



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

**MAGISTRATE DR.
AUDREY DEMICOLI**

Sitting of the 7th December, 2012

Number. 677/2011

**Police
(Spettur Keith Arnaud)**

vs

Solomon Tesfei Tekle

The Court,

Having seen the accused Solomon Tesfei Tekle of 21 years, son of Tesfei and Alem nee' Gudeta born in Eritrea on the 27th May 1990, currently residing at the Corradino Correctional Facility, holder of Maltese Identity Card number 38187(A) and of Police Number 05MM13 was arraigned before it and charged with having:

On the night of 01st and 02nd April 2011, while at Plush Lounge Bar situated at St Georges Road, St Julians, committed theft of a Blackberry mobile phone and other

documents, which offence of theft is aggravated by value, which value of the thing stolen exceeds two hundred and thirty-two euro and ninety-four cents (€232.94) but not two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) and by time, to the detriment of Chiara Scerri from San Gwann and/or other person/s;

Between the 01st April 2011 and the 09th May 2011, in Malta, knowingly received or purchased any property which has been stolen, which value exceeds two hundred and thirty-two euro and ninety-four cents (€232.94) but not two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) misapplied or obtained by means of any offence, whether committed in Malta or abroad, or shall knowingly took part, in any manner whatsoever, in the sale or disposal of the same;

Being charged for rendering himself recidivist, after being sentenced by a judgement which has become absolute.

Having seen all the acts of the proceedings including the Attorney General's consent dated 23rd May 2011 (exhibited a. folio 12 of the proceedings) for this case to be treated summarily.

Having heard the accused declare that he has no objection that his case is heard summarily and decided by this Court as a Court of Criminal Judicature.

Having heard all evidence submitted in this case.

Having heard the final submissions made by the Prosecution and the Defence Counsel.

Having considered:

The facts of this case relate to the theft of a Blackberry mobile phone (IME number 354908043257001) and some other items form a handbag belonging to the victim Chiara Scerri which theft occurred while the latter was at Plush Lounge in Paceville on the 2nd April 2011 at around

12.30am. The value of the mobile phone was established to be €250. From investigations carried out by the Police subsequent to the report filed by the victim, namely from information submitted by telecommunications service providers Vodafone Malta plc it transpired that nine hours after the reported theft the stolen phone was used by the accused and subsequently it was also used by another person, Ibrahim Shasharou. When the Police spoke to the latter whereby the phone in question was found in his possession he immediately co-operated with the Police and informed them that the phone belonged to his friend the accused and that the latter had given it to him to keep after they had gone drinking in Bugibba and the accused decided to remain there on his own and was then arrested for other alleged crimes not related to this case.

The accused was interrogated by the Police on two separate occasions whereby he was always given the right to consult a lawyer. During the first interrogation¹ held on the 10th May 2011 the accused denied ever having been in possession of the mobile phone in question. He also confirmed that his mobile phone number was 9919 4725 and he said that all his mobile phones were confiscated by the Police when he was arrested in Bugibba on the 8th April 2011. During the second interrogation² held on the 11th May 2011 whereby a confrontation with Ibrahim Shasharou took place the accused confirmed the version given by Ibrahim Shasharou, i.e. that he had handed the mobile phone to him when they had gone drinking in Bugibba because he was drunk and that he could not reclaim it because he was then arrested. The accused also said that he had found the mobile phone in question during the first week of April while at work as a glass collector at Plush Lounge. He said that the phone was on the floor and so he decided to take it and keep it. The accused also said that he had not given this version of facts the first time he was interrogated by the Police because he was confused. The accused chose to give evidence in these proceedings³

¹ Relative statement inserted at folio 108 and 109.

² Relative statement inserted at folio 110 and 111.

³ Relative transcription inserted at folio 135 et sequitur of the acts of these proceedings

whereby he re-iterated the same version of facts which he gave during the second interrogation.

The accused is being charged with the theft of the said mobile phone, with being in receipt of stolen goods and with being a recidivist in terms of Sections 49 and 50 of the Criminal Code. After having examined the evidence brought forward by the Prosecution in this case the Court deems that the said Prosecution has managed to prove to a grade of beyond reasonable doubt that the accused stole the mobile phone from Chiara Scerri's bag while she was at Plush Lounge on the 2nd April 2011. This Court does not believe the accused's second version of events whereby he stated that he found the mobile phone abandoned on the floor at Plush Lounge and decided to keep it. Had this been the truth he would have immediately said so to the Police when he was interrogated the first time instead of denying that he had ever been in possession of the said phone. The Court could not fail to note that the accused came forward with this second version only after his friend re-iterated to the Police in his presence that he (the accused) had given the mobile phone in question to him. Defence Counsel's submission that the victim confirmed that her bag did not close properly is indicative of the fact that the phone could have fallen out of the bag can also be indicative of the fact that it is much easier for someone to steal something from the said bag in a crowded place without the owner realising anything. The theory of recent possession is going to be applied in this case and the accused is going to be found guilty of theft because it was proven that he was present in the place and at the time the theft took place and furthermore the stolen object was in his possession only a few hours after it was reported stolen. The accused is therefore going to be found guilty of the first charge and the Court is going to abstain from taking further cognisance of the second charge which charge was only issued as an alternative to the first charge.

The Court cannot find the accused guilty of the third charge because no judgement was exhibited in these proceedings indicating that the accused was found guilty

Informal Copy of Judgement

of other crimes in terms of Sections 49 and 50 of the Criminal Code.

In terms of punishment the Court however took into account the accused's Criminal record from where it transpires that he is not a first time offender as well as the seriousness of the crime for which he is being found guilty and deems that an effective term of imprisonment should be imposed.

After having seen Sections 261(c) (f), 267, 270, 279, 280 and 20 of Chapter 9 of the Laws of Malta the Court finds the accused guilty of the first charge brought against him and condemns him to ten (10) months imprisonment. The Court declares the accused not guilty of the third charge brought against him and consequently acquits him from the said charge. In view of the fact that the second charge was given as an alternative to the first charge whereby the accused has been found guilty of the said charge the Court is hereby abstaining from taking further cognisance of this charge.

< Final Judgement >

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