



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

**MAGISTRATE DR.
JACQUELINE PADOVANI**

Sitting of the 10 th January, 2011

Number 740/2004

**POLICE
INSPECTOR THERESE SCIBERRAS
VS
CHRISTIAN ROGER MARLIN**

The Court, having seen the charges brought against Christian Roger Marlin of 37 years, born in the United States of America on the 25 of February 1968, son of Roger Roy and Nathalie Maria, residing at Flat 3 Block 7, Enrico Mizzi Street, Ta' Xbiex bearing Identity Card number 205700L;

Charged with having on the 1st September 2004 at about 3.30a.m. and on other days previous to this in St. Julians committed acts of theft from the Garden View Complex Is-Sirk Street, Swieqi, aggravated by time, place and means

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as per sections 263 (A), 269 (G) and 270 of Chapter 9 of the Laws of Malta;

Also with having on the 1st September 2004 at about 3:30a.m. entered into the dwelling-house of another person without his knowledge as per section 339 (O) of Chapter 9 of the Laws of Malta;

Also with having on the 1st September 2004 at about the 3.30a.m. you committed a violation of another person's property to the prejudice of the owner or holder as per section 340 (D) of Chapter 9 of the Laws of Malta;

Having heard the evidence tendered on oath;

Having seen the Articles listed by the Attorney General (a fol.108) whereby the Court may pronounce on the guilt or otherwise of the accused;

Having seen the note in the record of the proceedings dated 21st of April 2008 whereby the accused declared that he had no objection to being adjudicated by this Court;

Having heard the plea of guilt registered by the accused with regards of the second (2nd) and third (3rd) charge brought against the accused;

Having heard the confirmation of the same plea of guilt with regards to the second (2nd) and third (3rd) charge brought against the accused after the Court accorded a reasonable time for reconsideration;

Having heard the oral submissions of the parties;

Deliberates:

Witness to the Prosecution, PS 1244 Nicholas Sant, testified (at page 16 et seq.) that on the 1st of September 2004, Christopher Farrugia filed a police report at the St. Julian's Police Station, that a man had broken into his residence, walked through his house, told him that he had been sleep walking and walked out. Christopher Farrugia informed the Police that this man had, "*no valuables in his hands*" (vide police report at page 23). PS Nicholas Sant stated that he had a similar report from the Garden View Complex, where a theft had occurred. PS Sant stated that none of the stolen objects were retrieved or found.

Joseph Aquilina stated that he was a general manager of a language school which also accommodates students in fifty six (56) apartments. He stated that security personell had phoned up his father to inform him that a theft had occurred in apartment number '2210'. He therefore went on site and walked around the complex and he noticed the gentleman walking out of a supermarket with a loaf of bread and a newspaper in his hands. Joseph Aquilina said that he looked suspicious because he was limping. He decided to follow this man who kept looking at the apartments of the Gardenia Holiday Complex. At some point in time, Joseph Aquilina's father picked him up by car. This man had managed to hitch a lift, however Joseph Aquilina informed the driver of that car that he was about to give a lift to somebody that had just broken into some apartments. During this conversation, the man got out of the car and started to walk underneath the bridge of Regional Road, to Imrabat Street and then to Route D'Argan. The Police interviened and arrested the accused. The objects that had been stolen from room '2210' were found in the gardens of another property.

In cross examination, Joseph Aquilina confirmed that the accused did not run or try to flee from him except for a short while, when he had spoken to the driver of the car which was about to give a lift to the accused. Aquilina

stated that a camera, a CD player and a mobile phone were stolen from apartment number '2210'. Aquilina confirmed that the accused never worked in the complex.

Julian Aquilina (page 36), owner of Garden View Holiday Complex, stated that the complex had been targeted for a series of robberies over a six (6) month period. He stated that, apart from the robbery of apartment number '2210', the robber had entered also into the kitchens to steal some meat product, however, the burgler tripped the alarm system and the meat was left behind. He confirmed the evidence of his son (Joseph Aquilina) and the manner in which they followed the accused. Julian Aquilina stated that his employees, then found a screw driver (exhibit JA) that matched the scratches on the doors of the apartment.

Christopher Farrugia (at page 48), of Triq Imghazel stated that the Garden View Holiday Complex gives on to his property on the backyard. He stated that around three o'clock in the morning (3:00a.m.) he heard a sound emanating from the backyard and that he saw someone entering his house. Christopher Farrugia stated that he did not get out of bed immediately, so as not to frighten his wife, however when the intruder started to approach his wife, he got out of bed and the intruder started running down the corridor, stating that Farrugia should remain calm and that he was sleep walking. Farrugia stated that the intruder had an American accent. The intruder left the premises by the front door and ran out. Farrugia confirmed that the intruder was calm at all times.

PS 404 Paul Camilleri (at page 56 et seq.) exhibited documents AD and AD1 to AD6 (photos and lifters taken from the scene of crime).

Sue Fenech exhibited a crash helmet and CCTV recordings, exhibited in the proceedings Police vs. Brian David Charlot.

Inspector Therese Sciberras (at page 64) confirmed police report filed by Joseph Aquilina on behalf of Julian, with regards to thefts from apartment '2210' of the Garden

View Holiday Complex. She stated that the suspect had been described as being one point eight meters (1.8m) tall, moustache, black hair and an American-English accent. Inspector Sciberras stated that the accused worked as a xoufier with 'Faith Garage', that he was trying to find his girlfriend, his room number was '2211', that somehow, the alarm was triggered off, that he panicked, climbed a wall, fell into someones backyard, got inside the same house and went out of the front door. At one point in time the tennants of the house woke up, he asked them not panic and left the house.

PC1184 exhibited the fingerprints and palmprints of the accused (Dok.X1 and Dok.X2).

Brian David Charlot chose not to give evidence.

Joseph Mallia, appointed by the Court to compare Dok.X1 and Dok.X2 with fingerprints elevated from the Scene Of Crime Officers, exhibited his report at page 95. No fingerprints, elevated from the Scene of Crime Officers, matched any of those of the accused.

Deliberates:

From the evidence brought to this Court, it is evident that the Prosecution failed to bring any concrete evidence that in some way, connects the accused to the charges of theft from the Gardenia Holiday Complex, Apartment number '2210'. In fact no incriminating, stolen property was found on the person of the accused and no fingerprints of the accused were found on the scene of the crime.

Furthermore, no witness saw the accused entering Apartment number '2210' and the CCTV recordings were inconclusive.

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There is no doubt that the accused unlawfully entered the premises of Christopher Farrugia on the night cited in the citation, without the consent of the owner.

Therefore, on the strength of his own plea of guilt the Court finds the accused **Christian Roger Marlin** guilty of the second (2) and third (3) charges brought against him, the third (3rd) charge being absorbed for purposes of punishment; not guilty of the first (1) charge and acquits him of the same, and after having seen Articles 339(o) and 340(d) of Chapter 9 of the Laws of Malta, Article 22 of Chapter 446 of the Laws of Malta, **discharges the accused Christian Roger Marlin on condition that he does not commit another offence within a six (6) month period.**

< Final Judgement >

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