IN THE CHIEF MAGISTRATE COURT OF ANAMBRA STATE OF NIGERIA
IN THE MAGISTRATE COURT OF AWKA MAGISTERIAL DISTRICT
HOLDEN AT AWKA
BEFORE HIS WORSHIP N.A. ONWUKWO ESQ. SNR. MAG. GRADE I
ON FRIDAY THE 8TH DAY OF SEPTEMBER, 2017

CHARGE NO: MAW/185C/2013

BETWEEN

COMMISSIONER OF POLICE - - - - - COMPLAINANT
VS.
JOSHUA OKAFOR - - - - - - - DEFENDANT

Parties Present.

Appearances – Sgt. Cyril Ogbodo for prosecution.

B.O. Umezinwa for the Defendant

JUDGMENT

On 24-06-2013, the defendant was arraigned before me on a two count charge of willful and unlawful destruction of property contrary to Section 496 and 415 (1) of the Criminal Code Cap 36 Vol. II Revised Law of Anambra State, 1991 as amended.

Four witnesses testified of the prosecution in proof of the Charge whereas two witnesses testified for the defence.

Testifying for the prosecution, PW1, Ifeanyi Iloegbunam averred that on the 12th of October 2012, he received a call from one Mrs. Udeonyia, a tenant in whose care he keeps the car key. She informed him that the defendant asked for the keys to enable him know why an alarm was triggered. According to her, by the time she came outside, the car was no longer there. They made efforts to get the defendant on phone but could not get him. Thereafter PW1 was meant to know through the mechanic that the defendant brought the car to his workshop. According to the mechanic, it was an engine problem. Testifying further, the defendant elected to bear half the cost of the engine and even entered into an

...r cross-examination, PW4 stated that the defendant told him he ...duced that the engine of the car knocked on the road. With his evidence, ...he prosecution closed its case.

The defence thereafter opened with the evidence of the defendant. He testified as DW1. He denied the charge. He stated that PW1 begged him to assist in teaching him how to drive as well as taking care of the car. According to him, PW1 never accepted servicing the car when he alerted him. He averred that PW1 authorized him to collect the key from PW2 when the car started malfunctioning. He also stated he took the car to the mechanic based on PW1's instruction. Exhibit "H" was tendered through him.

Under cross-examined, he denied signing an undertaken where he accepted to bring half the price of the car engine. The undertaken was admitted as Exhibit "E". As a result of the denial, he was made to provide five specimen of his signature, which were collectively admitted in evidence as Exhibit "J". I must say right away that the signatures on Exhibit "J" were in tandem with the signatures on Exhibits "E and F".

Felix Orji finally testified as DW2. He swore he is a mechanic, that the car was brought to his workshop by DW1 and PW2. According to him, the fault he noticed were the rings. He averred he did not work on it, that eventually he told PW1 to come and move the car away from his workshop which was done.

He was thereafter cross-examined.

Now, in Nigeria we operate an adversarial and not an inquisitorial system of administration of Criminal justice. Consistent with this position, the law is settled that where the commission of a crime is in issue in any proceedings, civil or criminal, it must be proved beyond all reasonable doubt. Reasonable doubt which will justify acquittal is doubt based on reason and arising from evidence or lack of evidence, and it is a doubt

ement at the police station to that effect. Exhibits "A – C" were mitted in evidence through him.

Under cross-examination, he maintained he never instructed the defendant to collect the car key. He admitted that the defendant told him to change the oil but he wanted to do it himself. According to him, the defendant accepted liability at the police station and signed an undertaken.

Patricia Udeonyia testified as PW2. She narrated how the defendant tricked her into releasing the car key to him. According to her, the defendant drove away with the car, only to come back in the evening saying it developed a battery problem. Testifying further, she stated the defendant never came back to the compound in the car, which forced them into going together to the mechanic's workshop together in the morning. It was at the workshop that she was told that the car developed an engine problem. It was as a result of this that the PW1 said he must repair it since he never authorized him to collect the key. Her statement was tendered as Exhibit "D".

She was thereafter extensively cross-examined.

PW3, Sergeant Timothy Omowumi testified. He gave evidence in relation to the investigation of the case following a complaint made by PW1. According to him, the defendant accepted liability and signed an undertaken to that effect. The said document was admitted as Exhibit "E". Also his statement was admitted as Exhibit "F".

He was cross-examined thereafter.

The mechanic that repaired the car testified as PW4. He stated it was the defendant that initially came to his workshop to tell him that the car spoilt. He assisted him by telling one of his boys to go with him to tow the car to his workshop. He finally stated he installed a new engine bought by the complainant. His statement was admitted as Exhibit "G".

Signed:
N.A. Onwnkwo Esq.
Snr. Mag. GD.I
08/09/2017

Checked by:

Moneke S.N.

Chioma Okeke

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HIGH COURT OF JUSTICE
23 AUG 2018
ENUGU STATE OF NIGERIA

Why did the defendant elect to sign Exhibit "E"? Obviously there is a sole reason for it. He signed it because PW1 never authorized him to drive his car. The defendant having said there was an alarm, ought to have known it was a warning signal of an imminent danger to the car. A reasonable man should have stayed clear of that car. The defendant did not stay clear but rather embarked on a frolic, he should now bear the burden for that misadventure.

Let me state, that I believe the testimony of PW1. He admitted that the defendant helps him in driving the car but strictly on his permission it must be his reason for at least bringing half the price of the engine. Again, that PW1 sent the sum of ₦7,000 to the defendant to enable him to tow the car does not in my view mean he indeed authorized him to drive the car. There is no doubt they had a cordial relationship and that should be his reason for not being too hard on him. I must also add, that I believe the testimony of PW2.

On a calm view, the defendant drove the car regardless of the consequences or with reckless indifference as to what the result may be after the warning by the alarm. The evidence put forth by the prosecution bears a logical sequence and is more believable that the incredible account given by the defence.

I am satisfied that the prosecution proved the elements of the offence charged. The defendant ought not be acquitted on the charge as laid. In the result, I find the defendant guilty of the offence.

Allocutus – The Defendant pleads that the court to be lenient with him and caution him instead of sending him to the prison.

COURT

The defendant is hereby convicted and sentenced to 2 weeks imprisonment without an option of fine.

CERTIFIED TRUE

23 AUG 2018

CHIEF MAGISTRATES COURT
ANAMBRA STATE OF NIGERIA

ne knowledge or thinking of the defendant. It is based on the objective st, that is, what a reasonable person would describe as unlawful and dangerous. To be guilty of a willful act, the person concerned must appreciate that he is acting wrongfully, or is wrongfully omitting to act, and yet persists in so acting or omitting to act regardless of the consequences, or acts or omits to act with reckless indifference as to what the result may be. It is an intentional omission of a manifest duty to which there must be a realization of the probability of injury from the conduct and a disregard of the probable consequence of such conduct.

Now, it is the case of the prosecution that the car was driven without the consent of the PW1. PW2 corroborated it by narrating how she was tricked by the defendant to release the key to him. There is no gainsaying that PW1 engages the services of the defendant but the defendant must carry out the services under the express permission of PW1. There is no doubt that PW1's annoyance is predicated on driving his car despite the warning issued by the alarm, without his permission.

Let me deal with Exhibit "E". It is a letter of undertaken signed by the defendant wherein he agreed to bring half of the price for the engine. The defendant denied signing it which necessitated Exhibit "J". Counsel submitted that the date on Exhibit "E" is the 12th day of March, 2012 while the two other dates written towards the end of the document were "the 13th day of March, 2013". The two dates he referred to were the dates accompanying the signatures of the defendant and his brother. Firstly, counsel erred when he stated that the document was dated the 12th of March, 2012. It was dated the 13th day of March 2012. Let me point out that the handwriting and signatures on Exhibit "E, F and J" are the same.

I am of the firm belief that it was the defendant who indeed signed that letter of undertaken. The mistake of writing 2012 instead of 2013 to me is too minute to discountenance Exhibit "E". After all, the dates after his signature still bore 2013.

ch a reasonable man might entertain and it is not fauciful doubt, and not imagined doubt as would cause prudent men to hesitate before acting in matter of importance to themselves. The purport of proof beyond doubt is to show that nobody else, except the defendant committed the offence charged. See Afolalu Vs. State (2010) 16 NWLR (Pt 1220) 584, Nwaturoucha Vs. State (2011) 6 NWLR (Pt 1242) 170, Bolanle Vs. State (2009) 18 NWLR (Pt 1172) I. Eke Vs. State (2011) 3 NWLR (Pt. 1235) 589. This onus is rock steady and does not shift at any point and under any circumstance. See Abdullahi Vs. State (2008) 17 NWLR (Pt. 1115) 203.

However, it is settled, and I am in complete agreement, that the concept of proof beyond reasonable doubt cannot be stretched to mean proof beyond "any shadow of doubt", or proof to the hilt or proof beyond all IOTA of shred of doubt. See Igabele Vs. State (2004) 15 NWLR (Pt. 896) 314 at 334.

I must hasten to add that the mere fact that a defendant persistently lied in court, if any, does not establish his guilt. Lies told by the defendant may arouse suspicion that he must have committed the offence, but that suspicion however grave does not take the place of legal proof. See Ahmed Vs. State (2001) 8 NWLR (Pt 746) 622.

Let me now deal with the offence of malicious damage to property before me. The mens rea of the offence is created in the words "willfully and unlawfully". The injury to the property should not only be willful but it should also be unlawful. The ordinary meaning of "willful" is "deliberate" or "Intentional". When an act is said to have been done unlawfully, it means that it was done deliberately and intentionally, not by accident or inadvertence. Therefore, the state of mind contemplated by the word "willfully" means that the defendant had an intention to do the particular kind of harm that was done, or alternatively that he must have foreseen that harm may occur yet continued recklessly to do the act. With regard to the requirement of unlawfulness, it must be proved that the act was unlawful. The test as to what is unlawful and dangerous does not depend