell Kriminali , [7.7.2002]

⁵ Thomson Reuteurs, S-29

⁶ Blackstone Press Limited – 2006 edition

- During the final sitting of 11th July 2024 the defendant handed over to Jake Mallia representing Chain Market Ltd the sum of Euro 98.12 representing the amount taken.

Decide

The Court, upon the unconditional guilty plea registered by the accused charged and after having seen articles 18 and 284 of Chapter 9 of the Laws of Malta, the Criminal Code and article 6, of Chapter 480 of the Laws of Malta, the Arms Act finds Benjamin Maria F. Sauerborn **guilty** as charged of all the charges brought against him and condemns him to a term of effective imprisonment of **one** years imprisonment which in accordance to article 28A of the Chapter 9 of the Laws of Malta the said term is being suspended for two (2) years from today.

In terms of Article 28A(4) of Chapter 9 of the Laws of Malta, the Court explained to the accused in plain and simple language his liability under Article 28B of Chapter 9 of the Laws of Malta, if during the operational period of this suspended sentence he commits an offence punishable with imprisonment.

The court after having seen article 383 of the Criminal Code in order to provide for the safety of individuals or for the keeping of the public peace, in addition to the punishment applicable to the offence, requires the offender to enter into his own recognizance in the amount of one thousand Euros (€1,000) for a one (1) year period.

In view of the fact that the defendant compensated Chain Market Ltd, the Court abstains from acceding to the request by the prosecution in terms of article 15A and 28H of the Criminal Code.

The Court after having seen article 412D of Chapter 9 of the Laws of Malta places the accused under a Treatment Order for a period of two (2) years to address his alcoholism and this in accordance with the decree attached with this judgment which shall be considered to be an integral part of this judgment.

The Court confirms that the Treatment Order was given after the Court explained to the accused in plain and simple language the obligations and responsibilities emanating from the Treatment Order including the consequences should he breach the Treatment Order and after the accused gave his consent.

Furthermore, in view of the fact that no experts were appointed in this case, the Court abstains from taking further cognisance of the prosecutions requests in terms of Article 533 of Chapter 9 of the Laws of Malta.

Finally, the Court, after having seen Article 392A of the Criminal Code orders that this judgment together with the records of the proceedings be transmitted to the Attorney General within six working days in terms of law.

Delivered today the 3rd October 2024, at the Courts of Justice in Valletta, Malta.

Dr. Nadine Sant Lia
Magistrate

Oriana Deguara
Deputy Registrar