



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

MAGISTRATE DR. DONATELLA FRENDO DIMECH LL.D., MAG. JUR. (INT. LAW)

Sitting of 14th January, 2016

**The Police
(Inspector Matthew Spagnol)**

-vs-

Ahmed Salaat Mahmoud

The Court,

Having seen the charges brought against the person charged Ahmed Saalat Mahmoud, 18 years, son of Salaat Mahmoud and Fatima, born in Somalia on the 10th January, 1997, currently residing at 96, 'Cyclops', Flat 3, Triq Nicolo Isouard, Sliema, holder of Maltese Identity Card bearing number 143195A, for having in these Islands, in the early hours of the 1st January 2016, in Triq San Gorg, St. Julians:

1. committed the theft of one mobile phone of the make iPhone 6, to the detriment of Leo Stanley Clements Stal, which theft is aggravated by 'time' and 'amount'.

The Court was also asked that in case of guilt the person charged was to be treated as a recidivist, after having been found guilty by a decision of the courts of Malta, which decision has become *res judicata* and cannot be changed;

The court was further requested to issue a Protection Order for the victim and any other witnesses in terms of Article 412C of the Criminal Code, both during the trial and, in case of the offender being found guilty, alongside any other punishment the Court deems fit.

Having seen all the acts and documents exhibited;

Having seen the Attorney General's consent that this case be dealt with summarily and that the accused has no objection that the case be tried summarily;

Having heard the prosecution and defence counsel make their submissions;

Considers:

The accused is being charged with the theft of Leo Stanley Clements Stal's mobile, which he had purchased, as new, a few days earlier for the amount of three hundred and fifty euro (€350).¹ Stal contends that it could only have been the person charged who stole his phone as he had just used same moments earlier and only realised it missing once there had been close physical contact with the person charged and due to the events which unfolded immediately after.

Leo Stanley Clements Stal insists he had his phone on him as he had texted his friend, Elin Anna Ackerot, moments earlier before leaving Hugo's roughly around 2.45am. Both Stal and Ackerot agree on the time of the incident which occurred some time **around 3am**.² According to both witnesses Stal had his phone on him and whilst they were talking on the side of the road, an unknown person of African origin, comes up to them and starts getting "clingy, like touching"³, begging them with a certain insistence to hug them. They refused and after asking him several times to move away to no avail,

¹ Evidence of Leo Stanley Clements Stal fol.11 and evidence in cross-examination on 7th January, 2016.

² Vide also Current Incident Report, *Dok. MS3*, page 2 where the time of the theft was version given by Leo at the St. Julian's Police Station, was that of around 3.30am.

³ Evidence of Ackerot fol.13

they decided the only way in which they would be able to continue talking is if they oblige with a hug. Having received his hugs, Ahmed asked for a cigarette but since they had none, he left. Stal had told the Police that what had aroused his suspicion in the person charged was the fact that he witnessed Ahmed make a strange movement with another person whom had come close to him and he saw Ahmed going in one direction and the other person in another.⁴ This caused him to check for his phone which transpired was no longer on his person. Suspecting that Ahmed had taken the phone, Stal darts off finds Ahmed and starts checking for his phone.⁵ On her part, Elin Ana Ackerot having received a phone call from Sweden left Triq San Gorg and headed home. She testifies that Stal was in possession of his phone up until the moment that Ahmed hugged him. She maintains that Leo had the phone on him until they met Ahmed. Questioned by the Court whether they were surrounded by others, she replies in the negative and this fact is of no little significance – *“He starts hug us and he’s the only who was near us all the time. Like nobody else was near....It was only ne and Leo and this guy and then he walked away and the phone was gone.”*

The Court heard the person charged state that he had been to Valletta for the New Year’s Eve celebrations with a friend (who remains unnamed) and later went to Paceville where they had been drinking Johnnie Walker Whisky. Ahmed Mahmoud insists he did not take the phone and had hugged Stal and Ackerot since he was in a jovial mood and a lot of people were hugging each other. He explained that as his friend, only identified as a certain Youssef, had gone to buy cigarettes from a market close by. He distanced himself and that is when he saw Stal and Ackerot. He was happy and wanted to hug them. He admits to this as he admits asking for a cigarette. Ahmed continued to tell the court that there were a number of persons in the same area all of African origin. He also recounts how Stal then came on to him and asked him for his phone and proceeded to start frisking him looking for his phone. Stal was also asking these other persons of African origin as to whether they had his phone, a detail

⁴ Evidence of PS430 Andrew St. John fol.8

⁵ Also confirmed by Ahmed himself who explained that Stal had gone up to him and was searching his pockets for his phone.

which Stal omitted to tell the Court in his testimony possibly not to disclose the fact that he may not have been so certain that it was actually the accused that took his phone!

The Court also took note of the statement released by the person charged, Dok. MS5, and the evidence of PS 430 Andrew St. John who stated that the person was adversely known to him personally due to other brushes with the law. The Court also noted that the person charged had been convicted for having in May 2014 committed two counts of theft of mobile phones whilst in June 2014 he was convicted for receiving stolen property.

Ahmed Salaat Mahmoud vehemently denies stealing the phone. He told the Court that he met Stal - which from other evidence turns out happened two hours later at **3am** -whilst his friend had gone to buy cigarettes; in his statement he told the Police that this had happened at **1am**. What the Court finds difficult to accept is what could possibly make a person walk up to two strangers having a private conversation and insist to be hugged by them even when told that they wanted to be left alone and asked to go away? Elin Anne Ackerot is definitive when asked about the conduct of the person charged - "*....I asked him to leave a few times, maybe three or four times I asked him to leave.*"⁶.

If all he wanted was a cigarette he could have simply asked for one without the need for a hug! Yet by his own statement his friend had just wandered off to the market to purchase cigarettes; in fact by his own admission that is when he saw Leo and Elin Anne⁷. He had just been hugging Leo, so when told by Leo that his phone had gone missing no offer was made to help him look for it; looking for an object which one knows is not lost is a futile exercise indeed. Hugging a person is a touching and somewhat intimate act, reserved at most for acquaintances and most definitely not for absolute strangers wandering the streets at night or the early hours of the day!

⁶ Page 4 of her evidence in cross-examination

⁷ Fol.25 in Dok. MS5

Based on the evidence before it, this Court finds that in the early hours of the 1st January, 2016 Ahmed Salaat Mahmoud committed theft of a mobile phone of the make iPhone 6 to the detriment of Leo Stanley Clements Stal.

With regards to punishment the Court notes that the Prosecution failed to substantiate the charge of recidivism.

For the above-mentioned reasons, the Court, after having seen articles 261, 267 and 270 of Chapter 9 of the Laws of Malta, finds Ahmed Salaat Mahmoud guilty and by application of article 7 of Chapter 446 of the Laws of Malta places him under a probation order in terms of the law for a period of two (2) years as from today in accordance with the order annexed which is to form an integral part of this judgment.

The Court explained to Ahmed Salaat Mahmoud in ordinary language of the legal consequences should he commit another offence within the period of two (2) years.

Moreover, the Court in order to provide for the safety of Leo Stanley Clements Stal insists he had his phone on him as he had texted his friend, Elin Anna Ackerot, is issuing a protection order against the accused in terms of article 412C of the Laws of Malta for a period of eighteen (18) months.

The Court orders that this judgment be notified to the Office of Director of Probation.

**Dr Donatella Frendo Dimech LL.D., Mag. Jur. (Int. Law).
Magistrate**