

COURT OF CRIMINAL APPEAL

JUDGE

The Hon. Dr. Antonio Mizzi LL.D., Mag. Juris (Eu Law)

Appeal no. 305/2012

**The Police
(Inspector Anthony Portelli)
Vs**

Albert Tanti

son of Joseph, born on 9th January, 1948, holder of identity card number 103145(M)

This, tenth (10) day of October , 2017

The Court,

Having seen the charges brought against the appellant Albert Tanti before the Court of Magistrates (Malta) :

1. sometime between the 5th and 6th May, 2011 whilst at St Julian's committed the theft of four fire-arms from the premises styled as 'Belgravia' situated in George Borg Olivier Street, St Julian's, which theft is qualified by means, and value which exceeds €2,329.37 to the detriment of Joseph Sammut and/or other persons;
2. On the same date, time, place and under the same circumstances willfully committed damages exceeding €116.47 but not exceeding €1,164.69 to the detriment of Joseph Sammut and/or other persons;
3. On the 8th May, 2011 and the previous days, knowingly received or purchased any property which had been stolen, misapplied or obtained by means of any offence, whether committed in Malta or abroad, or knowingly took part, in any manner whatsoever, in the

sale of disposal of the same, whereby he knowingly received a fire-arm of the make Smith & Wesson 38 Special with serial no. 1K96318, which fire-arm is the property of Joseph Sammut and/or other persons, which fire-arm was reported stolen amongst other items on the 6th May, 2011 from inside the premises styled as 'Belgravia' George Borg Olivier Street St Julians;

4. On the 8th May, 2011, at about 11:15am, and in the previous days before this date, in Sliema and other localities in these Islands, kept in any premises or had in his possession, or had in his control or carried outside a premises, the mentioned fire-arm as enlisted in Schedule 1 of Chapter 480 (Arms Act) without having a license as indicated in the same Act;

5. On the 8th May, 2011, at about 11:15am, and in the previous days before this date, in Sliema and other localities in these Islands, kept outside a premises a cutting and pointed instrument (fish-knife) without having a license or permit from the Commissioner of Police;

6. Breached the conditions of bail as imposed on him by the Court of magistrates presided by Magistrate Dr Giovanni Grixti LL.D on the 31st January, 2008, whereby he was granted bail with the condition that he does not voluntarily commit a crime whilst he is on bail under a personal guarantee of €1,000.

In the case that the accused is found guilty, the Court is being requested to revoke the bail of the accused and proceed with the re-arrest of the accused and the Court is further requested to order that the sum of €1,000 as personal guarantee are to be forfeited to the Government of Malta as stipulated in section 579(2)(3) of Chapter 9 of the Laws of Malta.

Having seen the judgement delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 5th June, 2012, by which, the Court, found the defendant not guilty of the second and sixth charges brought against him, and whilst abstained from taking further cognizance of the first charge, after having seen section 334(a) of Chapter 9 of the Laws of Malta and sections 5(1) and 6 of Chapter 480 of the Laws of Malta

found the accused guilty of the other charges brought against him and condemned him to one year imprisonment and a fine (multa) of €116.47. The Court by application of section 56 of Chapter 480 of the Laws of Malta is ordering the forfeiture in favour of the Government of Malta of the knife exhibited as part of Document AP4 and by application of section 57 of the said Chapter 480 prohibited the accused from acquiring any license and/or permit in terms of the said Chapter 480 for a period of five years. Furthermore and by application of section 533 of Chapter 9 of the Laws of Malta the Court is ordering the accused to pay to the Registrar of this Court the sum of €176.27 representing expenses in connection with the employment of experts.

Having seen the application of appeal filed by the defendant Albert Tanti on the 14th May, 2012, wherein he humbly prayed this Court to reform the decision being appealed by confirming it where the court found the accused not guilty thus cancelling and revoking it in the part where the accused was found guilty of the accusations as indicated in the decision thereby declaring him not guilty according to law. Alternatively and without prejudice, should the appeal not be accepted, this Honourable Court is being requested to reform the decision in the part involving the punishment by imposing one which is more equitable in the circumstances of this case.

That the grounds of appeal of defendant Albert Tanti consist of the following:

A. First foremost, the accusations levelled against the accused are not in the least true with the accused vociferously objecting to them.

B. The accused, was in fact acting very responsibly, such that the turn of events, as they developed, were such that notwithstanding his good deed/s, the actions of the accused have been totally misinterpreted putting the said accused in this very unfair situation.

C. It is relevant to point out that this same court is hearing the compilation of evidence in another case, where the accused in this latter case had on his possession the

weapon indicated in this case with the result that the accused in this case took the weapon off this person as a means of protection. This responsible behaviour on the part of the accused in this case turned out to be detrimental to his position with the result that the accused is being made to answer for the charges raised in the charges, amongst which in having stolen the firearm/s two days earlier when in reality the accused did not do anything of the sort.

D. In this latter situation, the accused was literally protecting society from the irresponsible behaviour of the other individual who was/is young of age which situation, the first court did not show due importance. In this respect, the accused is being made to answer for a situation he did not bring about but for acting responsibly. The disastrous effect of this decision has been that the accused is being condemned for a crime he did not commit with the added result that responsible individuals in the future would be dissuaded in carrying out actions of bravery in order to avoid being wrongly accused as Albert Tanti is experiencing in this case.

E. Whilst the above objections are not in the least to be deemed exhaustive, they are certainly indicative of the innocence of the accused. This is being raised in view of the fact that this Honourable Court is being requested to consider that a serious miscarriage of justice is slowly taking root which this Honourable Court is being requested to prevent.

Having seen the records of the case.

Having seen the updated conviction sheet of the defendant.

Now therefore duly considers,

One of the major reasons for this appeal is the statement that the appellant acted in a very responsible way on account of the fact that he took the revolver from the possession of another man who wanted to harm him.

From the evidence of the appellant it transpires that this man is a certain Karus Meiers and the fight between this man and the appellant was witnessed by a certain Perry

Pillsbury. One would have expected that these two gentlemen would have been asked to give their evidence by the appellant. However, from the records of this case none of these two gentlemen were asked to give evidence. It was not up to the prosecution to ask them to give evidence. This is on account of the fact that it was the appellant who was took the witness stand in his defence who named these two persons. Up to that moment the prosecution was unaware of the part these two played in the case brought against the appellant.

In the circumstances the first Court was correct in arriving at its decision and this Court finds nothing to fault with the reasoning of the first Court.

However, due to the fact that the appellant is today a seventy year old man, this Court will be taking this fact into account.

Consequently, for the following reasons this Court does not uphold the appeal filed by Albert Tanti and confirms the judgement of the first Court with reference to the merits of the case. With reference to the punishment awarded by the first Court, this Court upholds the appeal filed by the appellant in the sense that it does not commit the appellant to a term of imprisonment of one year but instead sets him free under the terms of section 22 of Chapter 446 of the Laws of Malta on condition that he commits no other crime for a period of three years from today. This Court confirms the multa of €116.47. This Court orders that the appellant pays the sum of €176.27 expenses incurred by virtue of section 533 of the Criminal Code.