

THE DISTRICT COURT
OF NEW SOUTH WALES
CRIMINAL JURISDICTION

5 JUDGE FINNANE
AND A JURY OF TWELVE

TUESDAY 30 JANUARY 2007

10 **06/11/0581 - Regina v Dirk NIEROP**

15 IN THE ABSENCE OF THE JURY

PROCEEDINGS TAKEN OVER BY COURT REPORTERS AT 2.10PM

20 HIS HONOUR: Well, we now have a Court Reporter so I will make the order that the free copy of the transcript be provided to counsel for the accused. I like at the same time to thank the Court Reporting Branch for coming along to do it. It required some re-arrangement of other things.

All right, we better get the jury in.

25 LAVAC: Before the jury come, there's one matter that I would like to raise if I may.

30 HIS HONOUR: Above there is no need for you to stand up now. You can take a seat there.

LAVAC: Your Honour, the material that I obtained access to this morning is in response to a subpoena to the Department of Defence, which was issued by my learned friend - not my learned friend, but my solicitor I'm sorry. Unfortunately the subpoena has only been partly complied with. It only
35 supplied us with some of the material that we requested and we have been provided with a letter saying:

40 "Regrettably, I have not yet received copies of his personnel and medical files, that is, Mr Bullock. As soon as they come to hand I will dispatch them to the Court."

I raise that now your Honour because I understand my learned friend will be calling Mr Bullock to give evidence tomorrow morning and I may be in a situation where that very important material is not yet at hand.

45 HIS HONOUR: Who signed that?

LAVAC: Sorry your Honour?

50 HIS HONOUR: Who signed the --

LAVAC: Garry Williams, Director of Litigation, dated 25 January 2007

HIS HONOUR: Director of Litigation?

55 LAVAC: It's the Department of Defence.

HIS HONOUR: Oh, Department of Defence. Well, that is entirely

5 unsatisfactory. The Department of Defence keeps files on all servicemen and they are in a readily accessible form. As far as I know, each of the Services keeps its own records. The Army certainly had an office called Central Area Record Documents in Melbourne. I am rather surprised that these details can't be provided.

LAVAC: I am also your Honour. My learned --

10 HIS HONOUR: Can't your solicitor ring this gentleman?

LAVAC: My solicitor at lunch time rang and the gentleman wasn't there. He left a message on his answering machine. We hope to make contact with him some time later today. I am raising it in the event we still haven't received the material that we need by the time Mr Bullock starts to give his evidence --

15 HIS HONOUR: I think the Navy, the gentleman concerned ought to be told if he is not going to produce all the material he better come to court himself to explain why he can't do it and he can explain to me why he can't produce the material.

20 But if the situation is that you need the material, it isn't here and it is obviously available, no privilege is claimed in respect of it, then it might lead to my deferring cross-examination.

25 LAVAC: Thank you your Honour.

HIS HONOUR: I think the Navy should be told, or the Defence Department, this is very inconvenient and someone will have to come along and give a good explanation, otherwise there will be a few things said.

30 LAVAC: Thank you your Honour. I will ensure that my solicitor conveys what you have just said to Mr Gary Williams.

35 HIS HONOUR: What I suspect is that the Navy has its own personnel records and the Defence has asked Navy and someone in the Navy is fiddling around not sending them back to Defence, but that's a pure bureaucratic thing and this is a court so they better get their act together I think.

40 CROWN PROSECUTOR: One other matter that I would like to raise and it's in relation to the view. I am told by the Sheriff's Office that 48 hours' notice will be required to organise things so notice provisionally is given. And I am also told that the hotel opens at 10.30am. So, for example, if Thursday were an appropriate date to go since Friday we have problems and doctors in the afternoon, one suggestion, subject to what your Honour thinks about this, is to assemble perhaps at 9 and have the inspection at 10 before the pub opens to patrons.

45 HIS HONOUR: Well, I think we will try and do that obviously. It would be not entirely desirable to have to have police fending off people who are there lawfully for the purpose of drinking. They are probably very indignant of being prevented.

50 CROWN PROSECUTOR: Especially wanting to get in at 10.30 in the morning.

55 HIS HONOUR: People that have a great keenness to be there.

LAVAC: A great thirst.

HIS HONOUR: The only point of having a view at a particular time is after sufficient evidence is given to make it intelligible. Is Thursday likely to be?

5 CROWN PROSECUTOR: Yes.

HIS HONOUR: Are we likely to have gone far enough by Thursday?

10 CROWN PROSECUTOR: An alternative proposal would be Monday. I think we would have gone through a number of civilian Crown witnesses.

HIS HONOUR: I think Monday is more probable myself. And you might even find fewer enthusiastic drinkers, although one can't say. I don't think they are worried about the day of the week so much.

15 LAVAC: The only problem we have on Monday is unfortunately to accommodate Dr Moss, who is going on holidays on the Tuesday. That's the doctor that we need to interpose so we can get his evidence.

20 HIS HONOUR: Do it Tuesday I suppose.

LAVAC: Tuesday is fine your Honour.

25 CROWN PROSECUTOR: The only aspect to note at this stage, I am told informally, the camera arrangements that were placed in April last year may have been changed or even been supplemented. So that we are endeavouring to get some information about that. That would be one thing your Honour.

30 HIS HONOUR: What really has to happen is, I have been through this process before, with this sort of view you have to have a person who is familiar with the premises, who is sworn to give evidence at the scene and who points out any differences. Sometimes that's a police officer, sometimes it might be a hotel staff member, but clearly any differences have got to be pointed out.

35 CROWN PROSECUTOR: Yes.

40 HIS HONOUR: Even if it's the colour of the carpet or design of the railings or anything. They have to be told what is different now to what it was then, and someone has to point to what lights were on at that time and what ones weren't and so on. I think it would be better to have it next week after we have had some evidence. Certainly we shouldn't be interfering with the doctor who is giving evidence. Tuesday seems to be a good enough day. It will be Tuesday. I think we will organise jurors from here to Collaroy. In peak hour it would take more than half an hour I think.

45 CROWN PROSECUTOR: Yeah.

HIS HONOUR: I don't know. One of the Sheriff's Officers at the back, how long would it likely to take at that time of the day?

50 SHERIFF'S OFFICER: I estimate 45 minutes your Honour.

55 HIS HONOUR: I would have thought so too. I would have thought it would be. If we get any trouble on the Harbour Bridge of any kind you are in real difficulties and then we have to go over to The Spit, wouldn't we? There is a way of getting around it. What way would you normally go through? The Spit? (Sheriff's Officer indicated).

HIS HONOUR: That could be a terrible problem too. You can go the alternate way which is to go straight on Mona Vale Road and along that way it's rather an indirect way of getting there, but it avoids - that way it will take 45 minutes or an hour.

5

CROWN PROSECUTOR: Yes your Honour.

HIS HONOUR: That would mean we would have to get the jury in, if we were going to be there - what time do you suggest? 9.30?

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CROWN PROSECUTOR: Ten, that gives us half an hour before patrons arrive.

HIS HONOUR: I think we need to be there more than half an hour. I really think we have to have the jury here and ready to get in the buses at half-past-eight. Perhaps the Sheriff can enlighten me if I am wrong in that but would that be right?

15

SHERIFF'S OFFICER: Yes your Honour

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HIS HONOUR: I presume the bus would be put in the yard out the front there? (Sheriff's Officer indicated). Well, I think we would have to be ready to move at half-past-eight, which means telling the jurors to be in at 8 in the morning, which is a long day for them so we might have to adjourn earlier in the afternoon.

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CROWN PROSECUTOR: Yes your Honour.

HIS HONOUR: I think we will say next Tuesday at this point. We will have to get a Court Reporter. I think the Supreme Court supply some special reporter that goes out on these occasions and we have to have a car. I don't know how the defence team would get out. The prosecution team I presume will get someone to get out there.

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CROWN PROSECUTOR: Would, forgive my ignorance, everyone need to assemble from here in order to go there?

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HIS HONOUR: I don't think so. I would have to be here and I suppose you could get up from down the road really. The jury have to be here.

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CROWN PROSECUTOR: Yes.

HIS HONOUR: We have to swear in the Sheriff's Officer the day before, on the Monday. And then the Court Reporter and my Associate and I go straight, probably from the Downing Centre and travel from the Downing Centre. I presume the Legal Aid Commission will provide a car.

45

LAVAC: We can provide our own transport your Honour.

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HIS HONOUR: You can take your client with you?

LAVAC: Yes. Absolutely.

HIS HONOUR: All right, we will fix Tuesday. I will tell them now so they can prepare.

55

CROWN PROSECUTOR: Yes your Honour.

HIS HONOUR: Certainly it would be awkward if we turn up late in the day. All right, we better get the jury in then.

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IN THE PRESENCE OF THE JURY

5 HIS HONOUR: Thank you members of the jury. You can sit down Mr Nierop. Now two things have developed. First of all, we have a Court Reporter who will taking down the transcript which will be of great advantage to us in a trial. If there is any dispute about anything that has been said we will have a daily transcript.

10 The next thing is that next Tuesday we will be going on the view. Now because the hotel is one of those hotels that opens at 10.30 in the morning we have got to try and be there at about 9.30. That means, I am afraid, I am going to have to ask you to be here at 8 in the morning on Tuesday. We will go out and have the view and we will probably knock off earlier and make up for the fact that you have been there 2 hours earlier. But I think it preferable to have
15 all of the view, if not, at least most of view, conducted before a whole of drinking patrons come in and want to gain access to the upper parts of this hotel by this staircase. We have to keep bystanders away from you and from us while we are looking at what's going on. We will be having people explain the differences. Apparently there have been some changes in the hotel. That
20 will have to be explained. We don't want a throng of drinkers listening or wanting to add their bit. So I want to, if possible, get started by 9.30, and to Collaroy one can never tell what the traffic will be but it will give us, if we left here at 8.30 that will give us enough time to be there by 9.30.

25 What would happen is that you would come to this same area, there will be a bus and the Court Officers and the Sheriff will go with you on the bus and I would meet you there separately and counsel will meet us there separately. If there are any changes to that, I will let you know. If any of you have any
30 problems being there that early, please let me know. If we have got to change the arrangements, we will change the arrangements. This is just my tentative view about the arrangements that should be made.

35 By the time we get to Tuesday there would have been quite a deal of evidence and we will probably have seen some photographs and the like so you will get a bit of a picture already. Then you have a view, then you can see how it all fits together. I think that's all I need to say at this point.

Mr Prosecutor, do you wish to open?

40 CROWN PROSECUTOR: Yes, thank you your Honour.

Members of the jury, on 8 April 2006 Mr Shane Bullock and his wife Schye Bullock, aged 32 at the stage, went to the races.

45 HIS HONOUR: Mr Prosecutor, I don't want to be difficult but there is a certain amount of echoing in the Court. My reporter has to try to get down what you say. Could you speak just a little bit more slowly and I think she will pick it up better.

50 CROWN PROSECUTOR: Yes your Honour. I apologise. I am used to the tape.

HIS HONOUR: It is going over the voice and makes it very hard to pick it up
55 all here. Go on.

CROWN PROSECUTOR: When Mr Bullock and his wife went to the races, she was accompanied by a number of friends. They spent the day there and alcohol was consumed during the day.

That evening, at separate times it seems, both Mr Bullock and Mrs Bullock went to the Surf Rock Hotel in Collaroy. The accused, Mr Dirk Nierop, was working as a security guard or bouncer at the Surf Rock Hotel that evening along with other guards.

5

By 2 o'clock in the morning of 9 April 2006, Shane Bullock was by then in Mona Vale Hospital suffering from what the Crown alleges to be bruising and abrasions to both eyes, his lip and his back and forehead, together with a moderate displaced fracture of the right eye socket and apparently broken nose.

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The Crown case is that the accused, together with the other security guards, at the hotel had assaulted Mr Bullock on the staircase of the hotel whilst extensively escorting him from the premises at around about twenty-past-one or thereabouts that evening/earlier morning, 1.20am.

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The Crown expects that you will hear evidence from a number of civilian witnesses present in the hotel, inside the building that evening who saw some or all of the assault from different vantage points and perhaps, it's a matter for you, but you might expect with a number of witnesses and things happening over a short space of time, in a confined space with other patrons around that you might expect that what the witnesses remember happening and the order in which they happened may differ in some respects and you might think that's a matter of ordinary human experience. It may depend on your powers of memory, or what the person is concentrating on at the time and so on.

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The Crown expects, however, that the overall thrust of what happened that night will be told to you as follows: Some time after 1am Schye Bullock was in the upper area of this two level hotel. The bottom level opens in a small doorway out onto the street on Pittwater Road, then the entrance is slightly to the left. Apparently there's a set of stairs which goes up to the landing, kinks around, goes up another set of stairs, another flight if you like, to an upper floor area. And the Crown also understands in that upper floor area there is what is called an open central atrium or area where you can look down from the upper floor down to the bar below. So the upper floor is a completely continuous floor. It's got this railing and a square in the middle that's open.

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Now, as I say, some time after 1am Schye Bullock was drinking and socialising on the upper floor level. Her husband was nearby and she became involved in a raised voice exchange with another female patron who she will tell you she knew but they didn't get on particularly well. The Crown case is that the accused came over and grabbed her by the arm and asked her to leave and that Schye Bullock's brother, Gary Fraser, saw them and went and told Shane Bullock what was happening.

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At that time the upper floor area was crowded with a number of patrons and it will appear that there was noise, music, lights flashing and so forth. Shane Bullock came over to where his wife was, saw his wife being held, apparently pushed or moved towards over the top of the stairs. Those are the stairs that I referred you to where there is light coming down to the landing and turns around and goes down a smaller flight to then come to the bottom floor.

50

Shane Bullock I expect will tell you he said something like: "Get your f...in hands off" to the bouncer who was holding his wife by the arm, and that the bouncer said to him: "You're out as well" or words to that effect.

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5 CROWN PROSECUTOR: At that point another bouncer, or bouncers, grabbed the arm of Shane Bullock so he was being restrained. At that point it seems that there was some moving around and some struggling by Mr Bullock to try and free his arms from being restrained. He was taken towards the top of the stairs.

10 Some witnesses, the Crown expects you will hear, recall seeing Shane Bullock hit at the point at the top of the stairs or around the vicinity of the top of the stairs by one or more of the bouncers. Schye, meanwhile was dragged by another bouncer, who she describes as dark appearance, and moved away from the top of the stairs. I expect she will tell you she didn't see subsequently who happened to her husband only seeing from that point she lost sight at the top of the stairs.

15 As I say, Mr Bullock recalls struggling, trying to raise his arm and I expect pushing one of the bouncers off holding Schye in the chest. Accounts as to what happened next depends on what each witness observed and remembered. Some witnesses saw Mr Bullock punched by the bouncers, as I say, on the upper flight of stairs as he was being led down and some recall
20 others being around the bouncers and Mr Bullock, that is possibly stumbling at some point until they reached this landing on the staircase.

25 The witnesses Drazen Cuca, who had not been drinking, as you will hear, was looking down the stairs from above and saw a Caucasian bouncer with bleached blond hair punching Mr Bullock to the head and upper body area as Mr Bullock was being held by the arms by other bouncers. He will tell you Mr Bullock looked unconscious at one point and was not resisting whilst he was being punched.

30 Other bouncers were also on the landing and, depending on what you hear from the witnesses, either restraining Mr Bullock or also punching him in some fashion. I anticipate that you will hear from some of the witnesses that they believe the punches were going towards the head area and upper body area of Mr Bullock and that one of the main people involved in the punching was the
35 man with blond or peroxide blond hair.

The Crown case is the bouncer, or security guard, with bleached or peroxide blond hair working that evening was the bouncer Mr Nierop.

40 After the punching occurred, there will be various lengths of how long, that takes up to 30 seconds, an apparently unconscious Mr Bullock was carried by his head and neck area by two employees of the hotel down that lower flight of stairs to the landing with his legs dragging behind him as he went out the front door and onto the footpath of the street outside where, as the Crown
45 anticipates the CCTV footage that is the surveillance camera footage from the hotel shows him deposited and moving on the ground and the bouncers leaving. Thereafter, some people come out and it seems that some people called for police and an ambulance and the ambulance arriving, and you can see that on the video. I anticipate you will also see before the ambulance
50 arrived Mr Bullock appears to have recovered consciousness and gets to a sitting position and eventually a standing position, moving around for a while and sits back down attended by friends.

55 According to bystanders his face was covered in blood which was coming from his mouth and nose. His wife Schye had been let go by the bouncer holding her in time to see him dragged down the lower flight of stairs. She didn't see what happened on the landing. CCTV footage, the relevant footage was downloaded by the hotel operation's manager, Mr Maryn Sardelic, and handed

to police. He downloaded it from the system they have onto the CD and handed over.

5 As I say, the Crown expects you to see those excerpts and included in that the camera shows a part of the upstairs area and what the Crown says is the accused approaching Schye Bullock, the young woman wearing a fairly long dress that evening, but at the very top of the stairs and the stairs themselves including the landing where Mr Bullock was assaulted are not on the film and
10 as the Crown understands they are apparently part of the blind spot not caught by the camera.

The cameras also show the exit door from the hotel opened on the lower door onto the street outside from the two reverse angles looking one end and also looking from the other end.

15 Police attended and took photographs of the scene at a later time. The accused was spoken to, arrested and subsequently charged with the matters before you.

20 Mr Bullock was admitted to hospital and released the following morning around 9.30am or thereabouts. It appears that the fractures, on the Crown case, were not detected until what is known as a CT scan was carried out on his face on 11 April at the request of his then treating doctor, Dr Lieutenant Scott Squires. At the time the question of facial fractures were explored as Mr Bullock was
25 employed be the Royal Australian Navy.

I expect you will hear from Lieutenant Squires that he noted from visual examination that Mr Bullock had extensive swelling and bruising over the nasal bridge and around both eyes, with bilateral subconjunctival haemorrhages in
30 the eyes. He also had multiple abrasions around the eyes, upper lip, forehead and left shoulder blade. The CT scan revealed, the Crown expects you will hear, the fractured right eye socket and a bilateral nasal fracture which was described by a treating specialist Dr Wilcsek as "may or may not be new".

35 The Crown case is the accused apparently angered by Mr Bullock's words, firstly "get your fucking hand off my wife" and further inflamed by Mr Bullock's struggles set out to give Mr Bullock a beating in the course of what might be described as a spontaneously arising joint criminal enterprise. That is in which others spontaneously joined in the assault, either hitting him or restraining him.
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The Crown case is that the accused is a very well muscled man of some strength intended to cause Mr Bullock the degree of harm he suffered and that degree of physical harm amounted to grievous bodily harm.

45 I intend to say a little bit about that in explaining the charges to you.

I am going to move on to the charges from the blue document read out before you this morning before you were empanelled. That document is referred to as
50 an indictment.

The accused, as his Honour said to you in his opening remarks, is charged with two charges on that indictment. The first charge and then the alternative of the first charge, a second charge. The first charge talks in terms of maliciously inflicting grievous bodily harm. The second is assault occasioning
55 actually bodily harm. I am going to read out the first charge. Before I do, as his Honour said, if you are not satisfied as to the guilt of the accused on the first charge at the end of this trial you would then consider the question of the accused's guilty in relation to the second alternative charge. There is a slight

complication to which I will explain to you in a moment.

5 The first charge charges that on 9 April 2006 at Collaroy in the State of New South Wales the accused Dirk Nierop did maliciously inflicted grievous bodily harm to Shane Bullock with intent to do grievous bodily harm.

10 At a later stage in this trial I anticipate his Honour will give you directions of law as to what the Crown must prove in order to prove the guilty of the accused in relation to this charge. At the point the Crown says it must prove the charges beyond reasonable doubt and suggests the charges can be split up into a number of essentially ingredients, or what is called elements, each of which must be proved beyond reasonable doubt before the charge is proved as a whole.

15 I suggest to you at this stage those elements include: One, that the accused maliciously, two, inflicted grievous bodily harm to Mr Bullock, and three, intending at the time to cause him grievous bodily harm.

20 As for the meaning of maliciously, the Crown expects his Honour, at a later time, will give you directions about the law and the meaning of that word.

25 As for grievous bodily harm, the Crown suggests that that is a question of fact for you to decide after hearing all of the evidence and whether the injuries amount to, sometimes described as, really serious bodily injury.

As a matter of commonsense you may think there may be varying degrees of really serious bodily injury.

30 As for intending to cause grievous bodily harm the Crown suggests that that means intending to cause Mr Bullock that degree of harm, that is, grievous bodily harm or really serious physical injury, not something less than that. An intention to do something can be inferred from a person's conduct and words. The Crown says the actions of the accused, after hearing all the evidence, you would accept the evidence as to the level of his involvement in the assault on Mr Bullock and the manner which he became involved would allow you to draw the inference at the time the accused was not simply escorting an unhappy patron from the premises of the Surf Rock Hotel but intended to cause Mr Bullock serious bodily harm and culminated in the assault on the landing.

40 As for the second charge in the alternative that's the charge you heard read out, on 9 April 2006 while in the company of persons unknown the accused did assault Shane Bullock thereby occasioning actual bodily harm to him.

45 There is an intermediate step the Crown suggests before you come to consider this charge. That intermediate step is this, if you are not satisfied at the end of this trial that the evidence has established beyond reasonable doubt the accused intended to cause Mr Bullock grievous bodily harm, then the law provides for you the jury to consider what is called a statutory alternative before you move on to consider the alternative charge on the indictment.

50 The statutory alternative charge in this case that you would be asked to consider is whether the Crown has proved that the accused acting in company with others maliciously inflicted grievous bodily harm to Mr Bullock.

55 There are two differences to this charge from the first charge. The first is that the Crown does not need to prove the accused intended to cause grievous bodily harm. It only needs to prove that grievous bodily harm was suffered by Mr Bullock as a result of the assault.