



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

**MAGISTRATE DR.
AUDREY DEMICOLI**

Sitting of the 12 th November, 2010

Number. 162/2004

**Police
(Inspector Martin Sammut)**

vs

**Christian Roger Marlin
Brian David Ciarlo**

The Court,

Having seen that the accused Christian Roger Marlin, 36 years old, son of Roger and Nathalie nee' Spiteri, born on the 25th February 1968 in the USA, residing at Block 7, Flat 3 Enrico Mizzi Street, Ta' Xbiex and holder of identity card number 205700L and the accused Brian David Ciarlo of 21 years, son of Nicholas and Julie nee' Finch, born on the 24th March 1982 in Newcastle UK, residing 47, Flat 1, South Street, Valletta and holder of identity card number 236502L were arraigned before it and charged with having on these islands:

The co-accused Christian Roger Marlin alone with having on the 27th February 2004 at about 02.30hrs, in Church Street, St, Julians and in the vicinity:

1. With the intent to kill or to put the life of Ivo Dinchev Bonev and Dimitar Ivanov Dimitrov in manifest jeopardy, manifested such intent by overt acts, followed by a commencement of the execution of the crime, by driving vehicle bearing registration number JBF404 of the make Toyota into their direction, which crime was not completed in consequence of some accidental cause independent of his will;

2. And furthermore, on the same day, time, place and circumstances, caused grievous bodily harm to Ivo Dinchev Bonev and Dimitar Ivanov Dimitrov;

3. And furthermore, on the same day, time, place and circumstances, wilfully committed any spoil damages or injury to or upon any movable or immovable property that is seven (7) bollards to the detriment of the company Spinola Developments Co. Ltd which damage amounts to more than fifty Liri but less than five hundred Liri;

4. And furthermore, on the same day, time, place and circumstances driven vehicle bearing registration number JBF404 of the make Toyota in a reckless, negligent or dangerous manner;

5. And furthermore, on the same day, time, place and circumstances driven vehicle bearing registration number JBF404 of the make Toyota at an excessive speed;

6. And furthermore, on the same day, time, place and circumstances driven vehicle bearing registration number JBF404 of the make Toyota in contravention to a no-entry sign;

7. And furthermore, on the same day, time, place and circumstances after being involved in an accident owing to the presence of a motor vehicle on a road, failed to stop

and if required so to do by any person, give his name and address and also the name and address of the owner and the registration mark or number of motor vehicle.

The co-accused Brian David Ciarlo alone with having on the 27 February 2004 at about 02.30hrs at Portomaso Complex St. Julians caused grievous bodily harm on the person of Vidyv Stoyanov Videv.

Both accused together with having on the 27 February 2004 at about 02.30hrs at Portomaso Complex St. Julians, Church Street St. Julians and Ross Street, St. Julians and/or the vicinity:-

1. Disturbed the repose of the inhabitants by rowdiness or bawling, or in any other matter;
2. In any manner wilfully disturbed the public good order or the public peace.

Having seen all documents and records of the proceedings including the note filed by the Attorney General (fol 509) dated 15th December 2008 whereby he transmitted the acts and records of the preliminary investigation to be heard and decided by this Court as a Court of Criminal Judicature and whereby he deemed that from the preliminary investigation there might result an offence or offences under the provisions of:-

WITH REGARD TO CHRISTIAN ROGER MARLIN:

- (a) In terms of sections 41(1)(a), 218, 216, 325, 338(dd), 533 of the Criminal Code;
- (b) In terms of sections 15(1)(a)(2)(3) of Cap. 65

WITH REGARD TO BRIAN DAVID CIARLO:

- (a) In terms of sections 218, 216, 338(dd), 533 of the Criminal Code;

Having seen that on the 12th March, 2009 (a folio 508) the accused answered that they had no objection that

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their 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:

That the facts of the case are in brief as follows. On the night between the 26th and the 27th February 2004 a Bulgarian party was being held at the Portovino establishment in the Portomaso Complex. Both the accused were at the party, in their statements (exhibited at folios 88 to 93 of these proceedings) Brian Ciarlo and Christian Roger Marlin in fact both confirmed that they had gone to the party together and that they were accompanied by a Bulgarian girl. From the evidence it transpires that a fight broke out between some Bulgarian men and the accused Christian Roger Marlin and at some point the accused Brian Ciarlo intervened in the fight and he bit off part of the ear of a Bulgarian man called Vidyv Stoyanov Videv. The latter was taken to hospital by his friend George Manilov whilst both the accused decided to leave the place and after having retrieved Marlin's vehicle, a grey truck bearing registration number JBF 404, from the Portomaso car park and emerging from the said car park, Christian Roger Marlin who was driving the said vehicle ran over two Bulgarian nationals, Ivo Dinchev Bonev and Dimitar Ivanov Dimitrov, who were standing on the pavement behind seven concrete bollards in the upper part of Church Street, Paceville precisely where the said road intersects with the road leading to Portomaso and two other roads leading to St' Julian's (vide technical expert Richard Aquilina's report at folio 200 to 205 of these proceedings) thereby causing grievous bodily harm to both the said Bulgarian nationals as well as damage to the bollards which all had to be replaced.

The Prosecution in this case is contending that there is a connection between the two incidents and that the

accident which occurred outside the Portomaso car park was in fact an attempt by Christian Roger Marlin to cause grievous bodily harm to the Bulgarian persons standing on the pavement in order to get revenge because of the fight which had occurred earlier on at Portovino. The Defense on the other hand maintains that there is no connection between the two incidents and that what happened outside the car park was purely an accident and this occurred through negligence and dangerous driving by Christian Roger Marlin who was trying to get away from Portovino because of the fight and as a consequence of this dangerous and negligent driving caused involuntary grievous bodily harm to the abovementioned persons and involuntary damage to the bollards on the pavement.

The Court deems that the evidence of Ivo Bonev, Vidvy Videv, Georgi Manolov, Dimitar Ivanov Dimitrov and Aneliya Dinkova Lambeva and Jeremy Perici Calascione is essential in establishing what actually happened on the night in question,

Ivo Bonev gave evidence during these proceedings on the 12th March 2004 whereby he explained that on the night in question he was at Portovino with two girl friends when at around 2.00am a friend of his, Mitco (Dimitar Ivanov Dimitrov), told him that they should go outside and to hospital because another friend of theirs Vidco (Vidvy Videv), had had his ear bitten off during a fight. This witness explained that when they were walking through the car park he saw a dark grey vehicle parked in the distance and he was informed that one of the persons inside the vehicle had bitten off Vitco's ear. This witness explained that his friend Mitco started moving towards this car and so he immediately went after him and grabbed him so as to stop him from causing any trouble. This witness said that at this point the grey vehicle turned in a circle and moved away and then he saw his friend Anelia crying in a small garden outside the car park and he asked her to get out of the grass and go on the pavement so that they could all leave. At this point Bonev says that he saw the grey car reversing backwards and moving

forward at a great speed thereby hitting and running over four or five bollards which were about a meter in front of him and then he felt a strong impact on his chest and was dragged a distance of about fifteen metres by the said vehicle, the wheels of the car hit the side of his face and neck and then it ran over his legs and just drove off.

Vidyv Videv gave evidence during the sitting held on the 23rd April 2004 whereby he explained that he had gone to the party at Portovino together with his friends Mitco, Georgi and Ivo. At around 2.00am he was about to leave with Gerogi when he saw his friend Mitco fighting with another man with a moustache. He intervened and told the two men to stop fighting, they both dropped their hands down and at this point another man came from behind, grabbed Videv's right arm, pulled him and bit his right ear off, the man then slipped and Videv maintains that he fell on top of him and when he stood up the man on the floor spat out the part of the ear which he had bitten off and Videv says that he then picked it up and was subsequently taken to hospital by Georgi Manolov. Videv stated that he had to be operated twice and that part of his ear is still missing and his hearing is impaired. Videv recognised the accused Brian Ciarlo as the person who bit off his ear and the accused Christian Roger Marlin as the person who was involved in the fight with Mitco.

Georgi Manolov also gave evidence on the 23rd April 2004 whereby he explained that on the night in question he was at Portovino with Vitco and Ivo and just before he left he saw Mitco and the accused Christian Roger Marlin pushing each other, he intervened to try and stop the two of them fighting and amidst a lot of confusion and in a matter of seconds, he saw Videv on top of Brian Ciarlo on the floor and then Videv stood up and started shouting that his ear was not in place, he then saw Videv's ear on the floor, they picked up the ear and he accompanied Videv to hospital using the latter's vehicle.

Dimitar Ivanov Dimitrov (Mitco) gave evidence during the sitting held on the 30th April 2004 also said that he had gone to the Bulgarian party held at Portovino with his

friend Vitco. After the party he says that he was talking to a lady friend outside when he noticed two men looking at him, who he identified as the accused, and one of them started pushing him and asking him what was his problem. Dimitrov said that some of his friends who were inside saw the argument taking place and they came out to see what was happening and Vitco who tried to stop the fight ended up knocked down on the floor and with part of his ear bitten off. This witness recognised the accused Brian David Ciarlo as the person who bit off Vitco's ear. Dimitrov explained that Vitco was taken to hospital by another Bulgarian friend and he said that after about ten minutes he walked out of the bar accompanied by his friend Ivo and a Bulgarian girl called Aneliya. He said that they walked to the roundabout outside Portomaso where they saw a grey pick up parked outside and when the two men inside the van saw them walking out they started the vehicle's engine and drove towards them and tried to hit them. According to Dimitrov the van then went towards a one way street and then reversed, speeded up and ran over some bollards and then hit them while they were standing on the pavement behind the bollards. This witness identified the accused Christian Roger Marlin as the person driving the van and stated that after hitting them Marlin drove off at a considerable speed. This witness explained that he had a broken leg as a consequence of being hit and that he had to be operated on.

Aneliya Dinkova Limbeva also gave evidence on the 30th April 2004 whereby she confirmed that on the night in question she was at Portovino with the accused Christian Roger Marlin and Brian David Ciarlo. She said that after the party they were going to go home when Dimitar Dimitrov came out of Portovino and she started chatting to him. She also said that she got the impression that the three men started fighting then Vitco came out of the bar and intervened to try and stop the fight and when Vitco was in between the two men trying to stop them fighting Brian David Ciarlo came over and she saw Vitco and Ciarlo on the floor on top of each other. She says that Vitco left the place with another Bulgarian friend and she

left with Dimitrov and another friend Ivo and whilst they were walking outside Portomaso they were hit by a black jeep which she knew belonged to the accused Christian Roger Marlin.

The only independent witness who saw what happened on the night in question is Jeremy Perici Calascione who gave evidence during these proceedings on the 24th March 2006 whereby he confirmed what he had said to the expert Dr. Joseph Micallef Stafrace during the Magisterial Inquiry. This witness explained that in the early hours of the morning of the 27th February 2004 he was at the reception of the Rokna Hotel in Church Street, Paceville when he heard a sound of screeching tyres, he looked outside and saw a pick up van driving against the One Way sign and going towards the Agostinian Church, it then went into the road where there is the Rokna Pizzeria and then after a few seconds he saw the van being driven along Church Street from the left towards the right and towards the roundabout in Ross Street. He then saw the van going on the pavement to its left and running over some people who were on the pavement. This witness says that he saw two people being hit and some bollards which were on the pavement were also run over. This witness explained that the van then drove off and he took note of the registration number of the said vehicle and subsequently passed it onto the Police who arrived some minutes later on the scene of the accident.

The accused Christian Roger Marlin had given evidence in front of the experts appointed in the Magisterial Inquiry and he also released a statement to the Police (exhibited at folio 88 to 90 of these acts whereby he says that on the night in question he had been out drinking since the afternoon with his friend Brian David Ciarlo and he also said that he had gone to the Bulgarian party held at Portovino accompanied by Ciarlo and a Bulgarian girl called Aneliya. He said that at around 2.00am he was walking out of Portrovino with Ciarlo' and Aneliya when he saw another Bulgarian girl, Antonia, whom he had agreed to meet with but who had not turned up for the date, and this girl was with another guy. Marlin said that this male

friend who was with Antonia went up to him and pushed him and then a nightmare ensued because everybody started pushing. He says that there were about twelve people pushing each other and that Brian David Ciarlo was with him throughout. Marlin maintains that he grabbed Ciarlo and told him that they had to leave and after asking the guy at the door about the exit they retrieved their car and left the place in a hurry. Marlin says that he does not recall hitting anyone with his vehicle and he says that if he hit someone he is very sorry and that he is ready to pay for the damage caused.

The accused Brian David Ciarlo also released a statement to the Police (exhibited at pages 91 to 93 of the acts) whereby he admitted that he had bitten off Videv's ear but then he says that when he was walking out of Portovino with Aneliya and Marlin a Bulgarian guy walked up to him and started shouting that Aneliya was his girlfriend and then suddenly one of the Bulgarian men hit him in the face and he ended up on the floor being kicked and punched and it was at this point that he grabbed the Bulgarian man's face and bit his ear. Ciarlo also said that when the men got off him he left the place with Marlin and when they drove out of the car park there was a group of Bulgarians shouting and one of them was banging on Marlin's truck and the next thing he knew he saw the face of one of the men in front of the truck and then the man went down and they drove off.

Regarding the incident inside the bar where Videv's ear was bitten off it has already been pointed out that the Defence is alleging that although Brian David Ciarlo admitted in his statement that he had effectively bitten off Videv's ear he had only done so in self defence in order to get the Bulgarian men who were on top of him so that he could get up and leave and that therefore the Court should apply the provisions of sections 223 and 227(d) of the Criminal Code in his regard. The Court does not agree with this submission since from the evidence brought forward by the Prosecution in this case, namely the evidence of Ivo Bonev, Vidyv Videv, Georgi Manolov, Dimitar Ivanov Dimitrov and Aneliya Dinkova Lambeva it

transpires very clearly that Videv intervened in the fight which broke out between Marlin and Dimitrov and that Brian David Ciarlo came from behind Videv pulled him and bit off his ear and then slipped and ended up on the floor with Videv on top of him. All the Bulgarian witnesses were consistent about what happened in the bar and about the fact that Videv was not fighting but only intervening to separate Marlin and Dimitrov and that Brian David Ciarlo came from behind him and attacked him. The Court has no doubt that Videv's version of the events is the true one and it therefore does not deem that sections 223 and 227(d) are applicable in Ciarlo's regard. The Court also deems that although the Prosecution managed to prove beyond reasonable doubt that the injuries sustained by Videv were grievous it did not bring forward sufficient evidence to indicate that Videv suffered any of the consequences indicated in Section 218 of the Criminal Code.

Regarding the incident which occurred outside the car park where Ivo Bonev and Dimitar Dimitrov were hit by the vehicle driven by Christian Roger Marlin the Court does not agree with the Prosecution that it has been proven beyond reasonable doubt that Marlin deliberately drove on the pavement, hit the bollards and ran over the two Bulgarian men. In this regard the Defence submits that Marlin was driving in a reckless and dangerous manner because he was trying to get away from the place after the fight in the bar. The Court noted that Ivo Bonev stated that when they were walking out of the car park and Dimitrov saw Marlin's vehicle he started running towards it and he then ran after him to try and avoid any further trouble. This indicates that Marlin's allegation that he was in a hurry to get away from the place because he was afraid could be true. In view of this element of doubt the Court cannot find the accused Christian Roger Marlin guilty of voluntarily attempting to cause grievous bodily harm and of causing voluntary damage as indicated by the Attorney General. He is however going to be found guilty of involuntary grievous bodily harm and dangerous and reckless driving.

There is absolutely no doubt that both the accused should be found guilty of disturbing the public peace in terms of Section 338(dd) of the Criminal Code since they were both actively involved in the fight which took place in Portovino.

In terms of punishment and after having seen the criminal records of both the accused the Court deems that it should not impose an effective jail term but that a suspended sentence would be more adequate in the circumstances.

After having seen the sections of the law indicated by the Attorney General in his note dated 15th December 2008 and sections 226(b), 328(b) and 338(dd) of the Criminal Code as well as Sections 15(1)(a), (2) and (3) of Chapter 65 of the Laws of Malta the Court finds the accused Christian Roger Marlin guilty of the charges relating to causing involuntary greivious injuries to Ivo Bonev and Dimitar Dimitrov as well as to the charges related to reckless driving and disturbing the public peace and condemns him six (6) months imprisonment which in terms of Section 28A of the Criminal Code are being suspended for a period of two (2) years from today. The Court declares the accused Christian Roger Marlin not guilty of all the other charges brought against him and consequently acquits him from the said charges. The Court also disqualifies the accused Christian Roger Marlin from holding or obtaining a driving licence for a period of twelve (12) months from today.

After having seen the sections of the law indicated by the Attorney General in his note dated 15th December 2008 that is sections 216 and 338(dd) of Chapter 9 of the laws of Malta the Court finds the accused Brian David Ciarlo guilty of all the charges brought against him and condemns him twelve (12) months imprisonment which in terms of Section 28A of Chapter 9 of the Laws of Malta are being suspended for a period of two (2) years from today.

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After having seen Section 533 of Chapter 9 of the Laws of Malta the Court condemns the accused Christian Roger Marlin and Brian David Ciarlo to pay to the Registrar of the Criminal Courts within one (1) month from the receipt of written request for payment as to one half each of the sum of €2165.32 which amount relates to the expenses incurred in the appointment of experts in these proceedings.

< Final Judgement >

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