



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

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

**Case Number: 543/2019**

**Today, 30<sup>th</sup> October 2019**

**The Police  
(Inspector Matthew Spagnol)**

**vs**

**Omar Isse Mohamed  
(ID 128641(A))**

The Court,

After having seen the charges brought against the accused **Omar Isse Mohamed**, son of Omar and Isse, born in Somalia on 1<sup>st</sup> January 1996, currently residing at Marsa Open Centre and holder of Maltese residence permit number 128641(A);

Accused of having, on 29<sup>th</sup> August 2019, at around 08:30hrs, in Triq San Ġorġ, San Ġiljan:

1. Committed a theft to the detriment of Godwin Sunday, which theft is aggravated by violence; (Sec. 261(a), 262(1)(a) of Chapter 9 of the Laws of Malta);
2. Accused further of having, on the same date, place, time and circumstances, without intent to kill or to put the life of Godwin Sunday in manifest jeopardy, caused harm to his body or health, which injuries were certified to be slight in nature (Sec. 221(1) of Chapter 9 of the Laws of Malta);
3. Accused further of having been on the same date, place, time and circumstances in a public place or place open to the public, found drunk and incapable of taking care of himself (Sec. 338(ff) of Chapter 9 of the Laws of Malta).

The Court was requested to treat Omar Isse Mohamed as a recidivist in terms of Sections 49 and 50 of Chapter 9 of the Laws of Malta.

Having heard the evidence adduced and having seen the records of the case, including the consent of the Attorney General in virtue of Section 370(4) of Chapter 9 of the Laws of Malta for this case to be dealt with summarily;

Having heard the accused plead not guilty to the charges brought against him during his examination in terms of law and having also heard him declare that he does not object to the case being dealt with summarily;

Having heard the parties declare that they had no submissions to make.

**Considers that:**

**PS 407 Kenneth Scicluna** testified that on 29<sup>th</sup> August 2019 at about 8:30 a.m., whilst patrolling the St. Julians area, he was informed from the Police Station that there was a fight in front of Melita Pharmacy in St. George's Road. On his way there, he was further informed that the aggressor had made his way towards Burger King, which is slightly further up from the said pharmacy. He states that once near Burger King, a taxi driver informed him that there had been a drunken male causing some trouble and told him that the said male was wearing a blue shirt. The taxi driver also stated that the latter was walking in the direction of Melita Pharmacy. Witness states that he saw the said person, whom he recognised as the accused, and went to approach him, but whilst doing so, he was himself approached by two Maltese men, Nicholas Micallef and George Grech, who showed him a footage on a mobile phone, on which he could see two persons, one of whom was the accused insulting another male. He further states that he could see on the footage, that the accused was the aggressor, at which point the witness arrested him and escorted him to St. Julian's Police Station. On his way there, he met with PC 877 and PC 1009 who had gone next to Melita Pharmacy and found that the victim was still there and at that point, they were waiting for an ambulance to escort him to hospital. Witness further states that accused was heavily drunk and could not even utter his name when asked for his particulars.<sup>1</sup>

**PC 822 Brian Agius** confirms the occurrence as explained by PS 407 and further states in respect of the footage shown to them by the two persons who approached them, that accused was wearing the same clothes as could be seen on film, namely a

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<sup>1</sup> A fol. 37 to 44 of the records.

blue shirt. He also confirmed that accused was heavily drunk and that they could smell alcohol on his breath.<sup>2</sup>

**Nicholas Micallef** states that on 29<sup>th</sup> August 2019 at about 8.30 a.m., whilst with his work colleague George Grech, they witnessed a fight near the Melita Pharmacy in St. Julians. They stopped by the side and called the police. He states that he saw three persons – in his words “*two offenders and one on the floor*”<sup>3</sup> and recognised the accused as “*the offender*”, subsequently confirming that the accused was the attacker and that he saw him beating another person. He recalls that at the time accused was wearing a blue shirt. He further states that when they called the police, “*the guys knocked the other guy down*”<sup>4</sup> and that later, he also saw the accused kicking a girl in the street, then walking in the direction of Burger King. During his cross-examination, the witness states that he could not tell who started the fight because it had already started when he witnessed it.<sup>5</sup>

**George Grech** states that he witnessed a fight next to Champ Pastizzeria and called the police. He states that the fight involved three persons, two of whom were beating the other and recognised the accused as being one of the aggressors. He further states that at the time, the accused was wearing a blue t-shirt. The witness also confirms that they filmed the incident and passed on the footage to the police. During his cross-examination, he confirmed that he had not been present when the fight started.<sup>6</sup>

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<sup>2</sup> A fol. 45 to 48 of the records.

<sup>3</sup> A fol. 66 of the records of the case.

<sup>4</sup> A fol. 67 of the records of the case.

<sup>5</sup> A fol. 64 to 70 of the records.

<sup>6</sup> A fol. 71 to 75 of the records.

On his part, **Godwin Sunday** states that on 29<sup>th</sup> August 2019, early in the morning, he was in Paceville, when a group of about five men approached him, asking for a lighter. As he was about to give them the lighter, one of the men took his phone from his pocket and as he attempted to retrieve his phone, the accused punched him in the eye. According to the witness, it had also been the accused who had asked for the lighter. He further states that at the time, he was holding a €100 note in his hand as he had been on his way to buy a pizza. After punching him, the accused took the money from his hand and passed it on to the man who had previously taken his phone. He was then hit on the head and he fell to the ground, but he could not tell who had hit him this time. The witness also states that he does not remember what happened after that. Later he woke up in hospital. He further states that he had been injured in the eye (which the Court could see was red at the time of his testimony), the head and neck and his left elbow. As soon as he left hospital in the evening, he went to the Police Station to file a report, where he was told to go back on the next day. He did so and filed a report. During his cross-examination, the witness states that he had been alone at the time. He attended a party and later slept on the beach and was on his way to buy a pizza when the incident happened. He explained that he only had a €100 note and no change and he had taken it out of his pocket when he was close to the pizzeria. He had never met these men before. He further explains that although there were five men at first, after the accused grabbed the €100 note from him, only two men remained whilst the other three left. He also states that he was certain of the accused's involvement.

In her deposition, **Dr. Amy Chircop** confirms the content of the medical certificate issued in respect of Godwin Sunday on 29<sup>th</sup> August 2019, exhibited as Doc. MS 3<sup>7</sup>,

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<sup>7</sup> A fol. 9 of the records.

according to which Sunday was found to be suffering of a left temporal superficial abrasion, left subconjunctival bleed, tenderness in the neck region and in the elbow. The said injuries were described as “*slight save complications*”.<sup>8</sup>

The Prosecution exhibited the footage of the fight filmed by Nicholas Micallef and George Grech in the records of the case as Doc. MS 7. In this respect, during the sitting held on 9<sup>th</sup> October 2019, the defence declared that it was not necessary for witness George Grech to confirm the content of the footage as having been filmed by himself and that it accepted that the content of Doc. MS 7 is indeed the video taken by Grech to which he refers in his deposition. The Court watched the said footage, which clearly shows a man in a blue t-shirt kicking the victim in his right elbow and later pulling him onto the ground, where the victim hits his head and lays seemingly unconscious. The footage also shows another man wearing a grey t-shirt, also involved in the fight.

Accused released a statement to the Executive Police on 30<sup>th</sup> August 2019, wherein he states that he had no recollection of what happened, since he had been drinking in Paceville with his friends on the previous night.<sup>9</sup>

**Considers further that:**

From the evidence adduced, there is no doubt that on 29<sup>th</sup> August 2019 at about 8.30 a.m., Godwin Sunday suffered slight injuries and that accused was responsible or at least, partly responsible for the said injuries. This results from the deposition of Godwin Sunday himself who identifies the accused as having punched him in his

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<sup>8</sup> A fol. 61 to 63 of the records.

<sup>9</sup> A fol. 10 and 11 of the records.

eye, as well as from the deposition of two eye witnesses, George Grech and Nicholas Micallef, who also identify the accused as one of the aggressors in a fight which they filmed on the same morning. Indeed, in line with their testimony, the footage exhibited in the records of the case clearly shows a man in a blue t-shirt hitting the victim, whilst in the company of another male who was also involved in the fight. PS 407 and PC 822 likewise confirm that the accused was wearing a blue shirt moments after the fight and at the time of his arrest. Furthermore, the injuries resulting from the medical certificate exhibited are compatible with the victim's description of events and injuries suffered and the filmed part of the aggression against him.

The Court therefore deems the second charge as proved in terms of law.

By means of the first charge, the accused is also being charged with having committed the offence of theft aggravated by violence, to the detriment of Godwin Sunday.

As regards the theft, the Court has no reason to doubt Sunday's deposition to the effect that the accused snatched a €100 note from him, after he had already punched him in the eye thereby also assisting and being an accomplice in the first theft by a third party of the victim's mobile phone. Following the theft of the €100 note, the accused continued to hit the victim as results clearly from the footage exhibited, causing him slight injuries in the whole process.

The Court thus deems that the first charge has also been proved in terms of law.

In terms of the third charge, accused is also being charged with having been found drunk and incapable of taking care of himself in a public place or a place open to the public in terms of Section 338(ff) of the Criminal Code.

It results clearly from the evidence adduced that the accused was heavily drunk in a public place. PS 407 Kenneth Scicluna further states that the accused was in such a drunken state that he could not even utter his name. In his statement, the accused attributes his lack of memory of the events of the previous day to his drinking. The Court considers that once the accused was so heavily drunk that he was incapable of uttering his name, then he could not have been in a position to take care of himself. Accordingly, it deems that the third charge has also been proved in terms of law.

Finally, the Court is being requested to treat the accused as a recidivist in terms of Sections 49 and 50 of Chapter 9 of the Laws of Malta. In support of this request, the Prosecution exhibited a true copy of a judgement delivered by this Court, differently presided, on 16<sup>th</sup> April 2018 in the names ‘The Police (Inspector Frank Anthony Tabone) vs Mohamed Omar Isse’ and a true copy of another judgement delivered by this Court as differently presided on 13<sup>th</sup> June 2019 in the names ‘Il-Pulizija vs Mustafa Mohamud Mohamed u Mohamed Omar Isse’. In both judgements, the number of the identity card of Mohamed Omar Isse is identical to that of the accused in the present case and thus, the Court has no doubt that the said judgements refer to him. In the first, the accused was condemned to a term of nine months imprisonment and a fine and in the second, to a term of two months imprisonment. It is thus clear that the accused is a recidivist both in terms of Section 49 and Section 50 of the Criminal Code.



### **Considers further that:**

For the purpose of the punishment to be inflicted, the Court is taking into consideration the criminal record of the accused, from which it results that to date, he has been found guilty of dealing in drugs, drug possession and simple theft, in respect of which he was condemned to the punishments above referred to.

The Court is also taking into account the nature of the offences of which the accused is being found guilty and the circumstances of the case and that these are such that, notwithstanding the fact that the injuries caused were slight in nature, an effective term of imprisonment is the appropriate form of punishment to be meted out. In particular, the Court cannot but further note the prior convictions of the accused, with the most recent dating back only a few months before the incident in the present case.

### **Conclusion**

For these reasons, the Court after having seen Sections 17, 49, 50, 221(1), 261(a), 262(1)(a), 274(c) and 338(ff) of Chapter 9 of the Laws of Malta, finds accused **Omar Isse Mohamed** guilty of the charges brought against him and condemns him to a term of three (3) years effective imprisonment, from which term one must deduct the period of time during which he has been kept in preventive custody in connection with the offences of which he is being found guilty by means of this judgement.

Natasha Galea Sciberras  
Magistrate