



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

**MAGISTRATE DR.
EDWINA GRIMA**

Sitting of the 25th July, 2012

Number. 184/2010

**The Police
(Inspector Therese Sciberras)**

Vs

**Mark Andrew Buckley 25 years old born on the 25th
August 1984, Manchester UK son of Anthony and
Julie nee' Denton having the British Passport no
108015999 and currently residing at Corradino
Correctional Facilities.**

The Court,

Having seen the charges brought against the accused Mark Andrew Buckley wherein he was charged with having between the 28th July 2009 and the 23rd February 2010 in the Maltese Islands in St. Paul's Bay sometime committed voluntary damages which amount to more than 2330 euro but less than 4660 euro to the detriment of various third parties.

Moreover he is also being charged that in the same date, place, time and circumstances he committed theft which theft amounts to more than 23.30 euro but less than 2330 euro which theft is aggravated by value.

Having seen the documents exhibited.

Having heard the evidence.

Having seen the articles of law sent by the Attorney General of the 21st November 2011.

Having heard the accused declare that he does not object to the case being tried summarily before this Court.

Having heard submissions by the parties.

Considers,

That it transpires from the note of the Attorney General of the 21st November 2011, that the accused is being charged mainly with committing two crimes, being the crime of theft and that of voluntary damages to the detriment of various people.

From the evidence gathered during these proceedings it results that the accused had rented out an apartment in St.Paul's Bay from spouses Maurice and Salvina Cassar. Together with him in this apartment, lived his partner and his two minor twin sons. It transpires also from the records that the accused has a brother who also lives in Malta.

On the 21st February 2010 an anonymous report was filed at the Qawra Police Station stating that a male was shouting and causing a disturbance, which man had thrown a gas cylinder out of a window. The police therefore went to the site indicated by the anonymous caller and noticed a broken white chair and two containers containing food on the street. However no gas cylinder was found. The police heard shouting coming from the common area of a block of apartments by the name of

Marshal Court and therefore entered to investigate further. There they found the accused together with his brother and children. When the police entered the apartment where accused lived with his family they observed that the place was in a complete mess and also noticed that there was another white wooden chair similar to that found outside on the street.

When accused was spoken to it transpired that he had just gone out to buy some food from a Turkish take-away and for no apparent reason threw a chair and the food out of the flat's balcony. The next morning a certain Joseph Spiteri who is the owner of a mini market at street level next to the block of apartments in question, filed a report, stating that he had just found a gas cylinder on the roof of his shop. At the same time a certain Martin Monreal also filed a report stating that he had found a dent on the roof of his van which he had parked close by.

The accused was arrested and questioned, however he denied all allegations brought against him. When questioned whether he had thrown a chair and a gas cylinder out of the balcony, he categorically denied ever doing this and he puts the blame for some of the damages found in the apartment on his brother. He also denied taking from the apartment a television set and bedsheets as alleged by the owners of the flat. He only admits to breaking some chairs.¹

During the course of these proceedings the Court heard the evidence of all the injured parties in this case, mainly spouses Cassar, Joseph Spiteri owner of the mini market and Martin Monreal whose car was damaged when the cylinder fell to the ground. However none of these people witnessed the incident of the 21st February. The only witness to evidence part of the incident was Joseph Spiteri who declares that on the day he was outside in his balcony smoking a cigarette when he saw accused throw a chair out of the balcony. He then drew accused's attention to this fact and his brother approached him and

¹ Vide statement of accused Document TS1 at folio 27

apologised for the incident. Later on accused however approached Spiteri himself and confronted him on the matter. Spiteri then closed his shop and went home. In the morning when he went back to his shop he found the roof of his shop damaged. He states that he was then informed by his neighbours about what had happened. Spiteri however did not witness this incident but was only told by his neighbours that accused had an argument with his brother and threw the gas cylinder out of the balcony.² For some reason, however, the prosecution, did not deem it fit to investigate further in order to establish the identity of these neighbours who seem to have been well known to Joseph Spiteri. Consequently, these people were never brought to testify in the case to confirm that in actual fact they had seen accused throw the said objects, including the cylinder out of the balcony. The only person to witness the incident was accused's brother Anthony Buckley who however chose not to testify against his brother in these proceedings, as was his right at law. From their part, spouses Cassar and Martin Monreal, in their respective testimonies confirm that they did not see accused cause the damage they suffered in their property.

Consequently with regard to the charge of voluntary damages, the Court is of the opinion that the Prosecution has failed to prove its case against the accused beyond reasonable doubt, as is its duty according to law in criminal proceedings. The only damage that the accused admits to and which was witnessed by Joseph Spiteri is that of the broken chair thrown out of the balcony and also some other chairs which were in the apartment.

Considers,

The accused is being also charged with theft. It must be stated that our Criminal Code does not give a definition of theft. Carrara gives the following definition: "*Contrectatio dolosa della cosa altrui, fatta invito domino, con animo di*

² Vide evidence of Joseph Spiteri at folio 48 and 49 of the court records.

farne lucro.”³ Professor Mamo in his notes on Criminal Law states:

“An analysis of this definition discloses no less than five ingredients necessary to constitute the crime of theft namely:-

1. The *contrectatio* of a thing.
2. belonging to others.
3. made fraudulently.
4. without the consent of the owner.
5. *animo lucrandi*.

With regard to the first ingredient listed above being the “contrectatio” or the taking of the object, it is clear that the intention of the person taking the object must be a permanent one, meaning that the intention of the thief must be to appropriate himself of an object belonging to another without the intention of returning it to him. In fact our law distinguishes between the crime of theft in terms of Section 261 of the Criminal Code and the so called *furto d’uso* as contemplated in Section 288 of the Criminal Code, which crime carries the punishment established for contraventions. Therefore although there is no doubt that the object of this crime being the laptop was removed fraudulently from the possession of its owner by accused and this without his consent, however there is no evidence in the acts of these proceedings to indicate that the accused had any intention to make a gain or profit out of his actions.

In a judgment delivered on the 30th January 2003 by the Court of Criminal Appeal in its inferior jurisdiction⁴, the said Court emphasized the importance of this last ingredient necessary which constitutes the crime of theft, in default of which no guilty verdict may be delivered against the person being accused. In delivering its judgment the Court makes a detailed exposition of the opinions given by various jurists including amongst others

³ Vide Criminal Appeal The Police vs Mario Tanti 09.12.1944

⁴ The Police (Inspector Paul Bond) vs John Galea and Paul Galea

Carrara, Crivellari and Professor Mamo in his Notes on Criminal Law. Quoting Carrara the Court stated:

“Il dolo specifico del furto consiste nell’intenzione di procurarsi un godimento o piacere qualunque coll’uso della cosa altrui ... per lucro qui non s’intende un effettivo locupletazione ma qualsiasi vantaggio o soddisfazione procurata a se stesso.”

Quoting Crivellari the Court further added:

“l’elemento intenzionale nel furto non si cotruisce gia col solo animo di prendere ma’ coll’animo di lucrare.”

It transpires from the acts of the case that none of the above-mentioned elements have been sufficiently proven by the prosecution. Injured parties spouses Cassar confirm that they had rented out the apartment to accused in July of 2009. The flat was furnished with some furniture, blinds, bedsheets and all kitchen utensils and crockery. Maurice Cassar also testifies to the effect that he had given a television set to the accused since the old one that was in the flat was not working and accused complained of this fact. Spouses Cassar also confirm that accused lived in this apartment with his partner and their two children. They also confirm that accused’s brother used to visit the apartment on occasions. When accused vacated the apartment after the above-mentioned incident and injured party gained access to their flat once again, they allege that there was substantial damage to most of the items found in the apartment, being some of the furniture, the blinds, the pots and pans amongst other items. Also they allege that the walls were stained and therefore also needed to be white-washed. Apart from this they also allege that they found some items missing from the apartment, being the television set and the bedsheets.

That from investigations carried out by the police it does not result that any search was carried out at the place of residence of accused and therefore the items that were reported to be missing were never found in accused’s

possession. Accused denies having taken these items and states that he vacated the premises because he had some arrears in rent. Although it seems that the defense is not contesting the fact that accused lived in the apartment belonging to the spouses Cassar, however, it maintains that accused was not the only person to occupy the premises. The prosecution from its part has once again failed to prove that accused was responsible for the actual theft of the items. The defense, rightly so, states that since other people occupied and even visited the premises, consequently the prosecution had to bring forward evidence to prove that these other people could not have been responsible both for the damage caused in the apartment as well as for the theft of the items indicated by injured party.

In view of the evidence found in the records, therefore, the accused can only be found guilty of causing voluntary damage to some chairs, the value attributed by the Court to the said chairs *arbitrio bone viri*, being of an amount not exceeding €100.

Consequently, the Court after having seen section 325(1)(c) of Chapter 9 of the Laws of Malta, whilst acquitting the accused of the second charge brought against him, finds him guilty of the first charge and condemns him to a term of imprisonment of two months.

Finally after having seen Section 533 of Chapter 9 of the Laws of Malta condemns the accused to pay the Registrar of Courts the sum of €141.60, being costs related to the court-appointed expert.

< Final Judgement >

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