



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

**MAGISTRATE DR.
ANTONIO MICALLEF TRIGONA**

Sitting of the 21 st May, 2003

Number 468/2001

**The Police
(Inspectors Pierre Micallef Grimaud, Sandro Zarb)**

Vs

Stefano Pomponi

The Court,

The charges against the accused son of Vittorio and Mariella nee' Michelina born Lucca (Italy) and residing 2B Charlie's Guest House, Msida, holder of Passport 782183B are:

(1) That on 12 August, 2001, at about 1.45 am, in Dragonara Road, Paceville, without intent to kill or to put

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the life of any person in manifest jeopardy, caused grievous bodily harm on the person of Jesmond Vella;

(2) That on the same date, time, place and circumstances, at night time, disturbed the repose of the inhabitants by rowdiness or bowling in breach of Article 338 (mm) of Chapter 9 of the Laws of Malta;

The Court is requested that besides awarding the punishments prescribed by law, issues a removal order against same Stefano Pomponi in terms of Article 15 of Chapter 217 of the Laws of Malta.

Having seen Attorney General's consent that the case be heard by summary proceedings to which the accused did not object;

Having heard the evidence including the accused on oath;

Having heard oral submissions;

Considers,

Accused is charged with having caused serious bodily harm on the person of Jesmond Vella. He is also charged with breaking the public peace at nighttime.

It hardly needs to be said that it is the first offence that is of a serious nature and, if proven, could contemplate a maximum of nine years imprisonment, depending on the circumstances. Evidence attests to certain uncontested facts, namely, that the injuries sustained by complainant were the result of a scuffle that took place and involved the accused and complainant on the day and time mentioned in the charge sheet. The uncontested facts

that preceded the injuries are proven to have started opposite the Blackbull Pub in Paceville where the accused happened to be with two female friends of his (also of Italian nationality) when complainant pointed to park his car in the free space where the accused was standing. The scuffle occurred shortly afterwards on the opposite side of said road to which the accused and his friends had crossed followed a short while later by complainant. From this point onwards the evidence as to who started and provoked the fight and how complainant ended up with a broken leg are conflicting. Accused states that it was complainant who went over to him and shoved him more than once and when he pushed him back the fight ensued and they both ended on the ground. Complainant states that he was set upon by the accused from the back and he finished falling to the ground and fractured his leg. The prosecution did not produce any witness who could actually relate the sequence of the scuffle. The evidence tendered by the police, who intervened to separate litigants, is, in the context of the scuffle, that when the police was holding the accused he kicked complainant who was still lying on the ground. The accused does not deny that he kicked at complainant but denies hitting complainant on his leg. A relevant observation at this stage is that when accused kicked out at complainant he was bare foot as his sandals had fallen off in the scuffle.

The court faced with conflicting evidence has an added burden to see which version is the most credible keeping in due regard that it is the prosecution which has to prove its case beyond a reasonable doubt. In the case at issue the court is convinced that the cause of complainant's broken leg was his fall to the ground with the accused on top of him. The court is also convinced that the scuffle was started and solely provoked by complainant. If complainant felt insulted by something which 'ex admissis' he did not understand, and which was in itself innocuous, that is his business.

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Therefore and having regard to the demeanour, conduct and character of the accused, to the probability, consistency and other features of his statement, to the corroboration forthcoming from testimony tendered by other testimony, notably the two girls who were with the accused on the day in question, and to all the circumstances of the case (Article 637 Chapter 9), finds no reason to convict the accused of the charges proffered against him and consequently acquits him of all charges.

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