

ONTARIO COURT OF JUSTICE

DATE: March 11, 2025

B E T W E E N :

HIS MAJESTY THE KING

— AND —

HISSA ABED

Before Justice H. Borenstein
Reasons for Sentence released March 11, 2025

Mr. J. Foremancounsel for the Crown
Mr. Z. Al-Khatibcounsel for the accused Hissa Abed

BORENSTEIN J.:

[1] Ms. Hissa Abed plead guilty to mischief.

[2] On Sunday, August 18, 2024, she was in the back seat of a car with her family. They were in the area of Bathurst and Sheppard, in Toronto where people were holding Israeli flags and posters of hostages abducted by Hamas on October 7th, 2023.

[3] I am told these are weekly demonstrations that have been held since October 7th.

[4] I suspect most people are aware of these rallies, protests and counter protests in this and other cities since October 7th.

[5] Ms. Abed was in the back seat of the car with her family. As they drove by the rally, Ms. Abed was filming herself inside her car laughing, yelling “free Palestine” as they drove by the demonstrators. She tells the driver she wants to grab one of their flags. The car drives by the demonstrators as Abed tries to grab several flags before she was able to grab the flag from 88-year-old Mr. Sacke.

[6] One of the demonstrators is seen on the video immediately reaching into the back seat trying to grab the flag and, in so doing, strikes Abed.

[7] The Abed car drives away but got stuck in traffic.

[8] Various demonstrators ran up to Abed’s car and began kicking and hitting it with flagpoles.

[9] It became an instant chaotic situation. Precipitated by Abed grabbing the flag from Mr. Sacke.

[10] As protesters surrounded and were hitting Abed's car, Abed, her brother and father got out of the car to engage with the protesters. Abed is seen on video grabbing Mr. Sacke from behind with a hand over his shoulder and one hand over his torso as he goes to the ground. He is 88 years old and was injured. He was taken to the hospital for treatment. His injuries continue to this day.

[11] All these events are seen on two videos which have been made exhibits on this sentencing.

[12] Abed was charged with assaulting Mr. Sacke and theft from a citizen of Toronto in relation to grabbing the flag.

[13] The Crown and defence agreed to resolve this case by a plea of guilty to mischief under 5,000 in relation to taking the flag. The Crown advised the assault charge would be withdrawn as Abed would raise self defence and the Crown would not seek to disprove self defence beyond a reasonable doubt.

[14] That is the context in which this mischief occurred.

[15] Hissa Abed is 18 years old. She lives in Ottawa. She has no criminal record. I am told she wants to study and work. I have not been told much else about her.

[16] There is a joint submission for a conditional discharge and 12 months probation on agreed upon terms.

[17] This sentencing hearing is not about the sentence to be imposed. It is about whether I should consider Joel Sacke's Victim Impact Statement ("VIS") which the defence submits I should not receive.

[18] There were two victim impact statements submitted. One was a community VIS from the Friends of the Simon Wiesenthal Centre. That will be exhibit one on this sentencing. There is no issue taken with the admissibility of that statement.

[19] The second from Joel Sacke; the 88-year-old man whose flag was taken.

[20] The defence submits Mr. Sacke's victim impact statement is inadmissible because he was not the victim of the mischief. The defence submits Mr. Sacke was not named in the information as the person whose flag was taken and was not named in the Agreed Statement of Facts. Therefore, the defence submits he is not the victim and I should not admit his statement. The defence submits finding Mr. Sacke to be the victim of the mischief would be contrary to the Agreed Statement of Facts. Finally, the defence submits that, even if I find Mr. Sacke to be the victim and admit his VIS, I should give it little or no weight as he speaks about being thrown to the ground, his injuries and the effect this offence has had on his life and his sense of security.

[21] The Crown submits Mr. Sacke is the victim of the mischief and his statement should be admitted. The content of what he wrote speaks about his reason for attending the rally. That was the context in which this offence happened and he speaks about its impact upon him.

[22] I have no difficulty finding it was Mr. Sacke's whose flag was grabbed and taken by Ms. Abed as she as her family drove by demonstrators at the rally.

[23] I base this finding, not on Mr. Sacke's VIS where he identifies himself as the person whose flag was grabbed and was thrown to the ground, but on the evidence adduced on this plea; namely the videos that shows the events seconds later. This finding supplements but does not contradict the agreed statement of fact. He is the direct victim of this offence and I will admit his victim impact statement.

[24] I will not ignore those parts of Mr. Sacke's statement where he writes about the consequences of being thrown to the ground just because Ms. Abed did not plead guilty to assault.

[25] Section 722 of the *Criminal Code* provides that a court shall consider any statement of a victim describing the physical or emotional harm, property damage or economic loss suffered as a result of the commission of the offence and the impact of the offence. The entire series of events that day were set in motion by Ms. Abed intentionally provoking this group and grabbing Mr. Sacke's Israeli flag as he was at a rally for the hostages. The events that followed were set in motion by her offence.

[26] I will refer to and consider both Victim Impact Statements.

[27] I begin with the community Victim Impact Statement filed by the Friends of Simon Wiesenthal Centre for Holocaust Studies which reads in part as follows:

On that day, Ms. Abed brazenly grabbed an Israeli flag out of the hands of a citizen participating in a peaceful and solemn gathering, an unprovoked and hateful act of aggression that violated the citizen's right to assemble and express himself freely and without fear. This weekly vigil and Jewish gathering has taken place at the Bathurst and Sheppard intersection every Sunday since October 7, 2023, serving as a platform for the Jewish community and allies to mourn the 1,200 innocent souls murdered and the 251 hostages taken by Hamas on that day. Participants gather to hold Israeli flags and display pictures of kidnapped or murdered victims in an atmosphere of peace, unity, and solemn remembrance. Ms. Abed's actions disrupted this gathering, causing distress to those present and undermining a space dedicated to collective mourning and solidarity. The Israeli flag waved at these gatherings represents much more than national identity; it is a symbol of grief, resilience, and remembrance for the Jewish community. The forceful removal of this flag by Ms. Abed was not only an affront to the individual involved but also an act that unsettled an entire community still grappling with the horrors of recent events. Such acts are especially harmful because they embolden prejudice, foster division, and undermine the

fundamental principles of respect and equality that underpin our liberal democracy.

[28] Turning to Mr. Sacke's statement. I quote only part of the statement but have read and considered it all. I will not quote where he writes about his injuries but quote the following:

Every day I say this to myself. Why did this happen to me? On October 7, 2023 Hamas terrorists from Gaza invaded Israel, murdered 1,200 civilians and took 251 civilians as hostages. Since then, the Jewish community gathers at Bathurst and Sheppard every Sunday to pray for the safe return of the hostages, lend each other support and keep the memory of those murdered alive. I was carrying an Israeli flag to show my support for those murdered and taken hostage. I wanted to participate in a community in a part of town where we were welcome. What did I do that made Ms. Abed so angry with me that she grabbed my flag and threw me to the ground? Why am I being punished by being depressed in this way?

[29] Those statements describe the impact of this offence.

[30] As a society, we place great value on freedom of thought, expression and peaceful assembly. These fundamental freedoms are enshrined in s. 2 of the *Charter of Rights*.

[31] The defence submits this was akin to a hockey game where one fan grabbed the flag of the other team. With respect, that misses the mark. This is one of the most, heated issues we have seen in a long time. People have been killed on both sides of this conflict. Passions are very strong. As is clear in this case and is clear from the victim impact statements, this is not like stealing a hockey team's flag.

[32] Mr. Sacke attended the rally and carried the Israeli flag to draw attention to the kidnapped hostages and to support each other. He and everyone have the right to peacefully assemble, to gather and to express their views. Ms. Abed chose to provoke them, to engage in conduct intended to undermine their right to peacefully assemble and their sense of peace and security.

[33] With those comments, I turn to the aggravating and mitigating circumstance of this case.

[34] In one superficial sense, this may be seen as merely grabbing a flag. But in the context of what is going on in the world, that is plainly not the case and Ms. Abed knew it full well. There are mischiefs and then there are mischiefs. Ms. Abed intended to and did violate Mr. Sacke's and his community's sense of peace and security. It was meant to show their assembly and support cannot be expressed publicly without being met with aggressive behaviour.

[35] That conduct is itself aggravating as is the impact on Mr. Sacke and his community.

[36] By way of mitigation, Ms. Abed is young. She is only 18 years old. Her lawyer said she made a foolish decision at a political rally. She has no criminal record. She

plead guilty. A discharge will mean she will be unburdened by a criminal record and can live a pro-social life without a record if she chooses to. Her rehabilitation in view of her age, her lack of record and her plea of guilty are important considerations however, given the context, so too is denouncing this conduct.

[37] As I said, this hearing was not about the sentence to be imposed. It is about denouncing this conduct while balancing Ms. Abed's rehabilitative prospects.

[38] With those comments, I will adopt and impose the joint submission.

[39] Ms. Abed, you will be conditionally discharged and placed on probation for 12 months. You are to report to a probation officer within three days and thereafter as directed. You are ordered to keep the peace and be of good behaviour. You are to have no contact or communication, directly or indirectly with Joel Sacke. You are not to possess any weapons as defined by the *Criminal Code*. You are to take and actively participate in counselling for anger management and any other issue as directed by probation and sign all releases to enable your probation officer to monitor your compliance with these conditions. You are to perform 40 hours of community service to the satisfaction of your probation officer.

Released: March 11, 2025



Signed: Justice H. Borenstein