

CASES ADJUDGED  
IN THE  
SUPREME COURT OF THE  
REPUBLIC OF LIBERIA

AT  
MARCH TERM, 1967.

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FRANCESCO RICART MARTY, Appellant, v.  
REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,  
MONTSERRADO COUNTY.

Argued March 30, 1967. Decided June 16, 1967.

1. A conviction for the crime of malicious mischief must be set aside, and the judgment of the trial court reversed, where the evidence clearly fails to show wanton willfulness on the part of the person charged.
2. When counsel for the appellee fails to appear at the argument of the appeal before the Supreme Court, and even though it clearly appears that he intends to abandon the case, the counsel for appellant is to proceed with his argument, and the Court shall render its opinion thereon.

Defendant was charged with the crime of malicious mischief for having wrecked an airplane owned by complainant. The facts adduced at the trial where he was found guilty after trial by jury, clearly indicated that no purposeful intent to wreck the plane had been indicated by the defendant. He appealed from the judgment of the lower court affirming the verdict. *Judgment reversed.* Defendant ordered discharged forthwith.

*Richard A. Diggs* for appellant. Appellee was not represented.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

Francesco Ricart Marty, a Spanish national and an airplane pilot by profession, residing in Monrovia, Liberia, where he engaged in this occupation for a livelihood, was indicted by the grand jury of the May 1965 Term of the First Judicial Court, for the crime of malicious mischief. The indictment charged that the defendant unlawfully, wrongfully, willfully and maliciously destroyed, defaced and crashed a 170 Cessna Airplane, property of the Liberian Air Taxi Company Incorporated, under the pretext that he was an amateur pilot, knowing at the time that he was not an amateur pilot, and without a Liberian license to operate aircraft within the Republic of Liberia; that he unlawfully, wrongfully, willfully, and maliciously at the James Spriggs Payne airfield, not having the professional technique, with a malicious design and criminal intent to destroy the said Cessna Airplane, valued at the sum of \$14,000, entered the said plane and then and there crashed within a period of sixty minutes after voluntarily and maliciously taking over the possession of aforesaid plane, and thereby "the crime of malicious mischief the defendant did do and commit." During the succeeding term of court, presided over by Hon. S. Benoni Dunbar, Sr., he was tried and convicted of said charge. The judge rendered an opinion in its judgment affirming conviction, and concluded:

"Therefore, the trial of this case having been regular, and the evidence cogent, clear and relevant to the issue, the verdict of the jury shall not be disturbed but upheld; and defendant is hereby punished by amercement in punitive damages to the value of the property damaged, in the sum of fourteen thousand dollars (\$14,000.00), which shall be remitted to the Liberian Air Taxi Company, the injured party; and in addition, he is fined in the sum of two hundred dollars (\$200.00). And it is hereby so ordered."

The appellant, being dissatisfied with the several rulings and final judgment of the court, submitted a sixteen-

count bill of exceptions, and filed with this Court a fifteen-count brief complaining of errors committed by the trial judge. It is, indeed, sometimes boring to quote verbatim the evidence of witnesses, but it is oftentimes material, to expose the very testimony that so strongly influenced a conviction or acquittal. And so to the evidence.

The evidence of Samuel D. George, the private prosecutor goes thus:

"In 1952, I was successful in operating the first airplane business in Liberia and the operation is going on until today. Just a few years ago many foreigners became interested in business in Liberia to that end they thought to set up a competition at the airfield by organizing other airplane companies. At present there are about six companies, other than the Liberian Air Taxi Company, of which I am president, that are presently operating on Paynes Field. These companies seem not to want any Liberian to do business in their own country and, therefore, seek every means to throw them out of business. Airplane and other business. So on the 19th day of May, 1965, the defendant went to the hangar of the Liberian Air Taxi Company and told the pilot there that based upon the several applications he had made to him, the pilot, and the pilot of the Liberian Air Taxi Company having told him that he could not employ him but had to get sanctions from me, he the defendant, informed the pilot of the company that he had been to see me and got permission from me to work, and he informed the pilot that I told him, the defendant, to be instructed, the pilot to check him, the defendant, on the field. Based upon this information to the pilot, the pilot checked the plane out first, because it was a new engine just placed in it. After checking the plane twice, he came down and put the defendant in the plane and checked him out. When they returned to the ground, the defendant said that he was satisfied with the check and that he

would take control himself. So my pilot asked him three times, 'Are you able to control the plane now?' And he said, yes. The pilot then gave him the control of the plane and took up the two persons who went up before with the pilot, by the names of Joseph and Albert, with my pilot himself; in other words, they were four in the plane, he, the defendant, in control, with the pilot in front, and the two boys, Albert and Joseph, in the rear. He proceeded to take off and was successful in getting in the air and in less than two or three minutes he returned to the ground and crashed the plane beyond repairs, just about a hundred and fifty feet from the runway. The plane actually cost when it is new, \$18,000, but having been used, it has been depreciated to some extent and having just put in a new engine, the plane is new; it actually cost eighteen thousand dollars. At the time the plane was crashed, the defendant went in to the hospital, and stayed there for one day because the pilot of the plane made him stupid. When he returned from the hospital, although not knowing him, I expected him to get in touch with my pilot and come to me to make explanation and show how he intended to pay for this plane. I waited for over a month but nobody came. So I brought the matter to the attention of the Government in order that the necessary steps may be taken for me to gain redress. I add here that I never knew the defendant in the dock until the day he was arrested and brought to court to give redress in the matter and he came to court and a commitment was issued and he was put in jail and a bond was said to have been given, but I have not seen it; but he was released the same day. I got the impression that the foreigners want to throw the Liberians out of business. The defendant was already working with one Mr. Lewis, who is managing that company. He left his working place, came over to the manager of the Liberian Air Taxi Company,

gave the pilot the false impression that he had seen me and I gave him the instruction to see the plane, took the plane into the air, crashed it, went to the hospital one night, returned to the field and went back to Mr. Lewis to work. From this action of his, I concluded that he wanted to throw the Liberian Air Taxi Company completely out of business. I rest."

Toni Meissner, chief pilot for the complainant, and witness for the prosecution, made the following statement:

"A long time before the plane was ready to fly, the defendant came to me and asked for a job. I said, before you can be employed as a pilot in Liberia for the Liberian Air Taxi Company, you will have to first see Mr. S. D. George. On the 19th of May, the plane was made to fly. On this day the defendant came to me and told me that Mr. George told him that I should test him. In the afternoon, I myself made two test flights and the plane was O.K. After I made the two test flights, I told the defendant to come with me and then we made another test. I took off with the plane and we went over Monrovia for about fifteen minutes. I said to the defendant while we were in the air, that everything that was supposed to be O.K. on the plane was operating perfectly. After this flight, there was some small trouble with the radio. I told the radio technician to repair the radio. He repaired the radio. Then I asked the defendant if he could not make the flight. The defendant sat on the left seat and I sat on the right seat. After we left the parking place, we then changed seats. I asked him again if he thought he could make it. After those questions, he said, O.K. About forty-five minutes later the plane started to get off the ground. After the plane was in the air, the plane made a left curve and came down to the ground. I asked what had happened. I rest."

On cross-examination, this witness was asked the following questions:

“Q. As a pilot, and as such acquainted with and having expert knowledge about the operation and manipulation of aircraft, and being in the plane at the time the defendant was driving it, say whether or not from your observations and experience as a pilot, this crash was due to inevitable accident?”

After objection was overruled, the witness said, “I do not know.” Again he was asked:

“Q. The indictment charged the defendant that he unlawfully, wrongfully, willfully and maliciously, crashed the plane in question. Do you confirm this?”

“A. No.”

After the defense had concluded with the witness, the prosecution asked this question on redirect which impeached the evidence of Samuel D. George.

“Q. In answer to a question on the cross, you were asked whether the private prosecutor had sent the defendant to you to be tested, to which question you answered in the negative. Please tell us whether this defendant is the first person or pilot who has taken the message to you informing you that Mr. George had sent him to you to be tested.”

To this question objection was well taken, but the judge overruled and the answer was:

“A. It was not the first time that Mr. George ordered me to test the defendant.”

Witness Joseph, the mechanic's helper, took the stand next and his testimony coincided with that of Mr. Meissner. However, this portion we deem necessary to quote:

“We were on the airfield and mechanics were working on the plane. This man (the defendant) used to come there asking for a job. Toni said, wait, if

you want a job, go and see Mr. S. D. George. The next day he came and asked Toni again. Toni said, do what I tell you on yesterday. He then went to see Mr. George. The man told Toni that, I have seen Mr. George, and Mr. George said that I should come for you to check me out. Mr. Toni said well, we are just through installing the new engine and I have to test the plane myself before checking you out."

The defendant took the stand and testified :

"I am not guilty of the crime. Toni invited me. First we got into the plane, flew a little bit around and came back on the ground. We landed and parked the plane. There were about five or six persons there. Toni and I got out of the plane. We came out of the plane, went to have a beer, and at the same time there was someone fixing the seats of the plane. Then we went back to the plane, and Toni asked me to sit on the left side of the plane (the pilot seat). When I got into the plane I asked Mr. Toni why there was not any dual pedal, but he replied that he did not have the time to install one. Mr. Toni asked two other persons to come into the plane and then they turned on the motor. After turning on the motor, we closed the door and took off on runway two and three. When we got to the end of the runway, I put the magnets across to try it. For a brief moment, I was feeling to fly. I then felt that the plane was irregular because when you take a test flight, you never take other passengers in the plane. I had the sensation that the plane did not have the speed that it should have had. Both of us pulled the individual sticks. I saw that the plane went too straight up. Because of the vertical ascent, the plane lost speed and came down to the ground. This plane was not able to take those kind of stunts, because it was not an acrobatic plane, hence we came tumbling down. I rest."

With this evidence it is difficult to imagine how the

jury arrived at a verdict of guilty, and it is still perplexing to understand the judge's denial of the motion for a new trial. Summing up the motion, without restating it, it clearly avers (1) that the evidence during the trial did not prove the indictment; (2) that no criminal intent was proved; (3) that no malice was evident; (4) that Toni Meissner, the prosecution's witness, testified that it was not defendant's intention to wreck the plane. Life is precious even to the old and indigent. Only the mentally deranged and pixilated attempt to shorten their own lives. It is asinine to conceive that one would venture to wreck a plane so many feet above earth for the mere purpose of spiting one and satisfying another. "No greater love that a man hath who laid down his life for the love of his fellowman," has only been spoken of Christ.

So apparent was it that the case had been prejudicially handled and erroneously decided, that the Solicitor General made the following submission to this court when the case was called :

"1. That he has reviewed the records of the appeal and has certain reservations in respect to the merits of the case; and has decided not to take part in the prosecution of the appeal.

"2. That since R.F.D. Smallwood has been designated by the Attorney General to assist in the prosecution of all cases in which the Government is a party, that your honors will see fit to afford the learned gentleman an opportunity to study the case, and to file a brief, if in his opinion the conviction can be sustained.

"3. The Solicitor General would not like the case to be called at this stage in the absence of legal counsel for and on behalf of the appellee, for it might be said that the absence of counsel adversely affected the side of the prosecution. Wherefore, in view of the above reasons, we respectfully pray that the matter be temporarily suspended to give us an opportunity to confer



with the Attorney General and the private prosecutor, Samuel D. George, respectively, as to what action to take in the premises; and respectfully submits.”

Still giving the Government its day in court, the court made this ruling:

“The Court, in ruling, says that the application of the Solicitor General maintains that in accordance with the provision of our Executive Law, as found in the 1956 Code, the Solicitor General is the proper person to represent the Government before this Court. The Court observes that it has recorded and accepted the letters patent issued by the Attorney General in favor of Richard F. D. Smallwood to represent the Government in matters pending before this Court; nevertheless, it is the interpretation of this Court that the letters patent issued by the Attorney General has Mr. Smallwood supplement the work of the Solicitor General in appearing before this Court. In respect to the present matter, the prosecution was, prior to the assignment of the case for hearing, duly apprised of what transpired in the court below; and the premises should have alerted the Attorney General and the private prosecutor prior to this time and not having acted this Court cannot at the eleventh hour have this matter continued, for to do so would be a new precedent, which would not be in harmony with the law. Therefore, the application is denied and the case ordered proceeded with. And it is hereby so ordered.”

When the case was called again according to adjournment, no one appeared for the prosecution, which the Court noted when it ordered argument to continue, despite abandonment by the appellee of the Government's case as follows:

“When this case was resumed this morning for hearing, Mr. Smallwood, who holds letters patent from the Attorney General to prosecute for the Government and who has announced himself as represent-

ing the appellee, was not present; but before the court could take action in his absence, the Solicitor General appeared and upon inquiry from the Court of this circumstance the Court was made to know that Mr. Smallwood yesterday after the adjournment of the Court informed him that he would not return to Court this morning to continue the case; and brought this fact to the knowledge of the Attorney General that he had read the records in the case and would not represent the appellee. The Attorney General was in agreement with him, and said that the case should go on since it was on for argument already. Since Mr. Smallwood has failed to appear for more than twenty-five minutes from the opening of the Court, we cannot but interpret his absence to mean abandonment. Nonetheless, the Court orders Mr. Diggs for appellant to proceed with his argument. *And it is hereby so ordered."*

It is the opinion of this Court that the judgment of the lower court is erroneous and the same is hereby reversed and appellant ordered discharged without delay from further answering the alleged offense. And it is hereby so ordered.

*Reversed.*