



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

**MAGISTRATE DR.
DOREEN CLARKE**

Sitting of the 5th June, 2012

Number. 595/2011

**The Police
(Inspector Anthony Portelli)**

vs

Albert Tanti

Case Number: 595/2011

Today the 5th June 2012

The Court,

Having seen the charges brought against the accused, Albert Tanti, 63 years, son of Joseph and Olga nee' Zammit, born in Hamrun on the 9th January, 1948 and residing at Dorvic Flats, Flat no 5, St Vincent Street, Sliema and holder of ID card no 103148M.

Charged with having:

1. sometime between the 5th and 6th May 2011 whilst at St Julian's committed theft of four fire-arms from 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, of knowingly took part, in any manner whatsoever, in the sale or 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 Article 579(2)(3) of Chapter 9 of the Laws of Malta.

Having seen the order of the Attorney General for this case to be tried by this Court as Court of Criminal Judicature for offences contemplated in the following provisions of Law:

- a) section 261(b)(c), 263(a), 264(1), 265, 267, 278(2) and 279(b) of Chapter 9 of the Laws of Malta;
- b) section 325(1)(b) of Chapter 9 of the Laws of Malta;
- c) section 334(a) of Chapter 9 of the Laws of Malta;
- d) section 579(1)(2) of Chapter 9 of the Laws of Malta;
- e) sections 3(a)(5)(1), 6, 51(1)(a)(2)(7) of Chapter 480 of the Laws of Malta.

Having seen that the accused had no objection to the case being tried summarily.

Having heard the evidence and the submissions of the parties.

Having seen the acts of the proceedings.

Having considered

That this case relates to an incident that took place on the 8th May 2011 at about 11.15am when the accused was walking down Qrejten Street Hamrun. At that time PC409 Joseph Zarb, who was not on duty, had just parked his car in Qrejten Street when the accused walked past his car. As the accused passed by the vehicle PC 409 noted that the accused had a gun stuck in the waistband of his trousers. PC 409 got out of his car, contacted the police

depot for backup whilst following the accused; during this time PC409 remained in contact with the police depot over the phone until back up arrived a few minutes later. The accused was apprehended, the gun removed from his person and in the routine search carried out on site he was found to be carrying a knife as well. The accused was arrested and taken to the police depot for questioning. On verifications being made it transpired that the gun that the accused had in his possession had been stolen two days before from the Belgravia Auction Gallery in Saint Julian's which however belonged to a certain Alfred Cuschieri.

That the charges brought against the accuse in terms of the note of the Attorney General are theft aggravated by means and amount, willful damages, receipt of stolen property, failure to observe bail conditions, possession of a firearm listed under Schedule I and II of Chapter 480 of the Laws of Malta without the necessary permits, and the possession of a cutting and pointed instrument without the necessary permit.

Having considered

The first three charges are theft, willful damage, and receipt of stolen objects.

That from the documents exhibited and the testimony of Joseph Sammut (owner of the Belgravia Auction Gallery) and Alfred Cuschieri there is no doubt that the firearm which was found in the possession of the accused was one of the firearms that belonged to Alfred Cuschieri and had been stolen from the Belgravia Auction Gallery. However there is no shred of evidence that can link the accused to the theft that took place in the said auction gallery and the damage caused to and in the premises in the course of the theft.

What constitutes the crime of receipt of stolen property and what must be proved in order for a conviction to be secured has been extensively dealt with in the judgment given by the Court of Criminal Appeal in the lawsuit Il-

Pulizija vs Darren Debono decided on the 15th January 2009. In this judgment the Court said:

Illi skond il-gurisprudenza sabiex persuna tinstab hatja ta' ricettazzjoni hu mehtieg li jikkonkorru is-segwenti tlitt rekviziti u cioe':

1. il-provenjenza lilegitima tal-oggett in kwistjoni ossia li jkun insteraq, jew gie mehud b' qerq jew akkwistat b' reat iehor;
2. l-akkuzat irid ikun laqa' ghandu jew xtara tali oggett li ghandu provenjenza lilegitima; w
3. fil-mument tal-akkwist, l-akkuzat kien jaf bil-provenjenza lilegitima tal-oggett in kwistjoni (ara App. Krim **"Il-Pulizija vs. Bugelli"** [24.1.1942]; **"Il-Pulizija vs. Giovanni Grima"** [25.10.2002])

L-element formali ta' dar-reat hu li l-akkuzat kien konsapevoli tal-provenjenza illecita tal-oggett suggett tar-ricettazzjoni. Dan ir-rekwizit jista' jigi pruvat kemm minn provi diretti kif ukoll minn provi indizjarji. Hekk fl-Appell Kriminali **"Il-Pulizija vs. John Briguglio"** [24.6.1961] (per Harding J.) kien gie ritenut li :-

"Min jakkwista oggett taht cirkostanzi li fihom imissu jissuspetta li dak l-oggett kellu provenjenza illegitima, u ntant ma jaghmel xejn biex jikkontrolla dik il-provenjenza, u jaghalaq ghajnejh, huwa hati ta' din in-negligenza u kwindi ta' ricettazzjoni."

Gie ukoll ritenut li dan l-element formali tar-reat in dizamina ikun jissussisti anki jekk l-akkuzat ikun irceva jew xtara l-oggett fil-waqt li jkollu jew inkella imissu kellu suspett li l-persuna li taghtu dak l-oggett setghet giet f' pussess ta' dak l-oggett b' mod illecitu w b' dana kollu xorta jilqa' ghandu jew jixtri tali oggett minghajr ma jaghmel xejn biex jivverifika u jaccerta ruhu li l-pussess ta' dik il-persuna l-ohra kien wiehed legittimu u mhux kif kien qed jissuspetta hu. (ara App. Krim. **"Il-Pulizija vs. J. Briguglio"** [24.6.1961]; **"Il-Pulizija vs. John Dimech"** [24.6.1961]; **"Il-Pulizija vs. George Tabone"** [24.6.1961] u **"Il-Pulizija vs. Tancred Borg"** [26.10.1998]).

S' intendi ix-xjenza mehtiega fir-ricettatur tirrigwarda l-provenjenza kriminuza generika u ma tirreferix ghad-dettalji specifici tar-reat principali. (Ara App. Krim. "**Il-Pulizija vs. Joseph Piscopo**" [21.3.1953]; "**Il-Pulizija vs. Nazzareno Zarb**" [16.12.1998] u ohrajn)

Kif jghid il-KENNY:

"The knowledge: The prisoner must have received the stolen goods with knowledge then of their having been stolen. Such knowledge may be presumed prima facie if he knew of circumstances so suspicious as to convince any reasonable man that the goods had been stolen - e.g. ...when an unlikely vendor offers them for an unlikely price ... His subsequent conduct may be evidence of such knowledge - e.g. .. selling them surreptitiously ... or making no written entry of having bought them."

Illi kif qalet din il-Qorti diversament preseduta (per V. De Gaetano J., fl-Appell Kriminali : "**Il-Pulizija vs. Emanuel Seisun et.**"[26.8.1998]); it-teorija Ingliza "*of unlawful possession of recently stolen goods*" issib ukoll applikazzjoni fis-sistema legali taghna, ghax in tema ta' "*law of evidence*" il-gurisprudenza taghna ssegwi hafna dik Ingliza. Din it-teorija ma hi xejn hlief l-applikazzjoni tal-buon sens ghal cirkostanzi partikolari li jkunu jirrizultaw pruvati, fis-sens li meta jigu ppruvati certi fatti, dawn jistghu wahedhom iwasslu ragjonevolment ghall-konkluzzjoni li persuna partikolari tkun hatja tar-reat ta' serq tal-oggetti misjuba ghandha jew, skond ic-cirkostanzi, tar-reat ta' ricettazzjoni ta' dawk l-oggetti. F' dik is-sentenza din il-Qorti ccitat mill-**Archbold: Criminal Pleading, Evidence and Practice**, 1997, paras. 21-125, 21-126):-

*"In R. v. Smythe, 72 Cr. App. R. & C.A., the court stressed that it is a misconception to think that recent possession is a material consideration only in cases of handling: it adopted the following passage from **Cross on Evidence**, 5th. ed., p.49 (now 8th. ed., p.35): "if someone is found in possession of goods soon after they have been missed, and he fails to give a credible explanation of the*

manner in which he came by them, the jury are justified in inferring that he was either the thief or else guilty of dishonestly handling the goods, knowing or believing them to have been stolen....The absence of an explanation is equally significant whether the case is being considered as one of theft or handling, but it has come into particular prominence in connection with the latter because persons found in possession of stolen goods are apt to say that they acquired them innocently from someone else. Where the only evidence is that the defendant on a charge of handling was in possession of stolen goods, a jury may infer guilty knowledge or belief (a) if he offers no explanation to account for his possession, or (b) if the jury is satisfied that the explanation he does offer is untrue."

"Every case depends on its own facts.It would be impossible to compile a definitive list of circumstances which might be relevant. They will include, however, the time and place of the theft, the type of property stolen, the likelihood of it being sold on quickly, the circumstances of the defendant, whether he has any connection with the victim or with the place where the theft occurred, anything said by the defendant and how that fits in or does not fit in with the other available evidence." (ara ukoll f' dan is-sens :"**Il-Pulizija vs. Carmel Debono**" [1.11.1996], "**Il-Pulizija vs. Richard Spiteri**" [31.8.2006] u ohrajn).

In the present case there can be no doubt that the firearm found in the possession of the accused was stolen. The issue to be resolved is whether the accused knew or whether he could have reasonably known that it was stolen.

The accused chose to give his evidence before this Court in order to try to justify having a firearm in his possession. In his testimony he initially claimed that he had gone to St Luke's hospital (to the detox centre) and was walking down the hill when he bumped into a certain Karlis Meirs whom he met once before and stopped with him; some persons came in the doorway where the accused was with Meirs but the accused didn't like what was going on

so he walked away to the bus stop and saw all those persons following Meirs. The accused, on his own, proceeded to the Msida Police Station to sign the bail book and from there went to the apartment where he lives in Sliema (the accused shares an apartment with a third party). On entering his flat he found that Karlis Meirs was there; he didn't like the idea of him being there so he chased him out into the street and kept chasing after him two blocks when a gun fell "out of his side"; Miers ran off and the accused picked up the gun. He then went back to his apartment to decide what to do with the gun; initially he was going to take to to his uncle who lives in Hamrun since he was a retired police officer however on the way to his uncle the accused decided that it would be better if he took the gun to a friend; on his way to this friend he was apprehended by the police. The accused also states that when he chased after Meirs and took the gun when it fell on the ground in the street there was "the whole neighbourhood watching" but no one went to help. Further on in his testimony the accused says that when he chased after Meirs and grabbed the gun from the floor Meirs "took off, he went up the road and he left, and then later on he committed **an other** robbery". The accused also stated towards the end of his testimony that the maximum period of time that elapsed from the moment he took Meirs' gun from the ground till he was apprehended by the police was twenty minutes.

A reading of the testimony given by the accused leaves little doubt as to its lack of credibility.

The accused claims that he chased after Meirs; Meirs dropped a gun which he himself picked up in the view of "a whole neighbourhood" in the heart of Sliema and no one bothered to call the police. It is to be pointed out that neither did the accused call the police. He tries to justify this by saying that he did not want any trouble. However this is hard to believe since according to his version he would have had the whole neighbourhood to vouch for his extreme civic behaviour.

The accused also claims that he had the gun in his possession for twenty minutes at most; however this is impossible. He took the gun after he chased Meirs for two blocks from his apartment in St Vincent Street Sliema; after that he went back to his apartment in St Vincent Street Sliema where he pondered what to do with the gun. He decided to go to his uncle in Hamrun but once there it seems that he had a change of heart and decided to go to his friend Fred (he did not specify where he lives) at which time he was apprehended by the police. Even if he took the decision to go to Hamrun immediately on his return to the apartment (in St Vincent Street Sliema) and acted on it immediately it would have taken much more than twenty minutes for him to get from St Vincent Street Sliema to Qrejten Street Hamrun. Furthermore in two instances in his testimony the accused claims it was 2.00am when Meirs came to his apartment when he chased him away; the accused was apprehended at 11.15am. It also transpires from the testimony if the accused that he was aware of Meirs' involvement in criminal activity since when he claims to have chased Meirs away (and took his gun) he said that Meirs ran off to commit **an other** robbery.

The Court is therefore faced with a situation where it the accused was shown to have been found in possession of a recently stolen object but the explanation he offered to account for his possession is untrue. In these circumstances and in line with the jurisprudence quoted above the Court has to infer guilty knowledge. Consequently the third charge brought against defendant is sufficiently proved.

Since the Court is finding defendant guilty of receipt of stolen property and this charge was alternate to the first charge of theft the Court will abstain from taking further cognisance of the first charge of theft. For reasons cited above the second charge of wilful damage was not proved.

The fourth and fifth charges brought against defendant refer to the fact that he was found to be in possession of a firearm listed under Schedules I and/or II of Chapter 480

of the Laws of Malta and that he was found in possession of a sharp and pointed instrument without the necessary license or permit from the Commissioner of Police.

There is no doubt that defendant was found in a public place and had on his person a firearm and a sharp and pointed instrument. There is also no doubt from the testimony given by two police officers that the accused didn't have a permit or license to carry these objects.

In this regard it must be pointed out that the Court nominated expert Maurice Calleja established that the firearm carried by the accused is one listed in Schedule II of Chapter 480 of the Laws of Malta. Consequently the fourth and fifth charges have been proved in so far as they refer to sections 5(1) and 6 of the said Chapter 480.

The last charge brought against defendant is the breach of bail conditions. The writ of summons specifically refers to the breach of bail conditions imposed by this Court presided by Magistrate Dr Giovanni Grixti on the 31st January 2008. A decree dated 31st January 2008 given by Magistrate Dr Giovanni Grixti was exhibited however it appears that this decree was given with regard to a certain Roderick Debono. It is to be pointed out that the prosecuting officer did exhibit bail conditions imposed on the accused however these were not imposed by Magistrate Dr Giovanni Grixti neither were they imposed on the 31st January 2008. Consequently the accused cannot be found guilty of the last charge brought against him.

As to the penalty to be meted out the Court took into consideration the nature of the offences of which the accused is being found guilty as well as his conviction sheet. For purposes of the third charge the value of the gun stolen was €580 consequently the penalty for this charge is that established for theft aggravated by amount of more than €232.94 but less than €2329.37.

For these reasons the Court, whilst finding defendant not guilty of the second and sixth charges brought against

him, and whilst abstaining 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 finds the accused guilty of the other charges brought against him and condemns 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 prohibits 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.

< Final Judgement >

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