QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI

MAGISTRAT DR. JOSEPH MIFSUD
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Il-Pulizija
(Spettur Priscilla Caruana Lee)
(Spettur Alfredo Mangion)

vs

Genoveva Stoilova Neli Ilieva
Iliyana Ilieva

Seduta Distrett

Illum 23 ta' Awwissu, 2018

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputati **Genoveva Stoilova Neli Ilieva** detentrici tal-karta tal-identita Bulgara 64675794 u **Iliyana Ilieva** detentrici tal-karta tal-identita Bulgara 644804117 billi huma akkuzati talli fil-21 ta' Gunju 2018 ghall-habta tas-14:30hrs minn gewwa l-hanut Pull and Bear, il-Belt Valletta:

Ikkommettejtew serq ta' kartiera bi flus kontanti, diversi dokumenti u credit card mahruga mill-bank Barcley ghad-detriment ta' Sharon Bourne u/jew persuni ohra liema serq huwa kkwalifikat bhala serq semplici u dan bi ksur tal-Artikolu 284 tal-Kapitolu 9 tal-Ligijiet ta' Malta.

Il-Qorti giet mitluba sabiex f'kaz ta' htija, barra milli tapplika il-piena skont il-ligi, tordna lill-imputat ihallas l-ispejjez li ghandhom x'jaqsmu mal-hatra tal-esperti skont l-Artiklu 533 tal-Kap 9 tal-Ligijiet ta' Malta.

Rat l-atti kollha ta' dan il-procediment u d-dokumenti esebiti.

Semghet trattazzjoni finali.

KUNSIDERAZZJONIJIET LEGALI GENERALI

Illi qabel il-Qorti tghaddi biex taghmel il-kunsiderazzjonijiet taghha rigward l-imputazzjoni, il-Qorti ser tghaddi biex taghmel numru ta' konsiderazzjonijiet generali. Il-ikaz jitratta serq ta' kartiera minghand turista li sehh fil-21 ta' Gunju 2018 li kienet fl-istabiliment Paul & Bear, l-Belt Valletta. It-turista Sharon Bourne irrapurtat lill-pulizija din is-serqa fil-21 ta' Gunju 2018, u li ghal liema rapport hemm ix-xhieda ta' WPC250 Amanda Parascandlo Bunce u PC626Benetti.

<u>Livell ta' prova</u>

Huwa principju baziku prattikat mill-Qrati taghna fil-procediment kriminali, li sabiex l-akkuzati jigu misjuba hatja tal-akkuza migjuba fil-konfront taghhom dawn ghandhom jigu pruvati oltre kull dubju dettat mir-raguni.

F'dan ir-rigward issir referenza ghas-sentenza moghtija mill-**Qorti tal-Appell Kriminali fil-5 ta' Dicembru 1997** fil-kawza fl-ismijiet **Il-Pulizija vs Peter Ebejer**, fejn il-Qorti fakkret li l-grad ta' prova li trid tilhaq il-Prosekuzzjoni hu dak il-grad li ma jhalli ebda dubju dettat mir-raguni u

mhux xi grad ta' prova li ma jhalli ebda ombra ta' dubju. Id-dubji ombra ma jistghux jitqiesu bhala dubji dettati mir-raguni. Fi kliem iehor, dak li l-gudikant irid jasal ghalih hu, li wara li jqis ic-cirkustanzi u l-provi kollha, u b'applikazzjoni tal-buon sens tieghu, ikun moralment konvint minn dak il-fatt li trid tipprova l-Prosekuzzjoni. Fil-fatt dik il-Qorti ccitat l-ispjegazzjoni moghtija minn **Lord Denning** fil-kaz ***Miller v Minister of Pension*** - 1974 - ALL Er 372 tal-espressjoni 'proof beyond a reasonable doubt.'

> *"Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence 'of course it is possible but not in the least probable', the case is proved beyond reasonable doubt, but nothing shall of that will suffice."*

Fil-kawza fl-ismijiet **Il-Pulizija vs Graham Charles Ducker** (Qorti tal-Appell Kriminali - deciza fid-19 ta' Mejju, 1997) gie ritenut illi:

> *"it is true that conflicting evidence per se does not necessarily mean that whoever has to judge may not come to a conclusion of guilt. Whoever has to judge may, after consideration of all circumstances of the case, dismiss one version and accept as true the opposing one."*

Din il-Qorti taghmel ukoll referenza ghas-sentenza moghtija mill-***Qorti tal-Appell Kriminali fid-9 ta' Settembru 2002*** fil-kawza fl-ismijiet **Il-**

Pulizija v Martin Mark Ciappara fejn spjegat x'jigri meta Gudikant ikun rinfaccjat b'verzjonijiet konfliggenti u cioe' jistghu jigru zewg affarijiet u cioe' jew il-Gudikant ikun tal-fehma li l-kaz tal-Prosekuzzjoni ma jkunx gie sodisfacentement ippruvat, u allura l-Qorti ghandha tillibera, jew jekk ikun moralment konvint li l-verzjoni korretta hija wahda u mhux l-ohra, jimxi fuq dik il-verzjoni li jaccetta u jekk dik il-verzjoni tkun timporta l-htija tal-imputati jew akkuzati, allura jiddikjara tali htija u jghaddi ghall-piena jew ghal xi provvediment iehor.

<u>Apprezzament tal-provi fl-assjem</u>

Il-Qorti tissottolinea li huwa ben risaput li l-apprezzament tal-provi ghandu jsir mhux biss b'mod spezzettat u individwali izda l-provi ghandhom jigu analizzati flimkien fl-assjem taghhom sabiex wiehed jara x'inferenzi jew interpretazzjoni ragjonevoli u legali jista' jaghti lil dawk il-provi hekk interpretati. Ma tistax tinstab htija jew nuqqas ta' htija semplicement fuq analizi individwali jew separata tal-provi. Dawn ghandhom jigu kkunsidrati kemm individwalment kif ukoll komplessivament. Dan hu appuntu l-ezercizzju li sejra taghmel din il-Qorti, u cioe' li tezamina bir-reqqa kollha l-provi prodotti f'dan il-kaz.

Illi ghalhekk m'hemmx dubju li kollox jiddependi fuq il-kredibilita` tax-xhieda u dan billi bhala Gudikant, il-Qorti sejra taghti qies l-imgieba, il-kondotta u l-karattru tax-xhieda, tal-fatt jekk ix-xhieda ghandiex mis-sewwa jew hix kostanti, u ta' fatturi ohra tax-xhieda u jekk ix-xhieda hix imsahha minn xhieda ohra, u tac-cirkostanzi kollha tal-kaz, u dan ai termini tal-Artikolu 637 tal-Kap 9 tal-Ligijiet ta' Malta.

Huwa principju baziku prattikat mill-Qrati taghna fil-procediment kriminali, li biex l-akkuzati jigu ddikjarati hatja, l-akkuza dedotta, ghandha tigi ppruvata oltre kull dubju ragjonevoli, cioe' oltre kull dubju dettat mir-raguni.

Hawnhekk il-Qorti taghmel referenza ghal sentenza moghtija mill-Qorti tal-Appell Kriminali nhar s-sebgha (7) ta' Settembru, 1994 fl-ismijiet '**Il-Pulizija v Philip Zammit et**' u tghid pero' li mhux kull l-icken dubju huwa bizzejjed sabiex l-imputati jigu ddikjarat liberati, hemm bzonn li '*dubbju jkun dak dettat mir-raguni*.'

<u>L-ghodda biex tiddeciedi</u>

Il-Gudikant li jkun se jiddeciedi kif ser jaghzel is-sikkrana mill-qamh? It-twegiba nsibuha f'decizjonijiet li taw il-Qrati taghna:

> *Il-Gudikant għandu jezamina bir-reqqa l-provi rilevanti li jkollu quddiemu u mbagħad jiddeciedi l-kawza abbazi tal-ligi applikabbli, tal-gurisprudenza, u tal-provi li fl-opinjoni tiegħu huma konsistenti, konvincenti u korroboranti*.[1]

F'decizjoni tal-Qorti tal-Appell Kriminali moghtija fit-23 ta' Jannar, 2007 fil-kaz **Il-Pulizija *vs* Charles Bianco**[2] l-Imhallef Giannino Caruana Demajo kkummenta dwar meta jkun hemm deskrepanzi fix-xhieda:

> Din il-Qorti kellha okkazjoni tisma' x-xhieda u – ħlief forsi għal ftit ecitament li jħossu xi xhieda meta jsibu ruħhom fl-ambjent ta' awla tal-Qorti, ukoll jekk ikunu familjari ma' dak l-ambjent iżda jkunu qegħdin

[1] Appell Civili Numru. 140/1991/2 - **Norbert Agius v. Anthony Vella et., deciz** fil-25 ta' April, 2008 mill-Prim Imhallef Vincent De Gaetano u l-Imhallfin Joseph D. Camilleri u Joseph A. Filletti.
[2] Appell Kriminali Numru. 115/2006

jixhdu *in rebus suis*, u aktar meta jkunu qegħdin jirrakkontaw episodju li għalihom kien trawmatiku – ma rat xejn "nevrasteniku" jew isteriku fix-xhieda ta' John Bonello. Id-diskrepanzi żgħar bejn ix-xhieda ta' John Bonello u dik tal-Avukat Irene Bonello, li baqgħu għalkemm, kif jgħid l-appellant fir-rikors tiegħu, "żgur kellhom ħafna opportunitajiet li jitkellmu bejniethom dwar il-każ u jfakkru lil xulxin x'gara dakinhar tal-allegat incident", aktar milli sinjal illi x-xhieda ma tistax toqgħod fuqha huma sinjal illi x-xhieda ma kinitx orkestrata, u illi t-tnejn xehdu dak li ftakru u kienu onesti biżżejjed biex ma "jikkorregux" il-verżjonijiet biex igibuhom jaqblu ma' xulxin, għalkemm kellhom okkażjoni jagħmlu hekk u għalkemm setgħu jobsru illi d-diskrepanzi x'aktarx kien sejjer jaqbad magħhom l-appellant biex joħloq argument. Differenzi ta' dettal fil-mod kif xhud jara episodju trawmatiku huma ħaga normali u, sakemm fis-sostanza x-xhieda tkun taqbel, ma jfissrux illi dik ix-xhieda għandha tigi skartata.

Artikolu 637 tal-Kapitolu 9 jipprovdi gwida cara lill-Gudikant kif ghandu japprezza xhieda ta' xhud:

Id-deċiżjoni titħalla fid-diskrezzjoni ta' min għandu jiġġudika l-fatti, billi jittieħed qies tal-imġieba, kondotta u karattru tax-xhud, tal-fatt jekk ix-xiehda għandhiex mis-sewwa jew hix konsistenti, u ta' fattizzi oħra tax-xiehda tiegħu, u jekk ix-xiehda hix imsaħħa minn xiehda oħra, u tac-ċirkostanzi kollha tal- każ.

***Presumption of facts* u provi cirkostanzjali**

Il-Qorti qabel tghaddi biex tanalizza l-imputazzjonijiet thoss li ghandha taghmel espozizzjoni dwar il-*presumption of facts* u l-provi cirkostanzjali.

Fi kliem Sir Rupert Cross,

> *Presumptions of fact* (praesumptiones hominis) *are merely frequently recurring examples of circumstancial evidence, and instances which have already been mentioned are the presumption of continuance, the presumption of guilty knowledge arising from the possession of recently stolen goods and the presumption of unseaworthiness in the case of a vessel which founders shortly after leaving port. These are all inferences which may be drawn by the tribunal of fact.*[3]

Bhala ezempju ta' prova indizzjarja li minnha wiehed jista' jigbed konkluzzjoni partikolari, l-istess awtur jaghti l-ezempju tad-drawwa (*habit*):

> *The fact that someone was in the habit of acting in a given way is relevant to the question whether he acted in that way on the occasion into which the court is inquiring.*[4]

U fl-edizzjoni tal-2018 ta' **Archbold** jinghad hekk dwar presunzjonijiet ta' fatt:

> These are inferences which the court may draw from the facts which are established, but it is not obliged to draw.
>
> For example where a defendant charged with handling stolen goods is found to be in possession of those goods without any explanation, this circumstantial evidence may give rise to a

[3] Cross, R., Cross on Evidence Butterworths (London), 1979, p. 124. Ikkwotat mill-Prim Imhallef Vicent Degaetano fl-Appell Kriminali Inferjuri Il-Pulizija vs Louis Gauci Borda deciz 24 ta' April, 2002: Appell Nru 228/2001

[4] ibid. p. 40.

provisional conclusion that the defendant is the handler of those goods.

In some cases a rebuttable presumption of law imposes a legal burden of proof which must be satisfied to the requisite standard of proof in order to rebut the presumption, whereas some presumptions merely impose an evidential burden. For example, the presumption that a machine was working properly may be rebutted by merely adducing evidence to the contrary: *Tingle, Jacobs and Co v. Kennedy* [1964] 1 W.L.R. 638. In contrast, in order to rebut the presumption, created by section 74(3) of the Police and Criminal Evidence Act 1984, that the defendant committed an offence of which he was convicted, the Court of Appeal has held that the defence must prove on the balance of probabilities that the defendant did not commit the offence: *Watson* [2006] EWCA Crim. 2308. Similarly, in *Miell* [2008] 1 Cr.App.R. 23, the Court of Appeal treated s.74(3) as shifting the burden of proof onto the accused. In *C*[2011] 1 Cr.App.R. 17, however, the Court of Appeal, without reference to *Watson*, referred, at p.225, to s.74(3) as creating an "evidential presumption" and indicated that "if the defendant does adduce evidence to demonstrate that he is not guilty of the offence, it remains open to the Crown then to call evidence to rebut the denial". In *Clift* [2012] EWCA Crim. 2750 the Court of Appeal indicated that s.74(3) shifts the burden of proof to the defendant and that the prosecution is not required to prove to the criminal standard the matters covered by s.74(3).

Equally, in *R. v. O'Leary* [2013] EWCA Crim 1371 the Court of Appeal held at para.19 that, "The effect of section 74(3) is that the defendant bears the burden of proving that he did not commit the offence".

In *Zawadzka* [2016] EWCA Crim 1712, where evidence of a theft conviction committed in Poland by the defendant was admitted in a murder trial, the Court of Appeal accepted that the judge should have directed the jury that if the defendant proved on the balance of probabilities that she had not committed the offence then the jury should 'dismiss it from their minds'.

Even where a presumption imposes a legal burden of proof, if the imposition of a legal burden of proof upon the defence would give rise to a violation of art. 6(2) of the ECHR it may be necessary to read down the relevant statutory provision under section 3(1) of the Human Rights Act 1998, in line with the principles that were considered at §§ 10-11 and 10-12, *ante*, such that it merely imposes an evidential burden. Indeed, statute may expressly impose the evidential burden of rebutting a presumption upon the defendant. For example, in relation to the evidential presumptions about consent which section 75 of the Sexual Offences Act 2003 created, s.75(1) provides that:

"… the complainant is to be taken not to have consented to the relevant act unless sufficient evidence is adduced to raise an issue as to whether he consented, and the defendant is to be taken not to have reasonably believed that the complainant

consented unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it."

It appears that the effect of this provision is that the burden of disproving the relevant issue remains on the prosecution provided that evidence that is not merely "fanciful or speculative" has been adduced to raise the issue: *Ciccarelli*[2011] EWCA Crim. 266.[5]

Huwa minnu li fl-**Artikolu 638(2) tal-Kap. 9** ix-xhieda ta' xhud wiehed biss, jekk emnut minn min ghandu jiggudika fuq il-fatt hija bizzejjed biex taghmel prova shiha u kompluta minn kollox, daqs kemm kieku l-fatt gie ppruvat minn zewg xhieda jew aktar. Ghalhekk jispetta lill-Qorti tara liema hija l-aktar xhieda kredibbli u vero simili fic-cirkostanzi u dan a bazi tal-possibilita'. Huwa veru wkoll li l-Qorti ghandha tqis provi cirkostanzjali jew indizzjarji sabiex tara jekk hemmx irbit bejn l-imputat u l-allegati reati. Dan qed jinghad ghaliex ghalkemm huwa veru li fil-kamp penali l-provi indizzjarji hafna drabi huma aktar importanti mill-provi diretti, pero' hu veru wkoll li provi indizzjarji jridu jigu ezaminati b'aktar attenzjoni sabiex il-gudikant jaccerta ruhu li huma univoci.

Fil-fatt il-Qorti hawnhekk taghmel referenza ghal-sentenza moghtija mill-Qorti tal-Appell Kriminali fil-hmistax (15) ta' Gunju, 1998 fil-kawza fl-ismijiet '**Il-Pulizija vs Jason Lee Borg'**, fejn kien gie ritenut li provi jew indizzji cirkostanzjali ghandhom ikunu univoci, cioe' mhux ambigwi. Ghandhom ikunu indizzji evidenti li jorbtu lill-akkuzat mar-reati u hadd iktar, anzi l-akkuzat biss, li huma l-hati u l-provi li jigu mressqa, ikunu

[5] Archbold: Criminal Pleading, Evidence and Practice – 2018 Sweet & Maxwell (London), para. 10-15, p. 617-618.

kompatibbli mal-presunzjoni tal-innocenza tieghu. Illi ghalhekk huwa importanti fl-isfond ta' dan il-kaz li jigi ppruvat li kien l-imputat biss li ghamel dak li gie akkuzat bih u ghalhekk il-Qorti sejra tikkunsidra kwalunkwe prova possibilment cirkostanzjali li tista' torbot lill-imputat b'mod univoku bir-reati addebitati lilu. Fil-fatt kif gie ritenut fis-sentenza moghtija mill-Qorti tal-Appell Kriminali fis-sitta (6) ta' Mejju, 1961 fil-kawza fl-ismijiet '**Il-Pulizija vs Carmelo Busuttil'**,

> "*Il-prova ndizzjarja ta' spiss hija l-ahjar prova talvolta hija tali li ipprova fatt bi precizjoni matematika.*"

Illi huwa veru li fil-kamp penali, il-provi indizzjarji hafna drabi huma aktar importanti mill-provi diretti. Hu veru wkoll li l-provi indizzjarji jridu jigu ezaminati b'aktar attenzjoni sabiex wiehed jaccerta ruhu li huma univoci.

Archbold jghid:

> *"Where reliance has been placed by the prosecution on circumstantial evidence the proper approach is to determine whether a reasonable jury properly directed would be entitled to draw an adverse inference from the combination of factual circumstances by dismissing other possible explanations in relation to that evidence: Jabber [2006] EWCA Crim. 2694; G [2012] EWCA Crim. 1756. In London Borough of Haringey v. Tshilumbe, 174 J.P. 41, a senior environmental health practitioner for the local authority had affixed a hygiene emergency prohibition notice to T's premises. After the notice was affixed he returned to the premises and found a group of individuals sitting at a table eating food from plates and drinking from cans. It was alleged that T had failed to*

comply with the notice as he had continued to operate the premises as a food business. The magistrates held that T had no case to answer as the local authority had produced no evidence that the food and drink that were on the table had been provided to the occupants of the premises by T in the course of a food business. It was held that justices had been wrong to find that there was no case to answer; it could be inferred from the circumstances that the premises were being used for a food business and the defendant should have explained himself at trial. Strong circumstantial evidence may be sufficient for the court to find a case to answer: Danells [2006] EWCA Crim. 628.[6]

Illi din hija ezattament il-posizzjoni hawn Malta, kif fil-fatt giet konfermata b'sentenza moghtija mill-Qorti tal-Appell Kriminali nhar id-disgha ta' Jannar, 1998 fil-kawza fl-ismijiet '**Il-Pulizija vs Emanuel Seisun'**.

Din il-Qorti thoss u tghid li provi cirkostanzjali huma bhal katina li tintrabat minn tarf ghal tarf, b'sensiela ta' ghoqiedi li jaqblu ma' xulxin u li flimkien iwasslu fl-istess direzzjoni[7].

Prezunzjoni tal-innocenza

Ir-rizultat huwa li fi proceduri penali l-onus ta' prova tistrieh fuq il-Prosekuzzjoni matul il-procedura kollha, bhala regola generali u hija l-eccezzjoni li d-difiza trid tipprova xi haga, bhal perezempju d-difiza tal-insanita'.

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[6] Ibid. Pg. 533 para 8-119

[7] Il-Qorti fliet fid-dettal l-argumenti migjuba fis-sentenza fl-ismijiet Il-**Pulizija vs Abdellah Berrard et** moghtija mill-Magistrat Consuelo Scerri Herrera fid-19 ta' Mejju 2014

Huwa principju fundamentali fi proceduri penali li persuna akkuzata hija prezunta innocenti sakemm ippruvata hatja, u dan ai termini tal-Artikolu 40 Subinciz 5 tal-Kostituzzjoni ta' Malta, li jiddisponi is-segwenti:

> "*every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty...*"

Dan il-principju gie wkoll sanat fis-sentenza moghtija minn Sir Augustus Bartolo fl-ismijiet '**Il-Pulizija v Michele Borg et'** (deciza mill-Qorti tal-Appell Kriminali nhar it-13 ta' Mejju, 1936) fejn intqal:

> "*illi skont il-principju u s-sistema tal-ligi u procedura penali taghna mfassla fuq dak tal-Ingilterra u li huma strettament d'ordine pubblico;* '*the accused is presumed innocent until proved guilty.*' "

U issa ghalhekk wiehed jistaqsi: xi tfisser verament prezunzjoni tal-innocenza? Din tfisser li l-akkuzati ma jridu jipprovaw xejn dwar l-innocenza taghhom - hija l-Prosekuzzjoni li trid tipprova l-htija taghhom. Ghalhekk peress li hija l-Prosekuzzjoni li allegat il-htija tal-imputati, l-onus generali tal-prova, u cioe' tal-prova tal-htija, tistrieh fuq il-Prosekuzzjoni, li ghandha ghalhekk tipprova kull element tar-reati partikolari sabiex tasal ghal din l-istess konkluzjoni.

Il-Prosekuzzjoni trid tipprova l-kaz taghha *beyond a reasonable doubt*, li tipprova kaz dettat bla dubju dettat mir-raguni, li tfisser li l-grad ta'

buon sens jew ghaqal li jwassal gudikant sabiex jaqbel mat-tezi taghha u cioe' tal-Prosekuzzjoni.

L-obbligu li tipprova l-htija tal-akkuzati irid ikun assolut, oltre kull dubju dettat mir-raguni u f'kaz li jkun hemm xi dubju ragjonevoli, il-Prosekuzzjoni tigi kunsidrata li ma ppruvatx il-kaz taghha ta' htija u ghalhekk il-Qorti hija obbligata li tillibera.

Il-filmat esebit

Fil-ktieb *Electronic Evidence*[8], Stephen Mason jispjega li:

> *"Surveillance cameras are very much part of life in the twenty-first century, the foundations of which began in the latter decades of the twentieth century. Evidence of images from security cameras can be very helpful in identifying the perpetrators of crime, and the enhancement of the images, together with the use of more advanced techniques such as facial mapping, can help to identify parties to an offence."*

Il-Qorti taghmel referenza ghal dak li jghid il-**Blackstone** fl-edizzjoni tal-2016 fejn meta jitkellem dwar ritratti, video recordings u films jghid li:

> *"A photograph (or film) the relevance of which can be established by the testimony of someone with personal knowledge of the circumstances in which it was taken (or made), may also be admitted*

[8] Ippubblikat minn LexisNexis U.K. t-tieni edizzjoni ppubblikata fl-2010 pg. 345 para. 10.91

to prove the commission of an offence and the identity of the offender."[9]

Il-Qorti se tghaddi biex tanalizza l-prova il-filmat esbiet in atti. Illi fir-regoli illi tfasslu f'kawza **R vs Turnbull** fl-Ingilterra, li ghalkemm ma jikkostitwixxu l-ebda regola taht il-ligi Maltija, huma linji gwida fil-kaz ta' l-identifikazzjoni tal-persuna akkuzata. Illi dana gie ukoll sottolinjat f'sentenza moghtija mill-Qorti ta'l-Appelli Kriminali fl-ismijiet Il-**Pulizija vs Stephen Zammit** (deciza 16 ta' Lulju 1998) fejn il-Qorti tat esposizzjoni tar-regoli Turnbull fid-decizjoni taghha:

"First, whenever the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken, the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. In addition he should instruct them as to the reason for the need for such a warning and should make some reference to the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken. Provided this is done in clear terms the judge need not use any particular form of words.

Secondly, the judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way, as for example by passing

[9] Pg. 2545 f'*Real Evidence* F8.58

traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance? If in any case, whether it is being dealt with summarily or on indictment, the prosecution have reason to believe that there is such a material discrepancy they should supply the accused or his legal advisers with particulars of the description the police were first given. In all cases if the accused asks to be given particulars of such descriptions, the prosecution should supply them. Finally, he should remind the jury of any specific weaknesses which had appeared in the identification evidence.

Recognition may be more reliable than identification of a stranger; but even when the witness is purporting to recognise someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made.

All these matters go to the quality of the identification evidence. If the quality is good and remains good at the close of the accused's case, the danger of a mistaken identification is lessened; but the poorer the quality, the greater the danger.

Illi fil-ktieb tieghu Cross, **On Evidence** (6th edition) huwa jaghti definizzjoni ta' dak imsejjah bhala real evidence:

> ***'Things are an independent species of evidence as their production calls upon the court to reach conclusions on the basis of its own perception and not on that of witnesses directly or indirectly reported to it ...***
>
> ***Although it was devised by Bentham and adopted by Best, 'Real evidence' is not a term which had received the blessing of common judicial usage. There is general agreement that it covers the production of material objects for inspection by the judge or jury in court, but it is debatable how much further the term should be extended'.***

Cross imbaghad ighaddi sabiex jaghti diversi ezempji ta' dak illi jikkostitwixxi "real evidence" u fost dawn l-ezempji huwa jinkludi automatic recordings u ighid:

> ***'Most discussion has hitherto centred on the admissibility of tape-recordings, but this has now been supplemented by a thin trickle of authority on the admissibility of other media such as film, video-tape and computer output. In all of these cases the evidence is real evidence when it is tendered to show what it was that was recorded'.***

L-awtur Murphy, imbaghad fil-ktieb tieghu 'A Practical Approach to Evidence' (3rd Ed) jaghti dina id-definizzjoni ta' 'Real evidence' (fol. 7):

> ***'A term employed to denote any material from which the court may draw conclusions or inferences by using its own senses.***

The genus includes material objects produced to the court for its inspection, the presentation of the physical characteristics of any person or animal, the demeanour of witnesses (which may or may not be offered or presented to the court by design), views of the locus in quo or of any object incapable of being brought to court without undue difficulty and such items as tapes, films and photographs, the physical appearance of which may be significant over and above the sum total of their contents as such ... What is of importance in each case is the visual, aural or other sensory impression which the evidence, by its own characteristics produces on the court, and on which the court may act to find the truth or probability of any fact which seems to follow from it'. ...

'The court may look at and draw any proper conclusions from its visual observation of any relevant material object produced before it ... The tribunal of fact is entitled to act on the results of its own perception, even where it conflicts with other evidence given about the object ...'.

Ikompli:

'The court must, before admitting recordings as evidence be satisfied that the evidence which may be yielded is relevant and that the recording produced is authentic and original ... The above principles apply to the use of film produced by hidden, automatic security cameras installed in banks and elsewhere for the purpose of recording robberies and other incidents. The jury are entitled to consider the film as

identification evidence of the persons recorded on it, subject to the foundational requirements stated above" see eg 'R v Dodson; R v Williams [1984] Crim LR 489; see "Taylor v Chief Constable of Cheshire [1986] 1 WLR 1979'.

Fil-kawza **Taylor vs Chief Constable of Cheshire** (1986), Ralph Gibson LJ ighid:

'Where there is a recording, a witness has the opportunity to study again and again what may be a fleeting glimpse of a short incident, and the study may affect greatly both his ability to describe what he saw and his confidence in an identification. When the film or recording is shown to the court, his evidence and the validity of his increased confidence, if he has any, can be assessed in the light of what the court itself can see'"

Illi fil- kaz fl-Ingilterra **R vs Murphy and Maguire** (1990) l-Qorti stqarret:

"We consider that the Turnbull guidelines should be applied and adopted as far as appropriate by a judge in a Diplock court to his assessment of the weight to be given to visual identification made from a video film, whether that identification purports to be made by a witness or witnesses, or by the judge himself. We see nothing in principle to justify a distinction between the consideration of the identification evidence of a bystander and that of a witness or judge who identifies from a video film screen. The imperfections of human observation, the dangers of suggestibility and the possibilities of honest mistake even by a plurality of witnesses still arise and justify the need for special caution before convicting."

Illi fil-kaz in dizamina ma tqum il-kwistjoni dwar l-identifikazzjoni tal-persuna ta' l-akkuzati fil-filmat esebit (li d-difiza qeghda tikkontesta il-validita tieghu).

Il-prosekuzzjoni ppruvat minn fejn kisbu l-filmat, kisbuh minghand Paul & Bear, u kienu ufficjali tal-pulizija stess li wara li raw il-filmat gharfu lill-imputati li ma kienux ucuh godda ghall-pulizija. PC355 Chircop u PC626 Benetti elevaw huma personalment il-filmat cctv minn gewwa l-istabiliment li jinsab fi Triq Santa Lucija l-Belt Valletta.

Illi l-Qorti ezaminat dana il-filmat bir-reqqa biex tara dan jistax jghinha fid-deliberazzjoni taghha biex tiddeciedi dan il-kaz. Il-filmat ma jhalliex dubju li m'humiex l-imputati fil-filmat u x'kienu qeghdin iwettqu l-imputati.

Skond l-awtur Blackstone fil-ktieb "**Criminal Procedure**" (2001 para. D 22.15 pagna 1622) jiddefenixxi kif decizjoni tkun **unsafe or unsatisfactory**:

> *"..... means that in cases of this kind, the Court must in the end ask itself a subjective question whether we are content to let the matter stand as it is or whether there is not some lurking doubt in our minds which makes us wonder whether an injustice has been done. This is a reaction which may not be based strictly on the evidence, as it is a reaction which can be produced by the general feel of the case as the Court experiences it."*

Dan gie spjegat ukoll mill-Qorti tal-Appell (Sede Superjuri) fil-kawza fl-ismijiet "**Repubblika ta' Malta vs Ivan Gatt**" [1.12.1994] fejn intqal:

> "*fi kliem iehor, l-ezercizzju ta' din il-Qorti fil-kaz prezenti w f'kull kaz iehor fejn l-appell ikun bazat fuq apprezzament tal-provi, huwa li tezamina l-provi dedotti, tara jekk, anki jekk kien hemm verzjonijiet kontradditorji – kif normalment ikun hemm – xi wahda minnhom setghetx illiberament u senament tigi emnuta minghajr ma jigi vjolat il-principju li d-dubju ghandu jmur favur l-akkuzat u jekk tali verzjoni setghet tigi emnuta w evidentement giet emnuta l-funzjoni anzi d-dover ta' din il-Qorti hu li tirrispetta dik id-deskrizzjoni w dak l-apprezzament. Ghalhekk huwa l-kompitu ta' din il-Qorti li tezamina b'mod profond li l-provi kollha migjuba w migbura w in partikolari t-traskrizzjonijiet tax-xhieda w l-istqarrija illi l-appellant ghamel mal-Pulizija jwasslu ghal dik il-konkluzzjoni. Fi kliem iehor, il-kaz mhux wiehed azzardat legalment u kontra kull principju legali li wiehed jasal ghal konkluzzjoni ta' rejeta', imma hu kaz fejn l-appellant jista' ma jitwemminx f'dak li qal u l-Ewwel Qorti setghet ghalhekk legittimament u ragjonevolment tikkonkludi kif ikkonkludiet fuq il-provi*[10].

Il-Qorti tinsab f'pozizzjoni li fiha tista' legittimament tiddikjara l-htija tal-imputati skont il-ligi.

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[10] Ara wkoll : **Pulizija vs Wahid Elawami** Qorti tal-Appell Inferjuri 1.09.2004

KONSIDERAZZJONIJIET DWAR IL-PIENA

Din il-Qorti dwar piena tirrileva u dan b'referenza ghas-sentenza moghtija mill-Qorti tal-Appelli Kriminali fl-ismijiet Ir-**Repubblika ta' Malta v. Rene` sive Nazzareno Micallef** moghtija fit-28 ta' Novembru 2006:

> *"Il-piena ghandha diversi skopijiet. Wiehed minnhom huwa sabiex jigi ripristinat it-tessut socjali li jkun gie mcarrat bil-ghemil kriminali ta' dak li jkun. Taht dan l-aspett jassumu mportanza, fost affarijiet ohra, kemm ir- rizarciment tad-dannu da parti tal-hati kif ukoll ir-riforma tal-istess hati. Skop iehor tal-piena huwa dak li tigi protetta s-socjeta`. Dan l-iskop jitwettaq kemm billi fil-kaz ta' persuni li b'ghemilhom juru li huma ta' minaccja ghas-socjeta` dawn jinzammu inkarcerati u ghalhekk barra mic- cirkolazzjoni, kif ukoll billi, **fil-kaz ta' reati gravi, is-sentenza tibghat messagg car li jservi ta' deterrent generali**. Il-Qrati ta' gustizzja kriminali dejjem iridu jippruvaw isibu l-bilanc gust bejn dawn u diversi skopijiet ohra tal-piena."*

Il-Qorti terga' taghmel referenza ghas-sentenza taghha tas-17 ta' Jannar 2017 Il-**Pulizija vs Meriam Abdussalam Mouaddea** u ttenni li min ikun f'pajjizna bhala mistieden, hux ghall-vaganza, ghan-negozju, ghax-xoghol, ghall-istudju, biex jibni relazzjoni jew jekk persuna jinghata xi forma ta' protezzjoni ghandu jimxi b'mod strett mal-ligijiet ta' pajjizna.

Huma l-minoranza assoluta tal-"mistiedna" fostna li jigu jaqghu u jqumu mil-ligijiet ta' pajjizna. ***Patti chiari, amicizia lunga***. Nilqghuk fostna u

nkomplu nibnu r-reputazzjoni madwar id-dinja fejn dan il-poplu naghtha certifikat "***wrewna qalb tajba li ma bhalha***"[11], izda trid tirrispetta l-ligijiet ta' pajjizna. Dawn il-ftit qeghdin jaghmlu hsara kbira hafna ghaliex qeghdin jitfghu dell ikrah fuq ohrajn li jghixu hajja ezemplari. Il-Qorti theggeg lill-Ufficjal Ewlieni tal-Immigrazzjoni juzaw il-poter li taghtihom il-ligi fl-ambitu tat-trattati internazzjonali u ma jiddejqux jiehdu passi inkluz li dawk li jaghmlu reati f'pajjizna u joholqu alarm bla bzonn fost il-popolazzjoni ta' dawn il-gzejjer jkunu ripatrijati minnufih wara li jiskontaw is-sentenzi lejn pajjizhom. **Ghaliex huwa sewwa li persuna tkun tixtri ghall-kwiet u tispicca misruqa? Huwa sewwa kif sehh f'dan il-kaz li turista giet ftit jiem f'pajjizna ghal btala u tispicca misruqa minn suppost turisti ohra li gew f'pajjizna? Ghal Qorti dan mhux sewwa u mhux skuzabbli li wara li twettaq ir-reat iggib l-argument li hi tqila u allura trid tinghata xi trattament preferenzjali minhabba dan. Il-Qorti taghmilha cara li hi dejjem sostniet li persuna trid tinghata l-protezzjoni mill-koncepiment sal-mewt, izda huma l-imputati li ghandhom jipprotegu t-trabi li ghandhom fil-guf billi ma jispiccawx parti minn organizzazzjoni kriminali li tesporthom lejn pajjizna biex iwettqu numru ta' serqiet qabel jergghu imorru lura f'pajjizhom.**

[11] Atti 28:2

DECIDE:

Il-Qorti ghal dawn il-mottivi issib lill-imputati hatja tal-imputazzjoni migjuba kontra taghhom u wara li rat artikolu 284 u 285 tal-Kap 9 tikkundannhom ghal piena ta' erba' (4) xhur prigunerija effettiva kull wahda.

Dr Joseph Mifsud
Magistrat