



MALTA

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

**MAGISTRATE DR.
AUDREY DEMICOLI**

Sitting of the 10 th April, 2014

Number. 33/2012

**Police
Inspector Trevor Micallef**

vs

**Borislav Ilicic
Tatiana Skoric Tesic**

The Court;

Having seen the charges brought against:

Borislav Ilicic son of Predog and Tatjana nee` Tesic, born Yugoslavia, on the 03rd February 1986, resides 84, Ruby`s Court, Flat 4, Triq San Luqa, St. Paul`s Bay, holder of Serbian passport no. 007876123;

Tatjana Skoric Tesic daughter of Cedomir Tesic and Dusica nee` Ilijeu, born in Yugoslavia, on the 10th November 1965 and residing 84, Ruby`s Court, Flat 4, Triq San Luqa, St. Paul`s Bay, holder of Serbian passport no. 007883726

Borislav Ilicic alone that in these islands on the 07th January 2012 at about five in the morning (05:00a.m) in Main Street, St. Julian`s and/or in the vicinity drove Land Rover vehicle registration no. ABS649:

1. Through imprudence, carelessness, un skilfulness in his art or profession, or non-observance of regulations, caused grievous bodily harm on the persons of Emanuel Mangion and Tessa Anne Mangion (Art. 226 (1) (a) and Art. 226 (1) (b) Chapter 9).
2. Charge him further for having on the same date, time, place and circumstances through imprudence, carelessness, un skilfulness in his art or profession, or non-observance of regulations caused involuntary damages on vehicle registration no. CAR649 of make Peugeot to the detriment of Vanessa Mangion and Lawrence Craus (Art. 328 (b) (c) Chapter 9).

3. Charge him further for having on the same date, time, place and circumstances drove vehicle registration no. ABS649 make Land Rover in a dangerous and reckless manner (Art 15 (1)(a), (2)(3) Chapter 65).
4. Charge him further for having on the same date, time, place and circumstances drove vehicle registration no. ABS649 make Land Rover, on a road without having a valid driving licence, or drove said vehicle when said vehicle was unlicensed to be used on the road (Art. 15 (1) (a) (3) Chapter 65 and Reg. 3 (1) L.S 65.18)
5. Charge him further for having on the same date, time, place and circumstances drove vehicle registration no. ABS649 make Land Rover when there was not in force in relation to the user of the vehicle a policy of insurance in respect of third-party risks (Art. 3(1) Chapter 104)
6. Charge him further for having on the same date, time, place and circumstances whilst driving vehicle registration no. ABS649 make Land Rover did not keep to the left hand side of the road or when altering the direction of course, or slowing down or stopping, or when overtaking any other vehicle, horse or cattle, failed to exercise due care and attention, and failed to indicate his intention by hand signal or by traffic indicator or indicator lights (Art. 75 L.S 65.11)

7. Charge him further for having on the same date, time, place and circumstances drove vehicle registration no. ABS649 make Land Rover in an excessive speed (Art 127 L.S 65.11)

8. Charge him further for having on the same date at about quarter to five (04:45a.m) in Wilga Street, St. Julian's and/or in the vicinity:

Wilfully committed any spoil, damage or injury to or upon movable or immovable property hence on vehicle registration no. ASC333 of make Kia which damages exceeds euro 116.47 (LM50) but not the amount of euro1164.7(LM500) to the detriment of Michael Gaffarena (Art 325 (1)(b) Chapter 9).

9. Charge him further for having on the same date, time, place and circumstances caused slight bodily harm on the person of Michael Gaffarena (Art 221(1) Chapter 9).

10. Charge him further for having on the same date at about one in the morning (01:00a.m) in Ball Street, St. Julian's and/or in the vicinity:

Through imprudence, carelessness, un skilfulness in his art or profession, or non-observance of regulations caused involuntary damages on vehicle registration no. HBB664 make VW to the detriment of Mario Tonna (Art. 328 (d) Chapter 9)

11. Charge him further for having on the same date, time, place and circumstances whilst driving vehicle registration no. ABS649 make Land Rover, was involved in an accident involving damage upon vehicle registration no. HBB664 make VW, and failed to stop and, if required to do so by a police officer, a local warden or any other person having reasonable grounds for so requiring, give his name and address, the name and address of the owner of the vehicle, the details of the insurer of the vehicle as well as its registration mark or number (Reg. 67(1) LS 65.11)

12. Charge him further for having on the same date after 08:00a.m in St. Julian's Police Station:

Gave false oath before a judge, magistrate or any other officer authorized by law to administer oaths. (Art 108 (1) (a) Chapter 9).

Tatjana Skoric Tesic alone for having on the 07th January 2012 at about quarter past midnight (12:15a.m) onwards:

1. Caused, suffered or permitted her vehicle hence vehicle registration no. ABS649 make Land Rover to be driven by Borislav Illicic, a person not duly licensed to drive a motor vehicle or any other vehicle (Art 15 (1)(a) Chapter 65)

2. Charge her further for having on the same date, different times and circumstances caused or permitted any other person (Borislav

Illicit) to use a motor vehicle hence vehicle registration no. ABS649 make Land Rover on a road without same having a policy of insurance in respect of third-party risks (Art 3(1) Chapter 104)

3. Charge her further for having on the same date, different times and circumstances as owner of vehicle registration no. ABS649 make Land Rover failed to see that said vehicle is always and at all times covered by a licence issued by the authority (Reg. 14(3) LS368.02)

4. Charge her further for having on the same date at about eight in the morning (08:00a.m) in St. Julian's Police Station:

Gave false oath before a judge, magistrate or any other officer authorized by law to administer oaths. (Art 108 (1) (a) Chapter 9).

Having seen all the acts of the proceedings including the Attorney General's consent dated 12th January 2012 (exhibited a. folio 18 and 19 of the proceedings) for this case to be treated summarily.

Having seen that on the 12th January, 2012 (at folio 49 and 50) the accused declared that they had no objection that 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 seen the Note of Final Submissions filed by the Prosecution.

Having heard the final submissions made by the Defence Counsel.

Having considered

The facts of this case relate to a traffic accident which occurred on the 7th January 2012 at around 5am in Main Street, St. Julian's between vehicle registration number ABS 649 (Land Rover) driven by the accused Borislav Ilicic and vehicle registration number CAR 649 (Peugeot) driven by Vanessa Mangion whereby extensive damage was caused to both vehicles and whereby grievous injuries were suffered by Emanuel Mangion and Tessa Ann Mangion. Vanessa Mangion accompanied by her parents Emanuel Mangion and Tessa Ann Mangion was driving her vehicle in the above mentioned locality coming from Sliema and going towards Balluta. They were on their way to work after having picked up a colleague from Sliema. When they were driving past the Balluta Church Vanessa Mangion noticed a vehicle coming from the opposite direction swerving onto her lane. She shouted that this vehicle was going to hit them and in order to try to avoid it, she tried to cross over to the other lane but she did not manage to avoid the other vehicle (the Land Rover driven by the accused Borislav Ilicic) and this latter vehicle hit her car on the passenger side. As a consequence of this collision her mother Tessa Anne Mangion was trapped inside the vehicle and suffered two fractured ribs whilst her father Emanuel Mangion managed to get out of the vehicle but lost consciousness as a result of the injuries he sustained which injuries were deemed to be grievous. Frances Falzon who was a passenger in the vehicle driven by Vanessa

Mangion did not suffer any injuries. The accused Borislav Ilicic gave a different version of facts to that given by Vanessa Mangion whereby he stated that he was driving his vehicle on the proper lane in order to avoid the other vehicle coming from the other direction he swerved but his vehicle still managed to collide with the oncoming vehicle.

Having considered:

On the 2nd February 2012 Vanessa Mangion¹ testified before this Court and stated that on the date and time in question she was driving her car bearing registration number CAR 649² and she was accompanied by her parents and her friend Frances Falzon. She said that she was driving in Main Street, St. Julian's going towards Balluta when she noticed another vehicle coming from the opposite direction swerving in front of her and she tried to avoid it but this vehicle hit her vehicle on the passenger side. The witness indicated that she managed to get out of the car but she noticed that her mother was still stuck inside while her father was screaming with pain. She recalled that the other vehicle was a Land Rover with registration number ABS 645³ and remembered that it was the accused who was driving the Land Rover and that he was accompanied by another two persons at the time of the accident one of which was the co-accused Tatyana Skoric. Subsequently Vanessa Mangion specified that she was not sure whether the co-accused was in

¹ The witness exhibited a number of photographs DOK VM1 to DOK VM3 which photos were taken by Vince Bongailas.

² The vehicle was owned by Lawrence Kraus who at the time was abroad and was in the possession of Vanessa Mangion.

³ According to Stephen Cachia from Transport Malta stated on the 18th May 2012 that vehicle bearing registration number ABS 649 is a Land Rover Freelander registered on Tatiana Skoric Tesic and had the licence expired on the 31st January 2010.

the other car because she was confused after the impact occurred. When cross examined the witness stated that at that time there was no traffic and she recalled that she was driving at a speed of around 40 km/h. She added that when she turned and came in front of Balluta Church she saw the other vehicle coming towards her and being driven on the same lane and then swerving in the other direction. The point of impact occurred on the carriage way where the vehicles were proceeding towards Sliema, but before the accident she was driving towards St. Julian's. The witness stated that she tried to avoid impact with the other vehicle by turning to the right at 90 degrees but the other driver still managed to hit her car on the passenger side. Vanessa Mangion explained that she had swerved her vehicle to the right since there was no oncoming traffic but said that she was not sure whether she had turned at a 90 degree angle and stated that both vehicles stopped on impact.

Tessa Anne Mangion gave evidence during a sitting held on the 2nd February 2012 whereby she said that on the 7th January 2012 at about 5.00am she was a passenger in her daughter's vehicle which was being driven towards St. Julian's. As they were heading towards Balluta Church coming from Sliema she saw another vehicle coming towards them and swerving and this vehicle eventually hit them. The witness remembered that she had heard her husband screaming and shouting in pain whilst she could not move since she had fractured ribs⁴. She stated that her daughter tried her best in order to avoid the other vehicle.

⁴ Dr. Rene Camilleri testified on the 15th March 2012 whereby he confirmed that Tessa Anne Mangion had two fractured ribs which documents were confirmed on the 11th January 2013 court hearing.

Emanuel Mangion gave evidence on the 18th May 2012 whereby he stated that on the 7th January 2012 he was a passenger together with his wife Tessie Mangion in a car which was being driven by his daughter Vanessa Mangion and after picking up another person from Sliema they were driving towards St. Julian's, and when they arrived near the Balluta Church he saw another vehicle coming towards them from the opposite direction and swerving. This vehicle which was being driven by the accused hit them. The witness said that he could not remember many details regarding the accident since he had lost consciousness but he indicated that at the time of the accident he was sitting in the back seat of the vehicle and he recalls waking up at the ITU whereby he realised that he had sustained several injuries⁵ as a consequence to the accident. On cross examination Emanuel Mangion stated that the other vehicle had hit their vehicle on the passenger side. He added that the impact was not a head on impact and specified that his daughter's vehicle was not at a 90 degree angle. Emanuel Mangion said that his daughter saw the other vehicle coming towards them and she tried to avoid it and it was at this moment that the other vehicle hit them because the driver was swerving from side to side.

Frances Falzon gave evidence on the 18th May 2012 whereby she stated that on the 7th January 2012, her friend Vanessa Mangion picked

⁵ Dr Samantha Camilleri testified on the 15th March 2012 where she stated that according to the document (a fol 39) she had examined Emanuel Mangion and found that he had fractures on a number of ribs and a linear fracture of the scapula. He also had other injuries in his stomach, spleen and stomach. He was operated upon and his injuries were classified as grievous. Profs Godfrey Laferla (Court sitting of the 11th January 2013) stated that Emanuel Mangion had sustained a number of fractures and other internal damages. He was operated upon and the injuries were life threatening. He added that there were no functional disability but he will have a permanent scar in his abdomen as a result of the surgical procedure. Emanuel Mangion exhibited a case summary certificate which was issued from Mater Dei on his release from hospital (dok EM 1 a fol 122). He also had to attend therapy after he was released from Hospital. Dr. Mario Scerri examined Emanuel Mangion (vide report a fol 194 dok MS1) where he stated on the 26th April 2013 that the injuries that he had suffered were grievous. He also examined Tessa Anne Mangion and specified that she had also suffered grievous injuries per durata.

her up from Sliema. Her friend was accompanied by her parents and when they arrived near the Balluta Church she heard her friend saying that the other vehicle was swerving and that it was going to hit them. The witness also confirmed that the driver of the other vehicle was swerving his vehicle from one side to another and that at one point she heard an impact and realised that the other vehicle had hit them on the side of their vehicle. This witness explained that she was a back seat passenger and said that she did not sustain any injuries.

Mario Tonna testified in these proceedings on the 11th October 2012 and explained that on the date in question he had parked his vehicle (bearing registration number HAA 664) in Ball Street, Paceville when he saw another vehicle a Freelander (he recalled that the vehicle was a Freelander with registration number ABS) which was being driven at high speed and it hit his vehicle at the back. On impact his vehicle was pushed forward and it hit another vehicle in front of it. Tonna explained further that his vehicle had sustained a number of damages at the back and on the front. He confirmed that the documents inserted at folio 41 to 43 of the acts of the proceedings depict the damages that his vehicle had sustained. An estimate for the damages sustained were confirmed by Michael Casha (at folio 182) regarding documents found at folio 46 of the acts of the proceedings. Keith Ellul confirmed the estimates of the same vehicle found at folio 47.

The accused Borislav Ilicic testified before this Court on the 6th June 2013 whereby he stated that on the day before the accident he was celebrating Christmas because he is an Orthodox Christian and he was

at home till 3.00am, at which point he took his mother's vehicle and drove off together with his friend and went to Paceville to pick up his girlfriend. The accused explained that in Paceville he had an incident with another person because he had hit the mirror of a parked vehicle with his hand and he punched one of the persons who was inside the vehicle and left. He said that he had no other accidents while he was driving away from Paceville. The accused added that he has a driving licence issued in Serbia and continued that when he headed towards Balluta he saw another vehicle approaching from the opposite direction. This vehicle was on the side of the church while he was on the side of the sea. Ilicic maintains that the other vehicle crossed to his lane and he tried to avoid it but he still hit it. He added that he was driving at a speed of 50 km/h and said that the impact between the two vehicles occurred after he had passed the zebra crossing. Ilicic also explained that his vehicle sustained damages which amounted to 1700 Euros and denied that he had stated that his vehicle had gone over the carriageway markings when he had given evidence in front of the Court expert in the Magisterial Inquiry. Ilicic added that the other vehicle had come onto his lane and he had tried to avoid it by moving on to the other lane. He denied that he had said that while he was driving his vehicle he had lost control while executing the bend and that this was the reason why he had gone on to the other side of the road. He continued to deny the fact that he had hit another vehicle in Paceville at around 1.00am, and repeated that he had left his mother's residence at around 3.00am and he had an argument with a person at that time because he had hit the other vehicle's car mirror. And after this incident he had left Paceville and had the accident in Balluta. The accused denied that his vehicle was swerving immediately before the accident.

On the 11th July 2013, Tatiana Skoric gave evidence and stated that on the 7th January 2012 they were celebrating Orthodox Christmas Eve and she went to sleep at around 1.00am, and later on she received a phone call from her son saying that he had been involved in a traffic accident. She added that her son had driven her vehicle which was not insured or licensed because she told him to take it to a mechanic at San Gwann. She stated that what she had said to the Court appointed expert was the truth and she had nothing to add or change. She denied that she had lied to the court appointed expert and she also denied that her son had left home at 1.00am.

Bojan Kuzeljebic gave evidence on the 25th October 2013. He stated that he was a passenger in the vehicle being driven by the accused Borislav Ilcic on the day of the accident of the 7th January. He added that they left from his friend's residence at around 3.00am and had driven towards San Gwann in order to take the vehicle to the mechanic, but on the way they went to St. Julian's to pick up his friend's girlfriend. While they were waiting inside the car they had an argument with another Maltese person because the accused Borislav had hit the mirror of the parked vehicle. When they drove away from St. Julian's towards Balluta the witness said that he noticed that an approaching vehicle was driving on their lane and explained that his friend in order to avoid head on impact went on to the other lane. Bojan Kuzeljebic added that they were driving normally and it was the other driver who got into their lane and Borislav only tried to avoid the other vehicle.

Having considered

Upon close examination of the evidence brought forward by the Prosecution and the Defence in this case it is very evident that this Court is faced with two conflicting versions of facts regarding the dynamics of the accident between the two vehicles driven by the accused Ilicic and Vanessa Mangion respectively. This Court after having ascertained that Vanessa Mangion's testimony is corroborated by what her parents said as well as by the other passenger in her vehicle. And after having seen that in the testimony that the accused gave to the court appointed expert Mario Buttigieg in the course of the Magisterial Inquiry⁶ he had also corroborated what was always stated by Vanessa Mangion, i.e that immediately before impact he was driving at a considerable speed and so as not to lose control of his vehicle he continued driving straight when manoeuvring the bend, and consequently invaded the opposite carriageway, and then tried to go back on his carriageway in order to avoid impact, is morally convinced that the version given by Vanessa Mangion reflects the truth. In his evidence in front of the court expert, the accused had said that (at folio 71) "*As I was proceeding towards Triq il-Kbira, I passed the bend and I had to cut straight not to lose control. I went over the carriage way marking when i was travelling in on the straight part of the road. My tyre was over the carriageway marking...*" Undeniably this part of his testimony shows that the accused lost control of his vehicle because he did not cater for the bend. This also shows that he was driving recklessly at the time of his turning towards the Balluta Church. The court appointed expert indicated in his report (at folio 90) that the point of impact was in the middle of the road and that

⁶ Relative report inserted at folio 57 et sequitur of Process Verbal.

the accused was driving at a higher speed than the other vehicle and he came to this conclusion because the vehicle stopped further up the road. The Court also noted that the accused admitted that he knew that the vehicle he was driving had no insurance policy and road licence. All this confirms what was said by Vanessa Mangion and the other passengers in her vehicle who all stated that they had observed the oncoming vehicle being driven by the accused swerving and moving from side to side. In order to avoid the imminent danger she was faced with Mangion tried to move to the other lane and turned her vehicle. The Court therefore deems that the Prosecution managed to prove to a degree of beyond reasonable doubt that the accident in question occurred because of Borislav Ilicic's reckless and dangerous driving and that the damages sustained in Mangion's vehicle and the grievous injuries per durata suffered by Emanuel and Tessa Ann Mangion all came about as a consequence of this dangerous and reckless driving and non observance of traffic regulations by the accused. After having examined the conclusions of the medical expert Mario Scerri⁷ the Court deems that the injuries sustained by Emanuel Mangion and Tessa Mangion were grievous and had the consequences indicated in Section 218 of the Criminal Code.

The accused Borislav Ilicic is therefore going to be found guilty in relation the charges marked from one to seven.

Having considered

⁷ Relative report inserted at folio 194 et sequitur.

It also transpired that the co-accused Tatiana Skoric Tesic knew that her vehicle was not licensed or that it was covered by an insurance policy. She also admitted to the fact that she had told her son i.e. the co-accused to drive her vehicle to the mechanic. In view of the circumstances the Court finds Tatiana Skoric Tesic guilty of the charges marked 1, 2 and 3 brought against her.

Having considered further

Mario Tonna gave evidence in Court whereby he stated that he had suffered damages as a result of a collision between his car and another vehicle which he identified as being a Land Rover bearing registration number ABS 649. He had lodged a police report because of the damages that his vehicle had sustained. The accused had denied that he was involved in this collision. The Court deems it quite improbable that Mario Tonna had written the wrong registration number whilst identified the make of the vehicle being driven by the accused. Mario Tonna claims that the accident occurred at 1.00am but the accused denied that he was driving the vehicle at that time and that he was in any way involved in the accident. The Court deems that the version of facts given by Mario Tonna is more credible and has no reason to believe it. The Court would also like to point out that the co-accused Tesic said that she went to sleep at 1.00pm which means that the Christmas Eve celebrations at her home must have finished by that time and therefore it is quite plausible that her son would have left the house with his friend by that time, and could therefore have been involved in the collision with Mario Tonna as indicated by the same Mario Tonna. The accused Borislav Ilicic is therefore going to be found guilty of charges marked as 10, 11 and 12.

The Court noted that when Michael Gaffarena testified he could not recall any facts relating to the incident of the 7th January 2012 and the Prosecution cannot therefore be deemed to have proven the eight (8) and ninth (9) charges according to law and the accused Borislav Ilicic is therefore going to be declared not guilty of the said charges brought against him.

The Court also deems that the Prosecution has failed to prove to a level of beyond reasonable doubt that the accused Tatjana Skoric Tesic gave false evidence on oath before a judge, a magistrate or any other officer authorized by law and she is therefore going to be declared not guilty of the charge marked as four (4) as brought against her.

For the abovementioned reasons and after having seen Sections 226(1)(a), 328, 17 and 108(1)(a) of Chapter 9 of the Laws of Malta as well as Sections 15(1)(a)(2)(3) of Chapter 65 of the Laws of Malta, Reg. 3 (1) of L.S 65.18, Section 3(1) of Chapter 104 of the Laws of Malta and Reg. 67(1), 75 and 127 of L.S 65.11 the Court finds the accused Borislav Ilicic guilty of the charges marked as 1,2,3,4,5,6,7,10,11 and 12 brought against him and condemns him to 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 eighteen (18) months from today and disqualifies him from holding or obtaining a driving licence for a period of twelve (12) months from today. The Court declares the accused Borislav Ilicic as not guilty of the charges marked as 8 and 9 and consequently acquits him from the said charges. In terms of

Section 109 (1) and (2) of the Criminal Code the Court is hereby ordering the general interdiction of the accused Borislav Ilicic for a period of five (5) years from today and is hereby ordering that a copy of this judgement is notified to the Registrar of Courts so that the relative publication is made in the Government Gazette.

After having seen Section 15(1)(b) of Chapter 65 of the Laws of Malta, Section 3(1) of Chapter 104 of the Laws of Malta and Regulation 14(3) of L.S 368.02 the Court finds the accused Tatjana Skoric Tesic guilty of the charges marked as 1,2, and 3 brought against her and condemns her to a fine of two thousand five hundred Euros (€2,500) and disqualifies her from holding or obtaining a driving licence for a period of one (1) year from today. The Court finds the accused Tatjana Skoric Tesic not guilty of the charge marked as 4 brought against her and consequently acquits her from the said charge.

In terms of Section 533 of Chapter 9 of the Laws of Malta the Court condemns the accused Borislav Ilicic to pay the Registrar of Courts the sum of one thousand five hundred seventy nine Euros and thirteen cents (**€1579.13**) which sum represents the expenses incurred for the appointment of experts in these proceedings. This sum has to be paid within one month from the date of a request in writing made to this effect by the said Registrar of Courts.

< Final Judgement >

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