



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

**MAGISTRATE DR.
EDWINA GRIMA**

Sitting of the 2 nd May, 2013

Number. 19/2010

**THE POLICE
(INSPECTOR JOSRIC MIFSUD)**

VS

**DANIEL ALEXANDER HOLMES, 35 years, son of
Melvin and Kate nee' Green, born in Canterbury, date
of birth 11/04/1978, residing at Corradino Correctional
Facility, holder of British Passport number 20398311**

The Court;

Having seen the charges brought against the accused
Daniel Alexander Holmes, having been charged with
having on these islands in Xlendi, Gozo, on the 11th
December 2007, at around 1715hrs:

Informal Copy of Judgement

- a) committed theft of a vehicle make Suzuki type Samurai bearing registration number EAD491, which theft is aggravated by amount that exceeds the sum of one thousand Malta liri, and time to the detriment of Joseph Muscat (0714958M),
- b) same date, time, place and circumstances committed theft of a rubber boat (dinghy) bearing registration number S 10433, which theft is aggravated by amount that exceeds the sum of one thousand Malta liri, and time to the detriment of Xavier Bernard Hancock (0023459A)
- c) same date time place and circumstances committed the theft of an outboard motor make Yamaha type 140hp, which theft is aggravated by amount that exceeds the sum of one hundred Malta liri, and time to the detriment o Xavier Bernard Hancock (0023459A)
- d) same date, time, place and circumstances committed the theft of a outboard motor make Mercury type 4hp, which theft is aggravated by amount that exceeds the sum of one hundred Malta liri, and time to the detriment of Xavier Bernard Hancock (0023459A),
- e) same date, time, place and circumstances willfully committed any spoil, damage or injury to or upon any movable or immovable namely Booster Sound Hi Fi System property belonging to Joseph Muscat which value does not exceed Lm100.00
- f) and for having on the same date, at around 1730hrs at Fontana, assaulted Joseph Muscat causing him slight bodily harm in breach of Article 221 of Chapter 9 of the Laws of Malta..

Having heard the evidence;

Having seen the documents exhibited;

Having seen the note of the Attorney General of the 28th April 2008;

Having heard the accused declare that he has no objection to the case being tried summarily by this Court.

Having heard the oral submissions of the parties.

Having seen all the acts of the proceedings;

Considers:

The accused Daniel Alexander Holmes had been initially accused together with Barry Charles Lee of having stolen a jeep and a boat from the car park in Xlendi belonging to Joseph Muscat and Xavier Bernard Hanncock respectively. During the course of the proceedings Barry Charles Lee admitted to the charges brought against him and consequently by a decree of this Court of the 7th January 2010, the separation of the proceedings of both the accused was ordered so that judgment could be delivered against accused Barry Charles Lee and proceedings could continue with regards to co-accused Daniel Holmes.

That from the evidence tendered before the Court it results that on the 11th of December 2007 injured party Joseph Muscat had parked his jeep registration number EAD491 in the Xlendi car park and afterwards proceeded towards his bar by the name Ta' Nona. After a while he was alerted by Xavier Bernard Hanncock and his friend Jack Alan Coode, to the fact that his car had been observed being driven around the car park. Muscat went to the car park to check out this information and saw his jeep being driven off at high speed up the hill from Xlendi. He, therefore, ran towards the bar and asked for Hanncock's assistance. The two followed the jeep in Hanncock's car where they observed that Hanncock's dinghy had been hitched to the back of the jeep and had also been stolen. Hanncock managed to overtake the jeep and blocked its road. When Muscat tried to alight from the car, the driver of the jeep drove straight into the Kia being driven by Hanncock. The driver got down from the vehicle and ran off, whereas the passenger in the car, who was the accused Daniel Holmes, alighted from the car. Muscat ran towards accused and was aggressive towards him, however accused Holmes immediately denied any involvement in this incident and informed them

that he had only hitched a lift with Barry Charles Lee and knew nothing about the theft of the car and boat. In fact he told them to phone the police and that he would wait with them until the police arrived on site.

When the police arrived on site accused was arrested, however although it seems he was questioned by the Prosecuting Officer, he never released a written statement. This transpires from the testimony of the accused, since the Prosecuting Officer never testified during the proceedings. In fact in the acts of the proceedings only statement by co-accused Barry Charles Lee is exhibited, which statement cannot be considered as evidence against the accused Daniel Holmes.

Accused Daniel Holmes chooses to take the witness-stand and denies his involvement in this theft. He states that on the day of the incident, he was in Xlendi, and after having taken a drink at a bar in the vicinity he decided to walk uphill from Xlendi on the way back home and was trying to hitch a lift when Barry Charles Lee stopped and being an acquaintance of his, decided to accept the lift from him. Lee then sped off uphill and after a while they started being followed by another car who managed to overtake them and block the road. Barry Charles Lee then crashed into the side of the car, alighted therefrom and escaped. Accused states that since he had nothing to hide or run away from, he stepped out of the car and told the people who stopped him to phone the police.

His evidence is corroborated by injured party Muscat and Hancock who state in their testimony that accused did not try to escape and that it was he who suggested that they call the police. Witness Jack Alan Coode confirms that Holmes immediately denied any involvement in the theft when he was confronted by the two other men regarding the theft and made no attempt to run off. Witness states that Holmes informed them that he was in the vehicle because he had hitched a lift from Barry Lee.

Considers:

That article 42 of the Criminal Code lays down the circumstances wherein a person is considered to be an accomplice at law. Consequently for accused Daniel Holmes to be considered an accomplice to the actions carried out by Barry Lee, the Prosecution must necessarily prove beyond reasonable doubt that he knew before the crime was committed that Lee intended to commit such a crime and that he had agreed to assist him in any manner provided for in the said article 42. Consequently there must be clear evidence in the acts of the case pointing towards the existence of a common design between both men to commit the theft of the vehicle and the boat. The mere presence of Holmes at the scene of the crime, although in itself could lead to a presumption against him of his involvement in the commission of the crime, however does not prove beyond reasonable doubt that he had agreed with Lee to commit the crime and that he assisted or participated in the same together with him. In a judgment delivered by the Court of Criminal Appeal in the case *Il-Pulizija vs Carmelo Agius et* (decided 24th May 2002) it was stated: **“Huwa veru li l-presenza ta’ persuna fuq il-post tad-delitt u waqt li jkun qed jigi kommess id-delitt tista’ tammonta ghal komplicita f’dak id-delitt kemm il-darba jkun jirrisulta li bejn dik il-persuna u l-awtur tad-delitt kien hemm il-hsieb komuni li jsir dak id-delitt, u li l-presenza ta’ dik il-persuna effettivament assistiet lill-awtur, anke jekk biss moralment, biex iwettaq dak id-delitt.”**

Although Hanncock and Coode state that they had seen two men driving around in the Xlendi car park in Muscat’s car, however they are not in a position to identify who these men were. Muscat from his part is not only unable to identify the driver but cannot even state whether there was more than one person in the car when he saw it drive off from Xlendi. There is no evidence in the acts therefore, whether direct or indirect, to contradict the version given by Holmes both to the police at the time of the arrest as well as his testimony in this case. Criminal conspiracy necessitates not only proof that the conspirators had reached an agreement prior to the commission of the offence but also evidence establishing

the existence of this state of mind from the course of conduct of the person or persons accused. In their agreement the parties not only must understand that they are uniting to commit a crime, but they also must desire to complete that crime as the result of their combination. From a detailed analysis of the acts of the case, the Court finds no such evidence.

Considers further:

The accused is also being charged with causing injuries of a slight nature on the person of Joseph Muscat and also of causing damages to the vehicles belonging to Muscat and Hancock. From the evidence tendered by injured parties, it results that accused caused no injuries to Muscat, and also that the damage caused to both the vehicles of injured parties was carried out by Barry Charles Lee when he crashed into the vehicle belonging to Hancock whilst he was driving Muscat's jeep.

Consequently, on the basis of lack of evidence in the proceedings, the Court cannot but acquit the accused from all the charges brought against him.

< Final Judgement >

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