



Court of Criminal Appeal

Madame Justice Dr. Consuelo Scerri Herrera, LL.D., Dip Matr., (Can)

Appeal Nr. 491/2017

The Police
Inspector Louise Calleja

Vs

Omissis

Today, 11th December, 2018

The Court,

Having seen the charges brought against the appellant *Omissis* holder of Maltese Identity Card Nr. 554913L before the Court of Magistrates (Malta), as a Court of Criminal Judicature:

".....with having, in the year 2009 and in the previous months, in Omissis and/or in any other localities on these islands, by several acts committed by her, even if at different times, which constitute violations of the same provision of the law, committed in pursuance of the same design,

- 1. by lewd acts defiled minor Omissis aged 9 years;*
- 2. without a lawful order from the competent authorities, and saving cases where the law authorises private individuals to apprehend offenders, arrested, detained or confined minor Omissis against his will and this as a means of compelling the said Omissis to do an act or to submit himself to treatment injurious to the modesty of his sex;*
- 3. took part in sexual activities with minor Omissis;*

4. committed violent indecent assault on minor Omissis.

The Court is being requested, on reasonable grounds, to provide for the safety of Omissis, his family and other persona, and forthwith apply the provisions of Section 412C of the Criminal Code and thus issue a protection order against the accused the accused with all the necessary restrictions or prohibitions."

Having seen the judgement delivered by the Court of Magistrates (Malta) on the 10th November, 2017, the Court after having seen the sections of the law indicated by the Attorney General in his Note of Renvoie dated 23rd April 2013 and in particular Sections 17, 18, 203(1)(a)(c), 204C(1), 23 and 31 of Chapter 9 of the Laws of Malta the Court found the accused guilty of the first (1) and the (3) charge brought against her and condemns her to seven (7) years imprisonment. The Court declared the accused not guilty of the second (2) charge brought against her and consequently acquits her from the said charge. Due to the fact that the fourth (4) charge is clearly an alternative charge to the first charge for which the accused is being found guilty the Court abstains from taking further cognisance of the said charge.

In terms of Section 412C of the Criminal Code the Court is hereby issued Protection Order for a period of three (3) years from today where the persons protected are Omissis and Omissis.

So as to protect the identity of the minor concerned the Court hereby ordered that the names and personal details of the minor and his family as well as the name and personal details of the accused are not published on any means of communication.

In terms of Chapter 518 of the Laws of Malta the Court ordered the Registrar of the Civil Courts and Tribunals to add the name of the accused on the Register established in the said Act and to this effect it is ordering that the Registrar of the Civil Courts and Tribunals is notified with a copy of this judgement.

Having seen the application of defendant *Omissis* filed on the 22nd November, 2017 prays this Honourable Court to confirm that part of the decision where the accused was acquitted and annuls and revokes that part of the judgement where she was found guilty. Moreover, a more lenient punishment should be meted out in the circumstances.

That the grounds of appeal of defendant consist of the following:

With regards to the **facts**:¹

“.....of the case are in brief as follows. On the 2nd November, 2009 the Police received a report from the Child Protection Services within Appogg regarding alleged sexual abuse on a ten year old boy, Omissis by his maternal uncle Omissis. The boy had been fostered by his maternal grandparents, Omissis and Omissis, from birth and he lived with them until the age of ten. His uncle Omissis also lived in the same house. The boy's mother gave birth to him when he was still a minor and subsequently left him in the care of her parents. The boy was born from a relationship which Omissis had with a Libyan national Omissis, however the latter only became aware that he had fathered a child on returning back to Malta after being away from these islands for a number of years. The boy was nearly ten years old at this point and after a DNA test was carried out Omissis was given custody of the boy. The maternal grandparents co-operated fully with the father in this whole process and they even kept the boy with them when the father had to leave Malta for a few months. Towards the end of October, 2009 the boy started refusing to call his father dad and after the father enquired about him whether someone had told him to do this and father an incident where the boy attempted to kiss and touch the breasts of his father's partner, Omissis, the father started questioning the boy and showed him a pen drive and told him that there was data on this pen drive relating to what was happening in his grandparents house. At this point the boy told his father that from around the age of five until he was about eight or nine, his uncle Omissis, with whom he shared a room at his grandparents house, used to show him pornographic films

¹ Quoting from the decision itself.

and would then proceed to have oral and anal sex with him and teach him things about sexual matters. Omissis immediately made a report with the Child Protection Services within Agenzija Appogg and the boy spoke to the social workers Rodianne Vella and Donatella Bruno.

On the 3rd November, 2009 Omissis also disclosed tot he abovementioned social workers that when he was around seven years old there was an incident whereby his grandmother Omissis was lying down in bed and he went on top of her and started to make sexual movements and although she pushed him away at first, when he tried a second time she let him proceed to kiss her lips, touch her breasts and private parts and this without questioning how he had learnt how to do these things. The boy also spoke about another incident where he had walked into the shower while his grandmother was showering whereby he proceeded to remove his clothes and join her in the shower where he started kissing and touching her. Omissis also mentioned another incident where his grandmother called him into her room where he found her lying on her bed and she asked him to stand beside the bed and remove his clothes and she started touching his genitals with one hand and her vagina with the other hand.....The social workers explained that the boy was very reluctant to disclose the facts relating to the sexual activity with his grandmother because he said that he loved her dearly."

The aggravation being raised by the appellant is manifestly clear and consists of the following:-

1. First and foremost the accused appellant is insisting in her **innocence**.
2. Furthermore there **exist** several factors which give one to understand that the accusations levelled against the appellant accused were intended to do her harm when the accusations did not take place. As an initial start, it is relevant to point out that the appellant was made to answer for four (4) accusations of which she was declared **not guilty** with regards to the second (2) and the fourth (4) charge. This in itself **militates** in favour of the accused and shows that the accused was made to answer for charges which should never have been raised, although she was declared not guilty with regards to these referred to charges. This is particularly

relevant because it shows that there were speculative charges which are unacceptable when a person is innocent until proven guilty. Moreover, to accuse a person of something which is not true is very serious and could lead to a miscarriage of justice as is happening in this case.

3. Without **prejudice** to the above initial points raised, **knowledge of the background story is very relevant for one to appreciate the cross currents involving this situation.** A wrong appreciation of these factors and their importance have given rise to a wrong conclusion with the present disastrous consequences. The *parte civile Omissis* wanted to **marry** the biological mother of the child/boy named '*Omissis*' *Omissis* , daughter of the accused when she was only fifteen (15) whilst the *parte civile*, being of Libyan national, was in his twenties. *Omissis* was still at school. *Omissis* went missing for a period of time and *Omissis* took full advantage of the situation with the result that *Omissis* was born nine months later! The accused, together with her husband, refused to let their daughter get involved in what was being proposed by *Omissis*. Some of the objections raised were that he just wanted to **use** their daughter for his **own ends**, particularly to get a VISA and remain here in Malta. Furthermore, she was too young and did not have the necessary maturity to think of these matters. Moreover, she was **too trusting** as a person and of **weak character** to resist what was being proposed with the parents wanting to protect their daughter. Their reservations and sense of protection was justified *moreso* when full advantage of *Omissis* 's weakness was taken in getting her pregnant with the intention of using the situation hoping to remain in Malta! The accused, together with her husband *Omissis*, reported the matter to the Police and they were eventually informed by the police that he was to be deported from Malta. *Omissis* had vowed to the accused, particularly her husband, that he would seek revenge on the matter. For a period of nine/ten years, there was no contact with the *parte civili* with the result that the child '*Omissis*' being brought up by the accused and her husband as foster parents. During this period, **Agenzija Appogg** got involved with **constant monitoring** taking place and

Agenzija Appogg were very pleased with the way the child was being brought up. When changes were necessary, the accused and her husband were always obliging.

4. **Linked up** the previous point is when *Omissis* appeared on the scene, again **after so many years**. It must be stressed that he knew that *Omissis* gave birth to a child, but he never pursued the matter during his absence from these islands. *Omissis* never provided any maintenance or took an interest in the well being of the child during his absence from these islands. The accused and her husband were given to understand by the local authorities that *Omissis* was ordered to leave these islands. During the compilation of evidence it resulted that there existed no records in this regard in the police records! This was shocking news for the accused and her husband in that they were not told the truth. On the other hand, it was **equally shocking** for the accused and her husband to see that *Omissis* **did not even bother** about the child throughout all this period of absence from these islands! It has been established that during his period of absence, he never provided any maintenance or inquire about the child. *Omissis* never bothered to see what was going on and never raised a finger of interest in *Omissis*! It became very obvious that the *parte civile* found it convenient to see that the child was well taken care of and he was practically getting the best of both worlds.

5. On his return to the Maltese islands, *Omissis* wanted to have himself **declared** as the natural father of *Omissis*. There was **no objection** in this regard from the biological mother, moreso from the latter's parents, and even so, the law was such that no objection in this regard was regarded as acceptable since the legislator did not want to deprive a minor in being declared the legitimate child of the real biological parents! Once the child was **declared**² the legitimate child of *Omissis*, the latter **changed his attitude over night**. His sense of **revenge** started becoming obvious and his **harboured spitefulness** started to take full force.

² On carrying out a DNA test.

6. After a short period of time, he took the child under his care and the child being so young³, *Omissis* started being **swayed** by *Omissis*. **What is interesting is that throughout all this period, Agenzija Appogg was constantly monitoring the child ensuring that everything was being done properly. Furthermore, Agenzija Appogg never reported anything irregular and they recorded that they were quite pleased with the way things were being handled.**

7. The above point is important, since when *Omissis* decided to forward his complaint, it became very obvious that he was tutored in levelling accusations against the accused! Moreso, Agenzija Appogg started to show that they were only interested in their reputation and saving face. Agenzija Appogg, showed that in reality they were not an effective body in the monitoring of the child and that if, as Dr. Veronica Ellul declared that the child was “....a very intelligent child...”,⁴ therefore this means that the child also took Agenzija Appogg for a ride!

8. The accused contends that the child’s tender years were taken full **advantage** of by the **biological father** who had vowed that he wanted a sense of vengeance for not getting his way. Events moved in his favour and one must admit that he knew how to monitor the situation to his advantage to the detriment both of the accused and her family and also against the child himself. Regrettably, the child also seemed to have been **swayed** by *Omissis* whose invented story was well learnt by the child who showed that he depended on his father for survival!

9. Other vital factors which merit being mentioned are the fact that it was established that the accused is practically illiterate. This being said, it was admitted that she had no knowledge is operating a computer. This proved to be relevant but not much importance was given to it in the appreciation of the evidence where, on analyses, the idea was projected that she knew how to utilise a computer. It is here that even the child proved to be weak on this point and gives one the idea that it

³ Being nine to ten years only.

⁴Vide a fol. 69.

was suggested that he mention this point: “ Grandmother does not know how to switch on computer.....She does not know.”⁵

10. The evidence⁶ given by the child *Omissis* gives away the idea that he had a **good relationship** with his grandmother, the accused. This is indeed baffling, yet relevant, since it showed that the child has been put in an awkward position, stressing the fact that in three (3) years the grandmother: “She did not use to shout at me.”⁷

11. A further point which merits consideration and exposes the **lack of sincerity** on the part of *Omissis* is the fact that when he took possession of the child and successfully managed to create this *tsunami*, his true colours were exposed in that after all his ‘*supposed care*’ for the child, the child is not and has not been living with the biological father and who hardly visits him. This has served to add more harm to the child unnecessarily. Furthermore, this is indeed relevant since it exposes the fact that the father was not in the least interested in the child, adopting once again, a similar attitude when he had originally left Malta for about nine years not bothering in the least, let alone pursue his rights as a father, but finding it convenient that the accused and her family look after the child for him.

12. Various legal principles come into play in this very delicate case which deserve to be highlighted. The credibility of the *parte civile* who is only interested in seeking vengeance in not getting things his way. Serious doubt also prevails in the evidence collected giving rise to the principle that *in dubio pro reo* is to reign. The necessary intention let alone whether the child, when at such a tender age is to be believed when he had the full pressure of his father who wanted to use the child for his ulterior motives. This case reminds one of the very serious case – the Camilleri case - which was exposed when an individual, in **very similar circumstances**, was sent to prison and spent some time there when in reality he was innocent. It

⁵ Vide fol. 107- 109.

⁶ Vide a fol, 107 et seq.

⁷ Vide a fol. 120.

resulted that the daughter was encouraged by the mother to give false evidence and is now having to face criminal proceedings for what happened. What is interesting is that the investigating officer is the same one involved in this case! This point was raised after the prosecuting officer, in her summing up pointed out that children say the truth. What happened in the Camilleri case? Are we going to have a repetition? Is the court going to let itself be misled twice, and possibly other situations which have not come to light where an accused is wrongly condemned for something which did not take place?

13. Whilst the court is humbly requested to review the evidence afresh and bear in mind that whilst the accused is insisting on her innocence, yet even the **punishment meted out** was unacceptably harsh, which harsh attitude the first court did not hide in its decision, giving more importance and let itself be swayed by the attitude of *Omissis*, who was on a vengeance streak.

14. The accused is making it clear and is reserving the right to raise further points in her defence even during the actual tacking of the appeal.

Having seen the records of the case.

Having seen the updated conviction sheet of the defendant.

Now therefore duly considers,

That on the nineteenth (19th) of November of the year two thousand and nine (2009) before the Court of Criminal Inquiry, the prosecuting officer Inspector Louise Calleja presented the birth certificate, conviction sheet and two statements of the accused. Bail was granted to the accused under a number of conditions.

Rianne Vella testified on the seventeenth (17th) of December of the year two thousand and nine (2009) before the Court, at the time presided by Magistrate Dr

Jacqueline Padovani, stating that she is a social worker within the looked after the children service at Agenzija Appogg. She stated that she knows the minor since she was following his case since the child was next of care fostered by his maternal grandparents. The minor is *Omissis*. He had been living with his maternal grandparents since birth and explained since he was looked after, there is always a social worker for the foster care service and for the looked after care service so she could follow and monitor the case within the looked after children service.

She explained that on the second (2nd) of November of the year two thousand and nine (2009), Inspector Calleja contacted her and asked her to speak urgently to *Omissis*. She said that there were many issues of concern and due to that *Omissis* came to the office, that same day. She states that a social worker from the Child Protection Service came down and they took *Omissis*'s disclosure. She stated that on second (2nd) of November, on the same day *Omissis* alleged that he was sexually abused by his maternal uncle. He said that the abuse happened when he was in around year four - year five so he was around eight to nine years old where he slept in the same room as his uncle. His uncle would wake him up at night and make him watch pornograph film, he described these films as 'Hziata', bad films. He would say that they would involve a male and a female who would be having sex between them. He said, *'Sometimes they would be kissing, sometimes they would be with clothes, sometimes without clothes,'* and he said that after a bit, he would go to sleep, however, his uncle would wake him up again to watch the films. After this, he said that his uncle, his maternal uncle would start kissing him on his lips and then he would get his hand- the uncle's hand, would place his hand in under *Omissis*'s underwear. The uncle would grab *Omissis*' hand and place it into his genital area. She explained that *'After that, Omissis said that his uncle would undress him, turn him around and, he said that he would penetrate him analy. Omissis explained that he almost would get hurt when this would happen and he said that this happened more than once. He said that- after this he would feel a liquidy substance on his back side. Omissis said that- although he would hurt- he would say, for example, 'Ah-ah,' he said that, 'it was impossible for anyone to hear me because our door would be closed and so with that the it will be closed.'* He said that this

happened more than once and there was one occasion where the uncle put on another pornographic film after the sexual act. Added to this he explained to explain how his uncle would penetrate him, he said that his uncle will do, 'go in and out.' Added to this, Omissis explained that his uncle would place his private part into Omissis's mouth and as well he would grab his hand and place it on the private part of Omissis- when he would grab Omissis's hand and put it on his private part.' Omissis explained that the abuse stopped lightly before starting this scholastic year before September two thousand and nine (2009). J

She testified that Omissis said that when they would masturbate one another, he said that his hand would go, 'Up and down.,' he gave such detail. He said that his uncle would always threaten him not to speak out and if not he would shout at him. So he kept everything to himself. The minor first told his father about the abuse. She explained that she was present with Social Worker Donatella Bruno from the Child Protection Services.

Asked what is the uncle's name, she said Mr. Omissis. She explained that the father Mr Omissis spent some time away from Malta and upon his return he went to pick up Omissis from his maternal grandparents. Mr. Omissis wanted to know why and who was telling him not to call him 'papa', not to call him 'father', because this was a big issue for him. She explained that that 'Omissis- the father told him, 'Listen, I have this- ' he played a game, basically. He said, 'I have this pen drive and I have everything recorded, so whether you tell me or not, I am going to find out because I am going to put it in the computer and find out.' Omissis, then, - Mr. Omissis told us that Omissis, then said that it was his maternal grandfather who was telling him not to call him 'papa'. Following this, Omissis left the room and after a short while, Mr. Omissis told us that Omissis went back into the room and he saw Mr. Omissis, was about to put the pen drive in the computer and he was very resistant, Omissis was telling him 'No, no because I don't want you to see,' and it was at that point that Mr. Omissis told us, that it was at that point that stated the disclosures and from there it proceeded from there.' She stated that the first disclosure happened on second (2nd) of November of the year two thousand and nine (2009).

On the following day, the third (3rd) November of the year two thousand and nine (2009), Mr Omissis contacted the fostering Social Worker because he had her contact number and he told her that Omissis was saying further disclosures. On the same day she and social worker Donatella from Child Protection Services spoke to Omissis and he explained how apart from the things he did with his uncle *'would- always told him if he touched a woman. Omissis stated that, there was on one occasion where he was on the bed, next to the maternal grandmother, and Omissis went on his maternal grandmother and he did sexual moves on top of his grandmother. He said that at that point, his maternal grandmother pushed him away however Omissis said that he went back on her, but this time, she did not push him away, she did not stop him. He said that he started to kiss his maternal grandmother on her lips and he started to touch her breast and her private part area. He said that this took place with her clothes on her. His maternal grandmother did not ask him 'where did you get these things from?' after they spoke to Omissis on the day, they spoke to the father alone and he told them certain things which Omissis did not tell them.*

The witness explained that *'We never speak to the father - alone, so Omissis was out of the room, we spoke to the father alone and there were certain things which Omissis did not tell us. So the father left the room and we brought Omissis back into the room and we asked whether there were other things which he wanted to tell us.'* She explained that he was very resistant about telling them because he was scared that something could happen to his grandmother, whom he always said that he loved very much. He continued to disclose further and said that on several occasions his maternal grandmother would be getting washed in the shower and the door would be ajar. He said that he would go next to his maternal grandmother in the shower. He said that on one occasion, his grandmother told him to leave but he stayed there. Omissis then said that he removed his clothing and he stepped into the shower with his maternal grandmother. He explained that they were both in the shower, naked, next to each other and that *'He said that he started to kiss his grandmother on her lips, he touched her breasts and even her private part. They were both without clothes, he said this*

many times- and again, he said that his maternal grandmother never asked him, 'where did you get these actions from?' She explained that on the fourth (4th) of November of the year two thousand and nine (2009), the following day, Mr Omissis called the Fostering social worker again because he had her contact number and told her that Omissis was saying further things which were worrying him. They brought him to the agency and she and Donatella Child Protection Social Worker spoke to him at Appogg. Omissis said that there were further things that he wanted to tell them with regards to his maternal grandmother but he was finding difficulty saying them.

She explained that *'He stated that his maternal grandmother, on occasions, would be in her bedroom and he used to be in his bedroom and his maternal grandmother would call him into her bedroom and ask him to close the door. He said, in the meantime his maternal grandmother would be lying naked on the bed- he said that his maternal grandmother would make him go stand up next to her, next to the bed and she would remove his clothing. Omissis then said that his grandmother would have her hand on her private part and she would be saying words such as 'Ah-ah,' and then he said that his grandmother would grab Omissis's hand and place it on her private part and she would say again words like, 'Ah-ah.'* Then he continued to say that his grandmother would then place his own hand on his private part and she would move 'up and down' with her hands.' *She would move Omissis's part and her part.'* Explaining further that after this, he said that his grandmother would pull him on to her and they would start kissing. This happened more than once, Omissis then said that she would touch his shoulder and then she would touch his private part and then, once he is on top of her he would start to do sexual moves on top of his grandmother and he specified that his grandmother would say words such as 'Ah-ah.' She explained that *'he showed us that he would go 'up and down.'* He said that this happened more than six (6) times because while he was doing the movement, his grandmother was also doing the movement. Omissis told them when the sexual acts used to take place with his maternal uncle he would always get hurt, however he said that he would enjoy the acts with his grandmother and in fact he felt a sense of guilt about all this. He said that everything always started from the maternal uncle and then the maternal grandmother was involved. He said that both

abuses were taking place at the same time and neither of them knew of each other's abuse.

On the sixth (6th) of November of the year two thousand and nine (2009), Mr *Omissis* contacted them again and said that '*Omissis was saying further worrying things-about the child.*' Donatella and the witness spoke to *Omissis* on the same day and he mentioned that in Summer 2008 *Omissis* has a half brother named *Omissis*⁸ and he said *Omissis* lives with his mother. *Omissis* was living at the grandmother and grandfather's house. He said that *Omissis* is approximately four (4). They were living in the same house for a few days because the mother needed to go out. *Omissis* said that they would sleep in the same bed, and when they were going to sleep, *Omissis* started to kiss *Omissis* on his lip. *Omissis* lowered *Omissis*'s trousers a bit below his private part and he started to touch *Omissis*'s private part. He said '*Itella u jnizzel*'. She explained that he used to go '*up and down with his hand, then, he would put his own pants down a bit, further down from his private part and Omissis would do the same to him. Omissis wanted to say that Omissis, then, just turned around and went to sleep, however Omissis said that he then removed Omissis's trousers again- he lowever them further- and then Omissis tried to place his private part in the backside of Omissis and he started going 'up and down''* and *Omissis* said that then *Omissis* turned around and hit him on the face and told him to stop because these are not things which need to be done. He said that he had learned all this from his maternal uncle and there were also times where he tried things on his own. She explained that these were the disclosures she and Donatella took and that there were further disclosures which Donatella will say but the witness was not present. She explained that since the abuse, she and Donatella had several visits with the father because he is finding it difficult to control *Omissis*' behaviour because he is manifesting a lot of sexualised behaviour and is constantly thinking about the concept of sex and has tried things on his own as well and constantly wants to have sex. *Omissis* also exhibited certain things, he imagines the father's friend who lives in the same house to be showering naked, he has all these thoughts. He has been integrated into a school and now he attends

⁸ In some instances in the acts of the proceedings he is referred to as '*Omissis* '

school regularly however he goes home and says '*there is a girl at school and I will manage to kiss her and touche her beccause he wants to do these things.*' Omissis is finding a lot of difficulty sleeping because this is constantly on his mind, he was seen by a doctor on the eleventh (11th) of December of the year two thousand and nine (2009) and he was prescribed 'Orax' to be able to sleep. However they spoke with the father who is telling them that he is still having difficulty sleeping and is due to be seen at the Child Guidance Clinic and maybe have psychiatric help. She said that he has appointments on twenty fourth (24th) of December of the year two thousand and nine (2009). Omissis stated that there were even times when Omissis tried sexual acts with the dogs who used to live home with him at the maternal grandparents house. Omissis has been psychologically assessed by Ms. Veronica Ellul and they are currently in the process of finding someone who would be able to offer him intensive therapy.

She testified that the father was also saying that Omissis speaks about further episodes which he passed through but the father is even finding it difficult to speak about them because he is saying that it is being traumatic for him as well to listen to all these things. She explains that his father has been in his life for approximately one year, he came from abroad to find his son, he later obtained care and custody and when he was living with him, these issues of sexual abuse came out. She said that the father is facing many problems since he is of libyan nationality and his visa expires in the coming weeks on the thirty first (31st) of Decemember of the year two thousand and nine (2009) and has no work permit and no rights to benefits. He is '*no longer involved in a family which he was involved in and this was a huge shock so this man has no income, he cannot really maintain, so far he is managing but maintaining Omissis is a bit of a problem. The fathr wants to help him very much but he cannot stay in the country illegally. He has already applied for an extension of his visa. He wishes that Omissis will be taken in to care and is- offered therepy and help which he urgently needs because they are not able to give him because of his needs and all these thoughts.*' She says that yesterday the father came to Appogg and asked to take Omissis into care because he could not handle his behaviour and he said that he urgently needs to enter into a programme

and was even saying that he plans to go back to Libya and plans to leave *Omissis* on the doorstep of Appogg because he cannot take care of him. She explained that they are looking for residential placements but they do not have any options. She explains that *Omissis* needs a therapeutic environment which is the Kids Programme offered by the Richment⁹ Foundation however they would still have to assess whether there are other vulnerable children present.

She says that that would be the most ideal place for him to go because the other options, another two residential homes for boys might not be able to cater for his needs. She exhibited a report marked as Dok.RV.

Donatella Bruno testified on seventeenth (17th) of December of the year two thousand and nine (2009). She explained that she is a social worker in the *Child's Protection Services* for the last two (2) years. She stated that she wrote the report marked and exhibited as Dok RV herself. She explained that on the second (2nd) of November of the year two thousand and nine (2009) she was on intake, there was a new referral '*Re-Omissis*' and she went down together with Rianne because Rianne was his social worker, to take *Omissis*' disclosure. She met *Omissis* the first time on the second (2nd) of November of the year two thousand and nine (2009) and that *Omissis* is between eight (8) and nine (9) years old and was sexually abused by his uncle *Omissis*. She testified that he told them that he lived together with his grandma and pa and his uncle and he sleeps in his uncle's room. His uncle is twenty one (21) years and his name is *Omissis* and his grandmother is *Omissis*. *Omissis* told them that his uncle used to wake him up during the night and whilst the uncle was seeing films, which the boy describes as '*bad*'. They asked the boy what was there in the films and he told them that there were women and men who were kissing each other and were having sex together. *Omissis* told them that sometimes they would be with the clothes and sometimes naked. *Omissis* then used to go to sleep again, but the uncle used to wake him up again, in order to see the films together. Then *Omissis* '*encountered that other episodes took place where the uncle kissed him on his lips, where his*

⁹ The Court understands that this should read 'Richmond'

uncle has put his hands underneath Omissis's underpants, he took Omissis's hands and he put them in the underpants of the uncle, then the uncle took off Omissis's trousers and the uncle took off his own trousers. Then the uncle placed his private part in Omissis' butt. So this all used to happen during the night behind closed doors.' Asked by the Court whether the child was penetrated, she replied yes. That happened more than once. The boy also mentioned that once he saw a pornography film whilst his uncle made sexual acts with him. They asked him what were these sexual acts and he said that *'he put in and out his private part in his butt, he put in and out his private part in Omissis's mouth, he put his hand in Omissis's private part, he used to move Omissis's private part up and down.'* She testified that Omissis told them that the uncle used to take his private part and used to move them up and down. Omissis said that the uncle then grabs Omissis hand and he made him do the same thing on him that the uncle made the same, so masturbate his uncle. The uncle used to threaten him that if Omissis speaks, he would shout at him and therefore Omissis chose to keep everything to himself and not to speak.

She states that these acts took place in the grandmother and grandfather's house at Omissis but in Omissis's bedroom. After the disclosure of the minor, they spoke to the father because Omissis's first disclosure was with his father. They spoke with Omissis and he told them that on the twenty ninth (29th) October, he had picked up Omissis from the maternal grandparents, after he had been three (3) weeks in Libya. He asked Omissis why he was not calling him *'papa'* father and he chose to play a game with Omissis, he told them that he had a pendrive, which he brought from Libya where he had a programme on the pendrive and he told him that *"I brought this pendrive from the grandma's and grandpa's house and therefore I knew what was happening there, and I know who was telling you not to call me 'your father'."* Then Omissis told him that, *"My grandpa was telling me not to call you daddy."* Sometime after, Omissis was on his laptop and Omissis went near him and asked him what he was doing. The pendrive was inserted into the laptop and Omissis told him that he was going to see what was going on at his grandpa's house. Omissis re-emphasized with his father not to switch on the pendrive and he was going to tell him everything

what had happened and then *Omissis* had spoken regarding the abuse. Then on the third (3rd) of November, *Omissis* had called the fostering social worker because he also had contact with a fostering social worker and he told her that *Omissis* did say further things. He did not say what words, the social worker came up to Child Protection and they decided that together with the Looked After Children Services, they take *Omissis*'s disclosure again. She explained that '*Omissis told us that his uncle, Omissis, taught him how to touch a woman and he encountered an episode when once he was on the bed together with 'nanna', he went over his grandma and they were doing sexual moves together. The 'nanna', at first, pushed him in order to stop, however Omissis told us that he tried again to go up on her and nonetheless the 'nanna' did not stop now. Omissis also told us that he kissed the 'nanna' on the lips, he touched her breast and he also touched her private parts, whilst she was wearing her clothes. We asked him if his grandma did tell him anything, he told us that his grandma did not tell him anything why he was doing such things.*'

She explains that then they spoke with the father, asked him what *Omissis* said and the father mentioned other things *Omissis* said. *Omissis* did not tell them to them. She stated that they stopped *Omissis* and told *Omissis* to come in again and asked him if there were other things that he wanted to tell them. *Omissis* told them that there were other things that happened however he was afraid to tell them to them because he was afraid that something would happen to his grandmother and he loves her a lot and does not want that such things happen. She explains that '*Then Omissis, with a great difficulty, told us that his grandmother was washing in the shower with the door left a bit ajar. He used to go inside the shower, together with 'nanna'. 'Nanna' and Omissis used to be without the clothes and, on one occasion only, the grandmother told him to go out, however he did not go out from the shower. Then Omissis told us that he used to kiss 'nanna' on her lips, he touch her breast and touch her private parts while the grandma would be without clothes this time. The grandma never asked him why he was doing such things and from where he has learned such behaviour.*'

She explains that on fourth (4th) November, the day after, 'Omissis, again called the fostering social workers and once the social workers told us more things that Omissis had told Omissis. Omissis is the partner of Omissis, Omissis's father.' They called again Omissis in for the disclosure on the day and he told them further things had happened between him and his grandma. He told them that his grandma used to call him in her bedroom - in the grandma and grandpa's bedroom, Omissis used to go there, grandma used to tell him to close the door and to go near her. 'Nanna' was lying on the bed without clothes, Omissis used to stand near her bed and 'the grandma used to take off her clothes - sorry, Omissis's clothes, therefore Omissis and 'nanna', both, would be naked. Then the grandma would put her hands on her private parts whilst saying things like 'Ah, ah.' Then she used to grab Omissis's hands and put his hands on her private parts- Omissis's hands on her private parts, then she used to say again, 'Ah, ah,' and then she used to put Omissis's hands on his private parts. Then she used to move- the grandma used to move her hands up and down on her private parts and the same thing on Omissis's private parts. Omissis continued on telling us that the grandma used to grab him over her, while she was lying on the bed and touch his shoulders and she also used to touch Omissis's private parts. He used to do the same sexual movements that his uncle had taught him. Therefore- by moving his body up and down. Then 'nanna' used to continue doing these things with him whilst he used to do these sexual movemenets, the 'nanna' would do the same, whilst the 'nanna' used to say, 'Ah, ah.' These things happened more than six (6) times according to the minor.

She explained that they asked Omissis how he used to feel about these things, he told them that when his uncle had sexual intercourse with him in his 'buttox', he got hurt however with the 'nanna' he used to enjoy it, although he feels great sense of guilt. He said that when such things used to happen with the grandma, he used to tell them that the grandfather and the uncle used to be at work. He said that first things happened with the uncle and then things happened with the grandma. They did not take place at the same time. The uncle was not aware what 'nanna' did and neither was the 'nanna' aware what the uncle was doing. She explained that on the sixth (6th) of November, Omissis made contact with the Looked After Children Services and he

said that other things has happened. She asked him to bring *Omissis* over to her office and they took another disclosure from *Omissis*. *Omissis* told them that he has another brother who is four (4) years old, who lives together with his mother *Omissis* , who lives in Saint Paul's Bay and his brother's name is *Omissis*. He told them that in Summer 2008, *Omissis* spent some days at his 'nanna's' house because his mother wanted to go out. *Omissis* used to sleep in the same bed, together with *Omissis*, in the uncle's room. *Omissis* told them that when they used to go to sleep, he used to kiss *Omissis* on his lips. He used to take off Sam's trousers just beneath the private part and he used to move up and down on Sam's private part. Then *Omissis* said that he used to take off his trousers, just beneath under his private parts and *Omissis* used to touch *Omissis* on his private part by moving his body up and down. Then, *Omissis* moved towards *Omissis* and slapped him on his face and told him to stop doing such things. *Omissis* told them that he had done such things twice with Sam. She explained that '*Omissis told us that, very often, he thinks about what his uncle has taught him and he told us also that he tried some things on himself; that is, masturbating himself.*' She stated that on the ninth (9th) of November, she called *Omissis* to see how *Omissis* was doing and till this time *Omissis* was not going to school. *Omissis* told them that *Omissis* has said further things, they asked him to bring *Omissis* again and *Omissis* told them that '*there were more naughty things that happened with the grandma and with another girl. He told us the episode of the granma where it happened more than once. He told us that 'nanna' has two doors; she closed the first door, because usually she used to leave it on the second door, 'antiporta'.*

She stated that '*Nanna asked Omissis to switch on the computer and the internet. Nanna used to write 'sex' in the web address and photos of women, naked women used to come up, also pornographic films. 'Nanna' used to see habit of these films. She used to take of fher clothes and takes Omissis's clothes off. 'Nanna' used to lie on the sofa, she used to grab Omissis on her and kiss him on his lips. She used to move up and down, like the same way the uncle had taught him, then she took off Omissis down from the sofa, she opened her mouth and she put Omissis's private part in her mouth. Omissis told us that he also has kissed nanna's private part and Omissis has showed us how he had done to 'nanna' and how*

'nanna' has done to him by showing us with his mouth and he also used a word such as, 'nardahhulha.'

Asked by the Court where he got this word, she replied from the uncle. She explained that *'Then Omissis and 'nanna' said that they used to say 'ah, ah,' during the sexual movements and he also told us that the grandma used to put 'in and out', her fingers from Omissis's buttocks, in fact, Omissis told us, 'in and out, in and out,' and then he told us that 'nanna' turned her face, facing the sofa and Omissis did put his fingers in nanna's buttocks and he, again, said, 'in and out,' and they continue saying, 'ah, ah,' then she used to grab him over her, started kissing him and together they continues doing sexual movements. These happened after the things happened with the uncle. 'Nannu' and 'ziju' used to be at work, then I told him, 'What 'nanna' used to do?' he told us that she used to switch off the PC, put the clothes on and tell Omissis to dress up. Then Omissis told us that other things happened with another minor. The name of this minor, Child Protection has yet hasn't investigated, therefore I can't mention the names. He told us that this happened in the Summer Holidays, where Omissis has kissed this girl and he also has put his hands in the underpants of this girl and the girl has put her hands in Omissis's underpants.'* She is seven (7) years old. He told them that when people and cars used to pass, they used to stop and then he told them that this girl kissed her brother and went to tell Omissis and the girl also touched the private parts of her brother the same way that she has done with Omissis and Omissis told them that this girl tried various times to kiss him, *'nontheless, he used to refute.'* The girl used to tell him *'Ejja ha nizzewgu'* which means *'we do these things.'* However Omissis used to refuse because he knew what this girl was asking and once he went to tell her grandfather that she wanted to marry him and his grandfather laughed. He did not know what was happening. She states that those were the disclosures that Omissis told them. Omissis came various times to Appogg, worried about Omissis's behaviour. He mentioned various episodes that he was waiting for Omissis, Omissis's partner outside the bathroom door, where she used to have her bath, and when she used to get out, he used to tell Omissis, *"I was imagining you naked with water coming over you."* He told them that he started school and he liked a girl from school and wanted to kiss her and that he did

not kiss her but said "*Minnhemm u min hawn, nasal imbusha.*" Omissis said that the boy was masturbating along his room, during the evenings and Omissis told Omissis that he has done things with nanna's dog, he mentioned nanna's dogs and Omissis told him that he tried to do sexual acts with these dogs. Omissis also told them that he is all the time talking about these things and insisitng that he wants to do such things. It was decided that a psychological assessment by Ms Veronica Ellul takes place and it was done, the behaviour continued to escalate.

She explained hat they made an appointment with Dr Mangion at Children's Outpatients and she gave Omissis a '*taras*'. She says that that was last week on eleventh (11th) December and made an appointment with a psychiatrist on Christmas Eve due to obsessions. Omissis used to come to Appogg and telling them how difficult it is to control Omissis especially on these obsessions and on these thoughts because he did not know how to handle him. She said that Omissis yesterday told Rianne that Omissis has mentioned other episodes but Omissis told them "*I don't want to tell you, I don't want to get furthermore into this. It would be Omissis who would tell you,*" and it seems that Omissis mentioned another woman, but he did not say who was it or what age was she. Sh said that they did not get Omissis's disclosure yet. She explained that Omissis is telling them that he has problems to take careof Omissis because his VISA is until the thirty first (31st) of December. On the passport, he has written that he has no permit to work or to get other benefits. Omissis had a family business back in Libya and the family refused Omissis and told him '*If you are going to take care of Omissis you are not ,anymore, like, welcomed in our family,*' and he also, was asked to leave the business. He took his share and he left the business and obviously he is very shocked about the disclosure. They told Omissis to go and see a doctor because he needs to calm down. He does not have anymore money to take care of Omissis and that Omissis's providing the food for him and for Omissis and she is accomodating them. Omissis wants to put Omissis in a home in order to get the therapeutic interventions, not because he does not want to take care of Omissis. If Omissis is not going to receive further help, he cannot handle him. He said, "*I don't know what to do with his boy.*" They made a refereal for kids but there is a

waiting-list and there is no place and are thinking that Kids is the most place that can accomodate *Omissis*'s needs, although they are very concerned about the other children so the psychologist will make a certain meeting with the psychologists to decide what is best for *Omissis*. The psychologists also realised that he could need two (2) sessions therapy during the week and they are not sure if this Programme really works for *Omissis*, considering the other children. She testified that they will investigate further with *Omissis* to see if there are any others involved and if he has touched other minors, because Child Protection would need to get involved. She confirmed the report marked as Document RV which she wrote herself and confirmed her signature on the report. She confirmed the contents and stated that *'Rianne took this with me but however I did, because I am a Child Protection worker.'* She never met the grandmother and neither the uncle. She does not know who the uncle is. She met *Omissis* because she was also very concerned and came to Appogg *'Telling us what she needs to do to handle Omissis.'*

During the sitting dated the twenty first (21st) of January of the year two thousand and ten (2010) *'the accused assisted by Dr Farrugia and the Prosecuting Officer, agree that in order to minimise the trauma to the minor Omissis caused by giving evidence in Court for the second time, all parties agree that the video conference in the case Police vs Omissis will be exhibited in this acse and accepted as evidence given viva voce in this Court room.'* The Prosecution reserved the right of asking a minimum of questions necessary while the defence retained full rights to cross examine the witness.

Marica Mifsud testified on the twenty first (21st) of January of the year two thousand and ten (2010) and presented the translation of the report of Miss Stefania Sacco from Appogg. This translation is marked as Doc. MM.

Veronica Ellul testified on the twenty first (21st) of January of the year two thousand and ten (2010) who explained that she is a clinical psychologist and works at Appogg for the psychological services. She explained that she carried out a clinical interview and used four (4) psychological tests and her conclusion is that the minor

is a credible witness based on the fact that he presented himself as oriented in time and place. He was able to distinguish between fantasy and reality and was sort of lucid during the clinical interviews and presents himself also as a very intelligent child.

She stated that she carried out four (4) sessions with the child and also carried out a session with the father to gather more information. She explained that throughout her assessment she was in contact with the social workers. They gave her information about his disclosures and also what was happening. She states that they carried out a strategy meeting to see sort of the future of this child, they discussed amongst professionals. She confirmed the report is exhibited and marked as Doc. VE. Asked about the first and last time she spoke to the child she said on the ninth (9th) of November of the year two thousand and nine (2009) and on the thirteenth (30th) of November of the year two thousand and nine (2009). She testified that the child at the moment has obsessional ideas with regards to sex and he definitely needs some psychiatric help because he is unable to sleep at night and his father is having difficulties taking care of him, managing him. She said that definitely psychological help as well and that would benefit from a residential programme such as Kids.

In cross-examination, she confirmed that she had four (4) meetings which were all carried out in the span of two (2) weeks. Asked if she felt that she should interview the accused or any member of the family she stated that no, her role was limited to the child to check about his credibility.

Inspector Louise Calleja testified on the twenty first (21st) of January of the year two thousand and ten (2010) stating that on the second (2nd) of November of the year two thousand and nine (2009) she had started an investigation regarding allegations of sexual abuse on minor *Omissis*. On that day, the allegation was regarding his uncle who is a young man. His uncle is 21 years old. She spoke to the minor on that day and had also arrested the person whom the allegations were about and continued

the investigation. In the mean time, she had referred the minor to Agenzija Appogg on the same day because he was telling her certain things, making certain allegations and she needed an expert opinion. She referred him to Agenzija Appogg and was spoken to by social worker Donatella Bruno. He was spoken to on that day and they sent for him the day after on the third and fourth. During these three (3) days the minor alleged that even his grandmother had abused him sexually. At that stage she was informed by Agenzija Appogg regarding these developments. She informed the Magistrate once again that she had this allegation and was issued with an arrest warrant so that she could interview and speak to the grandmother *Omissis* whom she recognised in the Court room. *Omissis* had explained that he used to touch his grandmother's breast and private part whilst they were alone in their home in *Omissis*. She explained that *Omissis*'s mother does not live with *Omissis* and he always lived with his maternal grandparents. So it was him, his maternal grandparents and his uncle *Omissis* in the residence. *Omissis* explained that when he was abused by his grandmother, his uncle and his grandfather used to be at work. He also explained that there were instances where he used to watch a naughty film with his grandmother whilst the other two (2) were at work as well. When asked about these naughty films, he used to refer to them as '*naughty women without clothes having sex*'. He said that whilst they used to watch these naughty films, his grandmother used to remove her clothes and she used to remove the minor's clothes and she also used to remove the minor's clothes and they used to act together sexually, in a sexual manner. She testified that the way he spoke to them it was like he was participating in these sexual activities, for him it seemed to be the norm. When he was talking about his grandmother it seemed like he was talking about someone he really loves and loves even to the extent of doing sexual things, activities with the person. He also said that regarding what happened between him and his grandmother, he used to put his private part in his grandmother's mouth and also the grandmother used to encourage him to lick her private parts. So it is the minor doing oral sex on the grandmother and the grandmother doing oral sex on the minor. He said that when he used to lick the grandmother's private parts, she used to say "*ah ah*". She testified that this is what the minor told them. He also said that

the grandmother used to put her finger in his 'buttocks' and make him do the same to her. She confirmed that by 'buttocks' she means 'anus'. He emphasised that the grandfather and uncle were at work. She interviewed and interrogated *Omissis* about all these allegations who denied all allegations and had to release her on police bail because she suffers from severe diabetes. On the sixteenth (16th) of November whilst *Omissis* was testifying in the case 'Police vs *Omissis*', he revealed once again under oath all that had been told to her and the social worker with regards to the allegations of sexual activities with his grandmother and he explained everything. On that day they noticed that he even explained that what was normal to him, he was trying to do it even young children which he came in contact with. In view of these allegations, she once again spoke to *Omissis* and arraigned her in Court with the accusations of defilement and related offences. Reference was made to the statement marked as Doc. CSH2. She explained that the first statement was taken on the third (3rd) November two thousand and nine (2009) after Mrs. *Omissis* was duly cautioned in the presence of WPS 209 and WPC 238. She released a statement, a signed statement and the Inspector recognised her signature, the accused signature as well as the signatures of WPS 209 and WPC 238. Subsequently she released *Omissis* on police bail and was called in for interrogation once again on the nineteenth (19th) of November of the year two thousand and nine (2009). She released another statement on that day after being duly cautioned in the presence of WPC 238 Monica Bartolo and the statement is marked as Doc. CSH 3 and recognised her signature, *Omissis*'s signature and the signature of WPC 238. She testified that the accused denied all allegations of sexual abuse in both statements.

In cross-examination she confirmed that the minor told her that he used to be shown naughty films by his grandmother. She said that if she is not mistaken on the internet. She told them that she does not know how to use the computer but that the Inspector never questioned. She told her that can switch on the computer but she said she does not know how to go about it. She did not ask the minor about this, saying that if she is not mistaken she had spoken to the minor before she got this

information but told the psychologist. She said that she did not come in contact with the minor again but informed the social worker about it.

On the fifth (5th) of March of the year two thousand and ten (2010), the parties agreed to accept the testimony of the alleged victim *Omissis* as given in the proceedings *Police vs Omissis* and that this would constitute the examination in chief and that the alleged victim, the minor *Omissis* would only be exposed again for cross examination.

The minor *Omissis* gave evidence on oath by means of a video conference. Dr Farrugia for the accused, prosecuting officer Inspector Louise Calleja and Dr Roberto Abela for the parte civile agreed that it is an uncontested fact that the minor *Omissis* was giving evidence in respect of '*nanna Omissis*' who is the accused present in Court.

The minor **Omissis** testified on the fifth (5th) March of the year two thousand and ten (2010) stating that nanna *Omissis* speaks to him in English and he understands everything. The Court reminded him about when he testified about uncle *Omissis* and he had stated certain things about nanna *Omissis*. The Court told him that she will speak to him about nanna *Omissis*. Regarding the computer, he stated that the grandmother told him to switch on the computer and he switched it on. He confirmed that the grandmother does not know how to switch it on and that he thinks that she now knows. She told him to go on the internet and she searched. She wrote 'S E X' and stated that '*mbaghad bdiet tara r-ritratti tal-pastazi. Rat per ezempju nisa gharwenin u film imbaghad. Imbaghad ghamlet hekk, nezghet il-hwejjeg imbaghad.*' Asked what was in the film, he answered '*ibusu, nisa gharwenin bla hwejjeg.*' He confirmed that there were men in the video who were not dressed. He said that she typed 'S E X'. This happened more than once, he does not know when but he thinks it was winter. Asked if it happened more than ten (10) times, more than once but does not know how much, but much more. He says that it happened several times, not everyday but almost everyday. He does not know how long but till the film ends

and she used to switch it off. Asked what his grandma use to do when there were photos, he answered that she used to see them and then does the film. He stated that he undressed his grandmother, and she undressed him and then went on eachother without clothes, then he kisses her and even she. He said that they were on the sofa and kissed her on her lips, then touched her breasts, her part. In his words '*U mbaghad missejt sidirha, imbaghad il-parti taghha, ta' quddiem hekk 'il fuq u 'l isfel u hi l-istess u mbaghad hi b'halqha, hekk fethet halqha u ghamlitieli fil-parti ta' quddiem, hekk tikka 'l gewwa, taghmel hekk. U mbaghad jien ghamilt l-istess. U mbaghad flokk ghamilt hekk, ghamilt hekk. U mbaghad hi dahlet subajjha fil-parti tieghi ta wara, hekk 'l fuq u 'l isfel u hekk, jien ghamilt l-istess; dahhalt subajja u l-istess 'l isfel. U mbaghad ergajna gejna fuq xulxin u mbaghad ergajna. Busejna u messejtilha sidirha . . .*' He explained that '*Bdejt inbusha u mbaghad messejt sidirha u l-parti taghha fuq quddiem 'l fuq u 'l isfel hekk u hi l-istess. U mbaghad hi tfiet il-computer u hekk, libset u mbaghad marret tiftah il-bieb terga.*' He stated that they were alone when they use to do this. Asked if he spends time with his grandfather he answered that they sometimes use to go out. He used to enjoy it more with his grandmother. Asked if when he was alone with his grandfather he told him what was happening, he answered no because his grandmother would be angry. Stating that she told him that she will be angry if he tells someone. He stated that she use to tell him not to speak about these things, that she would shout at him if he does. He stated that she did not shout at him when she told him not to tell anybody. Asked if he thought it was a good idea to tell his grandfather, he replied that she would shout at him if he tells someone. Asked how old he was when these things started with the grandmother, he replied seven (7) or eight (8) but thinks more. Asked if he had done holy communion when these started, he did not know and does not know which class but was about seven (7) or eight (8). He stated that he has ten (10) years confirmed that they are talking about three years ago and that in these three (3) years she never shouted at him, that she would shout if he tells someone. Asked if he ever thought of telling someone, a teacher or priest, he replied never. Asked why he is saying these things when the grandmother is saying that she never did these things, he replied '*Mhux veru. Jien il-verita qed nghid.*' Asked if he ever fought with his grandmother, he replied no.

Asked how he felt about his grandmother, that last time he said he loved her, he replied '*Ija imma fuq l-affarijiet fhimt? Ghalhekk.*' Asked if these really happened, he replied yes. He was shown a photo brought by the accused and asked if he remembers it, he replied that he recognises himself. He thinks the photo was taken at school and showed it to his grandmother. He confirms that he knows that she keeps his photo in her purse, he always saw it there.

Asked again if someone told him to say these things or whether they actually happened he replied that his father had a video, he went to his place and he asked him to tell him what happened, and he said the truth. He stated that '*Jigifieri biex nghid per ezempju hekk, mhux jghidli per ezempju: ghid hekk u hekk, per ezempju hekk, nghidlu li hrigt. jghidli fejn fhimt? U jien ghidtlu l-affarijiet.*' Asked of whom was the video, he replied not theirs. Asked where he found the video, he replied he does not know and that he never saw it. He stated that his father told him to say what there was. He first told him about uncle *Omissis* then about the grandmother. Asked if he was saying the truth about his grandmother or if he was lying, he replied that the truth. The Court asked if he knows the difference between saying the truth and a lie and that he cannot lie about the grandmother but has to say the truth, he answered the truth. He confirmed that they really took place. Asked if his father told him to say these things, he replied that no one told him to say and that said the truth.

On the fifth (5th) of March of the year two thousand and ten (2010), **Marica Mifsud** presented a copy of the testimony given by *Omissis* on the thirteen (13th) of November two thousand and nine (2009) in the case *Police vs Omissis* marked and exhibited as Doc. MM.

In the testimony given by the minor *Omissis* on the thirteenth (13th) of November of the year two thousand and nine (2009) in the acts of the case '*Pulizija vs Omissis*', he testified that he is ten years old and use to go to *Omissis* school and does not know if he changed. He is in year six (6) and his teacher is Ms. Calleja. He use to live with his maternal grandparents and uncle. His uncle is *Omissis* and has twenty one (21)

years. He said that always lived there from when he was a baby till today. He confirmed that he use to go to the *Omissis* school since it is close to where the grandparents live. He said that once he was sleeping in his bed and uncle *Omissis* rented a bad DVD and inserted it in the DVD and was watching it on the television. Asked what the DVD was showing he replied kissing, some with clothes and some without, meaning they were naked. He does not know how long it took. Then he, referring to the uncle put it in the DVD and was watching it on television and called him to watch it with him and if he sleeps, he wakes him up again and then was watching it with him. He said that once he was in his bed and he, referring to the uncle was in his bed with his girlfriend¹⁰ kissing her under the quilt and he turned his face the other way. He said that once he was on his bed and the uncle was on his bed and he was teaching him '*beda jaghamel hekk mal-pillow u beda jbus il-pillow.*' *Omissis* was wearing his clothes. He was on the quilt when he was teaching him. He was moving and kissing the pillow.

He stated that once he was on the bed and he was on his bed and the uncle came on his bed, went on him and started kissing his lips, he grabbed his hands and grabbed the front part, was moving the minor's hand and '*mbaghad hu ghamel tieghu f'tieghi, beda jcaqlaq idu u mbaghad iz-ziju ghamel il-parti ta' quddiem gol-patata tieghi, bdejti inwegga u bdejti nghajjat, 'Ah' imbaghad ghamel il-parti ta' quddiem f'halqi, beda jaghamel up down up down u mbaghad qbadt nibki u mbaghad hareg qisu ilma u mbaghad mar f'postu biex jorqod.*' He says that he had eight (8) or nine (9) years and does not remember if he had done holy communion when this happened but thinks he had. He was in year 4 and the teacher was Ms. Grech. Asked if this happened once, he replied that more than once. Asked when it used to happen, he replied when he did not have school, it was Summer. The grandparents were asleep since it was night. The beds are next to eachother because he used to fall so they did them next to eachother so he does not fall. He does not remember if he was wearing a summer or winter pygama but was dressed. Asked if there were quilts or a sheet, he answered that he thinks sheets. He does not remember on which day of the week it happened. It happened

¹⁰ The minor used the word 'gharusa'

more than once a week but does not know how much. Asked if he told him that he was hurting he answered that he only said 'Ah' and then put it in his mouth. Asked if he stopped when he said 'Ah' he answered that he stoped and put it in his mouth. This happened more than once that he inserted his private body in his anus. He hurt everytime and said when he used to hurt he used to put it in his mouth. Asked if these always happened in the same place, he answered yes.

He said that once he was on his bed and the uncle was on the uncle's bed, he removed his clothes the shorts or trousers and panty and was doing 'up and down' with his front part to teach him so that when he finds somewhere alone he does them himself. Asked if he was speaking to him while doing this, he said no but he was teaching him and he was trying it on himself saying '*Hu- jien, meta kont qed naghmilhom, wahdi.*'

He then stated that regarding his grandmother, he was once on the bed then corrected himself, he was with his grandfather downstairs. He was downstairs but not sure if he was with his grandfather. He was downstairs, went near his grandmother who was sitting on her bed with clothes and he was with clothese, he went near her, pushed her, jumped on her, started kissing her lips, touched her breasts and her front part. He stated that he did what his uncle taught him. She told him to stop but he continued and she continued with him.

Asked how many times this took place, he replied more than once. He stated that '*Qbadt imbuttajtha fuq is-sodda, imbaghad qbist fuqha, bdejt inbusha, missejt sidirha, missejt il-parti ta' quddiem u mbaghad qaltli, 'Ieqaf', komplejt u mbaghad kompliet mieghi.*' He stated that '*U mbaghad bdejt incaqlaq hekk.*' asked if he meant he was jumping on her, he replied yes. The grandmother continued kissing him and doing this. He does not know how long but less than half an hour.

He said that once his grandmother removed her clothes and went into the shower to shower, he went into the shower, started kissing her, touched her breasts and

touched her front part and she was telling him to stop *'leqaf'* and when he continued, she continued. She touched his front part. Asked if this shower occurrence happened once, he replied that more than once.

Asked if he sometimes plays on the computer, he replied yes. The computer is of the grandfather. Asked if something ever happened, if he saw something on the computer he replied no that once he was downstairs with his grandmother, the grandmother closed the front door, told him to switch on the computer, he switch on the computer, told him to go on the internet, he went on the internet and she *'kitbet lil pastazi.'* She was seeing photos of naked people and after use to watch a film, then she use to undress, removed his, and he went on her, she kissed his lips and was touching his front part and opening her lips and *'taghmel il-parti ta' quddiem'* and continued explaining *'U mbaghad bdiet taghmel hekk u mbaghad jiena ghamilt l-istess, ftaht halqi u ghamilt l-istess u bdejt naghmel hekk u mbaghad dahlet subajjha, taghha, gol-patata tieghi, bdiet taghmel dak u jien bdejt naghmel dan. Sorry ta', hallejt naqra, meta ghamilt halqti mal-parti ta' quddiem, hi kienet hekk u mbaghad bdiet tghaffeg qisu qed tghaffeg ras. Jien bdejt nghajjat, 'Ah,' u hi bdiet tghajjat, 'Ah.'* Imbaghad dahlet subajjha taghha gol-patata tieghi u bdiet taghmel hekk, iccaqlaq up and down. Bdejt nghajjat, 'Ah.' u mbaghad jien bdejt naghmel l-istess u hi kienet hekk. Imbaghad dahhaltha, bdejt naghmel up and down ukoll-' He continued explaining *'Fil-patata u mbaghad bdiet tghajjat, 'Ah.'* Imbaghad regghet ghamlitli fuqha, bdiet tbusli xufftejja, ticcaqlaq u messet il-parti ta' quddiem u tmur titfi l-computer.' Asked what his grandmother wrote on the computer he replied *'Sex. S-e-x.'*

He says that these happened at the grandmother's house downstairs when the grandfather and uncle were at work where there is the television and the outside door *'il-bieb ta' barra'*. When she was ready she dressed up and went to switch off the computer, he dressed up and she reopened the door. He explained that when she had told him to switch it on, she closed the front door *'bieb ta' barra'*. These happened more than once. He does not remember in which class he was and who the teacher at the time was. He does not remember how old he was. Asked if these

happened when he got to know who his father is, he said that when he did not know him and when he knew him. He said that when he had his 10th birthday in May but his father knew him before, when he was in year 5. Asked if these happened this Summer he replied no and if in Christmas he said no, the Court then clarified that it is not referring to Christmas day but to Christmas time, he said yes. He does not know when it happened last with the uncle but confirmed that this Summer.

He said that he has more to say. He made reference to *Omissis*, his father's friend and said that they were in the balcony, he pushed *Omissis*, jumped on her, kissed her lips and touched her. The Court asked if he touched her stomach and he said yes and then was kissing her and she pushed him and told him '*It-tfal ma jbusux hawn ghax jistghu jieħdu infection u mard. Imbusu hawn, hawn u hawn. Imbagħad bdiet tghidli, hallini u hekk.*' He stated '*Imbagħad komplejt u mbagħad imbuttadni u qaltli, 'Hallini.*'

Regarding his four (4) year old brother *Omissis*, he said that he was three, he referring to his brother removed his trousers and pants and went near the grandmother since they were playing, then he got tired playing and went to sit on the stairs. His brother removed the panty or shorts, or trousers, went near the grandmother and told her '*Ara nanna*', then went next to him and the grandmother was shouting at him to dress up but he did not obey and went next to him and was doing '*up and down*'. Then he slept with them and while the grandparents were downstairs, they were kissing on the lips, '*nezzajtlu s'hawn, nzjat tieghi u bdejt naghmel hekk u hekk- u mbagħad għamilna ma' tieghi, l-istess, minn dawn- għamiltu hekk u mbagħad hu libes, dar, nehhejtlu s'hawn, bdejt naghmillu hekk imma mhux il-patata, mhux it-top, ix-xaqq. U allura ġieli mmur nilgħab mat-tifla*' Asked how old the girl is, he said she never told him how old she is. Her name is Janice¹¹, her brother Sharadin and grandfather Jany and big brother Brandon and another Lydan. She lives near his grandmother's house. He said that there were no people and cars and sat down, explaining '*poggejna u bdejt imbus hawn, missejt il-parti ta' quddiem dahhalt idi u*

¹¹ From the videorecording the Court understood that the name is 'Shanice' not 'Janice' as indicated in the transcript.

mbaghad din ghamlet l-istess dahlet idha u jekk jghaddi xi hadd, nies, jew karozza, nieqfu. Imbaghad darba marret tpoggi ghax hemm hanut hdejna u kien maghluq u poggiet u qalti, 'Isma 'l hawn ha nkellmek,' Mort nara xi trid. Qaltli, 'Jien u hija,' il-kbir brandon, qieghed Year 6, meta kien Year 5, qaltli, 'Ahna bdejna, taparsa qeghdin nizzewgu, bdejna nitbewsu u missejtlu l-parti ta' quddiem,' He said she is in year 2. He also said that once there was her mother, Sharidon the baby and her grandparents and they sat near them and she was telling him 'Jien irrid nizzewgek.' and he told her grandfather who started laughing.

Asked if he ever told someone about the things that happened with *Omissis*, he replied no. Asked how the police got to know he said that he first told his father, then Welfare and then inspector Louise Calleja. He told the same people about his grandmother, first to his father, then welfare and then Inspector Louise. He said that *Omissis* use to tell him not to tell anyone because he will shout at him. His grandmother also told him not to tell anyone. Asked if his grandmother is Maltese, he replied that she is English. He speaks to her in English and she understands a bit of Maltese. Asked if the things that happened with *Omissis* only happened twice he replied that more than twice.

In cross-examination during the same sitting, he said that first the things with *Omissis* started before those with the grandmother. He was in about year 5 or year 4 when these started with the grandmother. He recalled another incident exclaiming '*III...insejt nghidlek tan-nanna*' and stated that once he was in his bed and his grandmother removed her clothes in her room. He explained '*Marret fil-kamra taghha, idha mal-private taghha ta' quddiem, bdiet taghmel hekk, imbaghad bdiet tghajjatli, mort nara xi trid u meta dhalt qaltli, 'Ghalaq il-bieb,' u ghalaqt il-bieb,' u ghalaqt il-bieb u sibtha taghmel hekk. Imbaghad ghamlet idha ma taghha, hekk u mbaghad ghamlet idi, tieghi stess, imbaghad nehhiat il-hwejjeg tieghi, ghamlitli fuqha, bdiet tbusli xufftejja, messitli l-pari ta' quddiegh regghet u bdiet ticcaqlaq u bil-bieb maghluq.*' He said that the grandfather and uncle were not at home. It was in the morning and in summer. He explained that '*Le jien mort. Qaltli biex ng halaq il-bieb, mhux 'sakkar', 'ghalaq'.*' No one was at home, only

the dogs. Asked if things ever happened with the grandfather, he replied no. It only happened with people he mentioned. He never spoke about this with his grandfather and mother. He does not know how many times he sees his dad. He was nine years close to ten when he got to know his father. He told him about three weeks ago. Asked how many times his father sees him, he replied that he does not know and that '*Issa three weeks li rajtu issa*'. Asked how many times he use to see his father per week when he got to know his father, he replied '*Heqq, meta kien irid.*' but does not know when. He confirms that when he got to know his father he used to go see his father but not sleep at his father's house. He said that as far as he knows, his mother should see him on Saturday and Sunday but she never went for him. She only went for him about two times, stating for example a Saturday and then another day not that Sunday but another Sunday. Sometimes she comes to see him at his grandparents house but not always. He never went to sleep at his mum.

Asked how he told his father he said that his father asked him and he told him. The grandfather never saw him sad. The grandfather did not know. He said '*Hu qatt marani mdejjaq ghax jien dejjem kont niehu gost.*' Asked if he used to enjoy the things that happened with *Omissis* he replied no, but stated '*Kont naghmel naqra man-nanna, kont niehu gost.*' Asked how his grandfather never realised that he cried and had his face with tears, he replied that no because they were asleep and when he woke up he was not crying. He never tried to tell his grandfather because his uncle told him that he would shout at him if he says. He said that his grandfather takes him out, to swim, at Splash and Fun but he never told him. He never told him about what was happening with his grandmother. Asked why he did not tell his grandfather when they were alone, he said that he was scared that his uncle would shout at him. He was scared from his grandmother.

Regarding the uncle, asked about when he was under the quilt with the girlfriend, he said that first they were kissing on the bed and then stayed under the quilt. He said that he saw them kiss and heard '*Mwa mwa.*' Asked about when *Omissis* was on the quilt, he said that '*Dak kien fuq is-sodda, beda jaghmel hekk fuq is-sodda u beda jbus il-*

pillow, biex jaghllimhomli,; He says that his uncle was teaching him and '*mbaghad beda jaghmel hekk mal-parti ta' quddiem,*' Asked regarding '*up and down*' if his uncle was with shorts and if he was covered, he replied that he removed his panty, shorts or trousers or jeans he had on. Asked if he ever saw something like what he said with his dad, he replied no. He recognised the accused *Omissis*.

Martin Bajada gave evidence on the fourteenth (14th) of April of the year two thousand and ten (2010) where he explained that he was given a video conference cassette in the case Inspector Louise Calleja vs *Omissis* to make a digitilised copy of it. He presented his report including the digitilised copy and stated that he is returning the video conference cassette. The report is marked as Doc MB and the digitilised version of the video conference is marked as Dok MB1.

WPC 238 Monica Bartolo testified on the third (3rd) of November of the year two thousand and nine (2009), a few days before they had a report regarding sexual abuse on a ten (10) year old *Omissis* and investigated the alleged abuse perpetrated by his uncle *Omissis*. Donatella from Appogg called them and told them what *Omissis* revealed that even his grandmother *Omissis* whom WPC 238 recognised in Court also abused him sexually, showed him porn films, touched his private parts, had seen her naked in the bath many times. On the third (3rd) of November of the year two thousand and nine (2009) she and WPS Rachel Aquilina went to *Omissis* at *Omissis*'s address and they arrested her with an arrest warrant. She testified that there were two surgents from the Forensic Division to take phoots, one of them was PS 1328 Brimmer. She was present for two statements, the one given on the third (3rd). She said that Inspector Louise Calleja sent her, referring to the accused with Police Bail and she came back on the nineteenth (19th) she says if she is not mistaken on the nineteenth (19) of November and she made another statement on the nineteenth (19) as well. She said that when they arrested her she was given the caution immediately and she was cautioned again before the statement. She believes that she signed the statement but she denied all allegations against her. She was present on the third (3rd) November, she was sent with Police bail and came back on

the nineteenth (19th) of November and she made another statement on the nineteenth (19th). She confirmed that she was suffering from diabetes. They took her to the policinic to get her prescription for insulin so she could take it during her time at the lock-up.

WPS 209 Rachel Aquilina testified on fourteenth (14th) April of the year two thousand and ten (2010) stating that on the second (2nd) November of the year two thousand and nine (2009), the Vice Squad received a report where a certain Omissis together with his father *Omissis* called at their officers where they informed them that while the child was being taken care of by his grandmother and his uncle at the home in *Omissis* he was sexually abused. On this report, the child was referred to Agenzija Appogg where then on the third (3rd) November of the year two thousand and nine (2009) social worker Donatella from Appogg informed Inspector Louise Calleja that Omissis had alleged that his grandmother had also sexually abused him. The grandmother's name is *Omissis*. On the same day the third (3rd) of November at around 11:45 she together with WPC 238 Monica Borg and forensic experts at the Depot called at an address in *Omissis* that *Omissis* was arrested by means of a warrant where she was brought to the Vice Squad for further investigations. On the same day she was also present for a statement released by *Omissis* where together with WPC 238 Monica Bartolo, the Inspector Louise Calleja duly cautioned *Omissis* and she chose to sign the statement. She was not involved in other investigations and statements that were taken. She recognised the accused.

Veronica Ellul testified again on the fourteenth (14th) of April of the year two thousand and ten (2010) stating that she is a 'clinic sociologist' and works at Appogg in the 'Sociological services'¹². She stated that she administered a '*draw a person test*' where the child was asked to draw a person which is usually a projection of the person himself. Then she asked the child also to draw a person of the opposite sex '*from the first join*', she administered a draw a family test where the child drew not

¹² When Veronica Ellul testified on the 21st, January, 2010 and stated that she is a clinical psychologist and works at Appogg for psychological services.

his own family but a different family and she said that she is going to present the graph of Millon Pre-Adolescent clinical inventory which is a personality test. She explained that from the first test the 'draw a person test' the fact the drawings are very small, usually children drawn in the middle of the page and sort of fill up the page, in this case the child presented small drawings which indicates '*may be low self-esteem, maybe as well depressive traits.*'

She said that children usually draw a person of the same age and same sex, *Omissis* drew a person of the same sex however a person much older than himself. She testified that this could mean that '*maybe he is not accepted among his . . . as a child and so feels the need to grow up, in fact he presented a person of twenty two (22) years of age whilst hi is ten (10).*' He said that the other drawing as well of the opposite sex indicates the same thing, also the 'draw a family test' usually sort of children when asked to draw a family usually draw their own family. In this case, he did not which could mean that he feels maladjusted in his own family unit. There are many people in this family so it might indicate some confusion, he also had difficulties identifying the roles each individual in the family had. For example, he mixed up who is an aunt, who is an uncle so that indicates a bit of confusion with regards to the family.

Asked by the Court about the borders and boundaries of the child, she replied that he might have difficulties of keeping his boundaries with other people thinking sort of that a family is made of many people and not sort of '*annular family*'. There is no distinction between gender as well, even in the other drawings, sort of all males and females are drawn in the same way. She explained that she also administered PACI which is the Pre-Adolescent Inventory, the high scores in this test were mostly that *Omissis* had a type of personality which is active dependent, which means that he relies on others rather than himself to receive gratification and avoid pain. So maybe he could have learned that to receive rewards he has sort of act out in a specific way, this behaviour he will receive rewards for it. He finds it difficult to rely on himself to receive rewards. Other sort of anxiety scale was quite high and the obsessive compulsive thought was quite high in the test, in the clinical interview in fact

Omissis has obsession in thoughts with regards the sex and he keeps thinking about sort of sexual activity. However the reality scale was quite low which means that he knows how to distinguish what is reality from fantasy, so there is no indication that the child is delusional. She also administered the child appreciation test, the child is presented with a series of pictures and the child has to create stories and usually it is a projection of the child feelings. What emerged from this test, which she said she will not present the stories here because it is a projective test, *'was the fact that is a lot in his stories.. which is most evidence is the fact of trickery and deceit where somebody the character is tricked into something and the main character is left with a feeling a bit sad, because he was tricked into doing something and betrayed as well'*. She states *'In fact also as well another story emerged from draw a family test, I asked him specifically sort of who is the person who is the least happy in this family and he pointed at a particular figure, a girl and he related a story which says sort of that this girl was deceived, tricked by family members and sort of this person, this character felt sad because she wasn't expecting that sort of family who are close to him would actually trick him.'*

Asked if she is still holding sessions with the minor, she said no. She said that this was an assessment so held with the child and one session with the father. Asked by the Court if she knows who is conducting his survey, she replied *'No actually he does need obviously therapy, now we were wondering whether sort of since proceedings are undergoing whether therapy could start.'* The Court stated that yes his testimony is ready from both sides and that therapy needs to start immediately. The witness stated that they identified a Sociologist Nadia Abdilla who will conduct therapy. Documentation were exhibited as Doc. P1,P2, P3 and P4. The witness confirmed that these were made by Omissis in her presence.

WPS 209 Rachel Aquilina testified on nineteenth (19th) of May of the year two thousand and ten (2010) stated that *'...accepted to sign and present with us there was also WPC 23 and I'm recognising my signature on every page.'* She recognised the accused in the Courtroom.

WPC 238 Monica Bartolo stationed at vice squad testified on the nineteenth (19th) of May of the year two thousand and ten (2010) and testified regarding Doc. CSH 2 where she stated that on the third (3rd) of November of the year two thousand and nine (2009) she was a witness for a statement given to the police by *Omissis* who was arrested. She was given the caution and she chose to sign at the end of the statement. On the nineteenth (19th) of November she released another statement, was given the caution and she signed the statement.

Omissis testified on the twenty fourth (24th) of June of the year two thousand and ten (2010). He stated that he came first to Malta about sixteen (16) years ago but did not marry. He has a child, *Omissis*. He got to know that he is *Omissis*'s father, not last December but the one before. He knew that he had a child six (6) years ago but searched and did not find them. He recognised the accused in Court. The child use to live with his grandparents. The grandfather's name is *Omissis*. He says that the child lived in *Omissis* and then went to live with him for a bit and explains '*mbaghad jiena thassartu u thassart lilhom fl-istess hin minhabba li hadtu minn ghandhom u qisni maridtx nifridhom minn xulxin. U jiena kelli l-kura u l-kustodja. Issa jiena ma xtaqtx illi t-tifel jinfired minn maghhom hekk.*' He says that he went to speak to them and told them that the child would live with them but he would collect him on Saturday evening and return him on Sunday evening and they started doing this.

He went to Libya to visit his sick father and spent two (2) weeks and when he arrived, he called him telling him that tomorrow he would come to see him. When the child went out he did not want to go in the car with his father, he was screaming and shouting. He says that *Omissis* went out and started uttering '*kliem baxx*', she pulled the minor and took him home and closed the door. He went out of the van and knocked, and the child opened. He explained '*Ghidtlu; x'gara? Qalli: xejn, xejn, xejn. Ghidtlu: x'gara? Ghidli x'gara. Xejn. Din Omissis dahlet qisha faccata hekk u t-tifel baqa' hdejja. Ghidtlu: Omissis ilbes ha niehdok dawra u nurik l-affarijiet li gibtlek u hekk. U minn hawn u minn hemm hareg. Qbadt uhadtu d-dar tieghi jiena. Morna d-dar. X'gara? Ma*

ried jitkellem b'xejn. Xejn, xejn. U ghadda naqra hin, kien qed jara t-television hdejja. Jiena nghix ma mara din kienet ghand it-tifla taghha. U wara giet u qaltli: x'gara? U ghidtilha: lanqas jiena ma naf x'gara. Hekk ghamlu, hekk ghamlu.' He explains that he went to watch tv and there was him in the sofa aand the witness had a pendrive. He says that he got it from Libya, he had a programme on the computer and wanted to put it on his here. When he put it out and was near the computer, he asked him what it is. He testified that:

'Ghidtlu: din Omissis, nghidlek x'inhil din? Qalli: x'inhil? Ghidtlu din jiena qabel nitlaq minn hawn, mhux gejt ghidlek li jiena sejjer? Qalli: iva. Ghidtlu: dhalt ghand in-nanna jiena, ghax nidhol ftit fejn il-bieb, qalli: iva. Ghidtlu: din qed tarha hawn? Qalli: iva. Ghidtlu: ghafastilha din il-butuna u tfajtielek taht is-sufan. Ghidtlu: din toqghod iddur god-dar u issa nkun naf il-verita kollha b'din. Ghidtlu: ghax issa jien meta gejt ghalik, ghidtlu: rajtni dhalt jiena gewwa? Qalli: iva. Ghidtlu: dak il-hin jiena tbaxxejnt, hadtha u tfajtha fil-but. Ghidtlu: issa din tghidtlil l-verita kollha. Issa jiena li kelli f'rasi li t-tifel jghidli x'gara ghal dak il-hin, ghal x'hiex ghamel hekk. U dan it-tifel kif ghidtlu hekk iggennen. Taghamiliex, taghamiliex, taghamiliex u jghajjat u jwerzaq! Nghidlek jiena, nghidlek jien. Ghidtlu: all right, ha naghmlulha hawn u ghidli int. Jiena dak kollu, ghax hu t-tifel la papa ma jghajjatli u la daddy, xejn. Ghax dawn hekk qalulu, biex lili ma jghajjatlix dawn l-affarijiet. U ghidt jiena nohodha bil-kwiet sakemm jidra t-tifel. U dan it-tifel qalli: issa nghidlek kollox. Ghidtlu: ok, ejja ghidli. Jiena stennejt nisma ghal x'hiex ghamlu hekk u ghal x'hiex ma jghidlix papa u dawn l-affarijiet. U beda gej bl-istorja ta zijuh...'

He stated that the minor told him that the uncle use to do him 'affarijiet pastazi'. He stated 'Qalli: ghax iz-ziju kien igib il-films pastazi, kien joqghod jarhom u kien darba minnhom gie jqajjimni. X'jigifieri? Jiena l-verita qatt ma stennejt li ha nisma dan il-kliem ghax qisek tinhasad x'hin tisma affarijiet pastazi u hekk. Qalli: ghax hu jmur jikri l-films u jgibhom u joqghod jarhom. Qalli: u jigi jqajjimni biex noqghod narhom mieghu. X'iktar? U qalli: u darba minnhom iz-ziju gie jqajjimni, qalli u tela' fuqi u beda jghamilli l-parti tieghu ta' quddiem u qalli: jdahhal idejh fil-parti tieghi u jdejja fuq il-parti tieghu u jibda sejjer hekk.' The Court commented 'U hawn hekk ghamel mossa b'idejh tiela u niezel.' 'Bhal meta wiehed qed jimmasturba.' He explained 'Ghidtlu: x'iktar? Ghidtlu: inti bis-serjeta qed

titkellem? Vera hekk? Emminni anke issa taqbadni r-roghda x'hin niftakar x'qalli. U ghidtlu: inti bis-serjeta qed tghid? Qalli: iva. Ghidtlu: x'iktar? Qalli: u z-ziju mbaghad qalli: inezzani l-qalziet, qalli: u jaghmilli l-parti tieghu ta' quddiem mal-parti ta' wara. Ghax hekk beda jkellimni, parti ta' quddiem u parti ta' wara u hekk. U ghidtlu jiena. Qalli: imbaghad darba minnhom bdejt nibki. U jiena ghidtilu: kif jista' jkun Omissis? Ghidtlu . . . Qalli: bdejt nghajjat. Ghidtlu: imma n-nanna ma semghetkx u n-nannu? Kif jista' jkun? Qalli:le, ghax zammejt halqi u hu zammni u qalli: ara ma tghajjatx, ara ma titkellimx ghax nghajjat mieghek. Qalli imbaghad bdew sejr in l-affarijiet li z-ziju jaghmel mieghu, jaghmilulu fil-parti tieghu ta' wara u mbaghad jaghmilulu go halqu, johroglu qisu ilma, hu jhalli liz-ziju jghaaddi s-sodda tieghu u jobzoq fl-art u affarijiet. Jiena ggennint, il-verita. Ghidtlu: kif jista' jkun in-nanna ma tafx b'dawn l-affarijiet? Kif inti qatt ma mort fuq in-nanna? Mhux il-hin kollu tkun man-nanna u z-ziju xoghol? Ghidtlu kif ma mortx fuq in-nanna u tghidilha li z-ziju ghamilli, ghamilli, ghamilli. Qalli: ghax qalli nghajjet mieghek. Ghidtlu: imbilli jghajjat mieghek, ma qallekx ha jsawtek. Ghidtlu: gieli sawtek? Qalli: le. Ghidtlu: mela ma ghandekx ghalfajn tibza. Stajt tmur fuq in-nanna u tghidilha jew in-nannu. U jiena l-verita, daqshekk, intlift dak il-hin.' He told Omissis who he lives with to come and listen since she was cooking. He states 'il-verita ggennint. Hriġ fil-gallarija niehu sigarett. Ghidtilha: Omissis, jiena ha mmur ghalih dan iz-ziju tieghu u illum noqtlu. Ghidtilha: illum noqtlu. U bdiet izzomni Leli u qaltli: tiggenninx. Qaltli: dawn affarijiet tal-pulizija, affarijiet hekk. qaltli: tiggenninxx. Ghidtilha: xejn, ha mmur ghalih daqshekk. u minn hawn u minn hemm, jien ghandi habib pulizija u fakkritni Omissis u qaltli: mur ghand Omissis. Pulizija habib tieghi joqghod iz-Zurrieq. Qaltli: mur hu parir minn ghand Omissis ghax Omissis jifhem f'dawn l-affarijiet. Qbadt, ghidtilha: all right. U mort ghand Omissis. Dan mort 'l ghada jiena ghand Omissis ghax dak inhar ikkalmajna hekk u ghaddiet. Mort ghand Omissis, kif ghidtlu lil Omissis qalli taghmel xejn, it-tifel issa, dan meta gibtu kien il-hamis, jien ghidt lil Omissis l-Gimgha. Is-Sibt imissha ommu jew il-Hadd, jew Sibt jew Hadd kienet suppost tiehdu u Omissis qalli: ara ma taghtijulhomx. Qalli: issa mmexxik jien. Qalli: issa gej is-Sibt u l-Hadd, qalli: qisu ma hemm xejn. Qalli: nhar it-Tnejn fil-ghodu, qalli: l-iktar sad-disgha (9:00) ta' fil-ghodu incempillek jiena u nghidlek fejn tmur. Ghidtlu: all right, ha noqghod fuqek. U mort id-dar u beda jghidli affarijiet ohra li z-ziju kien jghallmu bil-pillow ghax anke l-pillow din qatt ma smajtha f'hajti, dina l-ewwel darba li qalli mbaghad li tfisser imhadda, b-Ingliz ma nafx. U illi ghalmu biex jaghmel, kif joqghod jitbewwes maghha, kif hekk u

affarijiet hekk, kif jaghmilli hekk u dawn l-affarijiet. U bqajt nistaqsih lilu lil Omissis kif lin-nanna ma ghidtiliex. Ghal x'hiex lin-nanna ma urejtiex. Ghalxjen, l-istess kelma, ghax bzajt minnu, miz-ziju.'

He testified that *Omissis* called in the morning and told him to go to Inspector Louise and he went. He has a camera, he testified that the video is not good but records sound and when he was speaking to *Omissis* he told him to tell him from the start and recorded him. He took this to the inspector, then took the child and they spoke to him. He thanked *Omissis*.

He states that '*Issa t-tifel qabilha, qabilha ftit kien ghamel lil Omissis mossa.*' He testified that she was playing with him in the balcony, he has a television with a playstation and was playing with her and *Omissis* so that he does not miss his grandmother '*qisu t-tfal dejjem ha tfissidhom u affarijiet hekk u qabez fuq Omissis u ta' tfal li hu, Omissis minghalija li t-tifel bhal tfal ohra jitfissed ghax tfal tat-tifla taghha hekk jaghmlu. U dan it-tifel qabad ibusha minn xuftejjha. U mbaghad qabad qaltli dahhal idejh bil-mod bil-mod, qaltli u gejjja idu ghal sidri. Qaltli: kif indunajt, imbuttajtu. Kif wasalt id-dar jiena sibtha sewda fahma. Ghidt x'gara? Roghda kbira fuqha u qaltli: ghamel hekk, ghamel hekk, ghamel hekk. Qaltli: issa, biex inkunu certi ghax ma rridx tghid illi jiena forsi qed nghidlek hekk. Qaltli: oqghodlu ghasa taparsi hrigt u hekk u hu fil-gallarija ma jindunax bih. Ghidtilha Omissis, jekk nara xi haga hekk nispicca hazin. Jiena nispicca hazin. Ghidtilha: ha naghlmu haga, ghidtilha: ghax il-bews li jbus mix-xufftejn, ghidtilha jiena kull darba li wassaltu ghand nanntu, kull darba li wassaltu ghand nanntu, illi jbus nanntu minn xuftejjh. U kont ghidtilha meta qaltli Omissis b'dak il-kaz, kien ghadu jmur ghand in-nanna. Ghidtilha: issa nghidlek, ghidtilha ejja mieghi u arah meta jmur ghand in-nanna jew inkunu sejrin ha ngibuh lura, qed tarah x'jaghamel. U hekk ghamel ghax kull darba li kien jara lin-nanna, ibusha minn xuftejjha u jibqa mwahhal maghha jew meta nkun sejjer biex ingibu lura jaqbadhha minn xuftejjha u jibqghu imwahhlin flimkien. Jiena ghidt lil Omissis, jista' jkun li l-Ingilizi hekk. Qaltli Omissis, ma jistax ikun. Ma jistax ikun. Qaltli: l-ebda nanna jew omm ma taghmel dawn l-affarijiet. Qaltli: l-bews, anke lil Omissis qaltli: l-bews minn hawn, minn hawn u minn hawn. Tfal ma jbusux minn hawn ghax jiehd virus u dawn l-affarijiet. Imma kif qaltli b'dak il-kaz, hadt mieghi lil Omissis u ratu li jbus lil nanntu minn xuftejjha. Qaltli:*

jiena ma nistax nifimha din. Kif jista' jkun dan il-bezw kollu. U bqajna qisna hekk. U mbaghad inqala' li nqala'.'

He said that he went to Omissis and told him what happened and told him about what happened with Omissis and Omissis asked him if he had asked about his grandmother. He said that he did not need to ask him about the grandmother since he only mentioned that the uncle attacked him. He testified that 'Mort id-dar u il Omissis ghajjatlu ghidtlu: Omissis, ghidtlu: qed tarha din? qalli: iva. Ghidtlu: bhal ma rrekordajt ghand in-nanna, din irrekordjatli hawn, din god-dar l-istess, iddur u tirrekordja. Ghidtlu: u bdejt nara fuq il-computer li inti ghamilt hekk u hekk lil Omissis u hu meta ghamel hekk lil Omissis, qallha: ha nghidlek sigriet fuq iz-ziju u fuq in-nanna, t-tifel. U kif ghidt lil Omissis qalli: meta staqsieh, ara s-sigriet tan-nanna x'hemm. Ghidtlu: smajt illi inti ghidt lil Omissis illi hemm sigriet fuq iz-ziju u fuq in-nanna. Issa s-sigriet fuq iz-ziju u fuq in-nanna. Issa s-sigriet taz-ziju ghidtuli. Ghidtlu: issa jekk ma tridx tghidli tan-nanna, inpoggi din fil-computer.

L-istess: le, le, le, le tghamlux u nghidlek jiena kollox. Jiena nghidlek kollox. U beda. Li n-nanna ddahlu maghha fix-shower, tnezzghu, tinza hi, joqoghdu jinhaslu. Qalli: l-ewwel darba mbotta lin-nanna u beda jbusha u jmissilha sidirha u mbuttatu u mbaghad kompiet u mbaghad darba ohra l-istess, imbuttatu u kompiet. Ghax hekk il-kliem, kif qal hu ezatt. U mbaghad qalli li darba minnhom kien fis-sodda tieghu, hi fil-kamra taghha, is-sinjura din lestiet bil-lest, nezghet bla hwejjeg, telghe fuq is-sodda u qalli: bdiet thajjatli Omissis, Omissis, Omissis. Qalli: u gejt u sibt lin-nanna fuq is-sodda bla hwejjeg. Qalli: qaltlu biex jghalaq il-bieb, ghalaq il-bieb, Qalli: gejt hdejjha, qalli: qabdet tnezzani. Qalli: u ellghetni fuqha. Beda jaghmlilha, skuzawni, beda jaghmlilha hekk fuq il-parti taghha, qabditlu jdejh u bdiet tghidlu biex jaghmlilha hekk.' The Court commented 'Hawn hekk ix-xhud qed jaghmel mossi bhal messaggi.' He explained that 'Qalli: bdejt naghmlilha hekk u qalli: in-nanna qabditli l-parti tieghi u bdiet taghmilli hekk...' The Court commented 'Hawn hekk ix-xhud qed jaghmel il-mossi ta' masturbazzjoni.' He continued 'Qalli imbaghad gibditni fuqha, qalli: u bdejt immissilha sidirha u bdejt inbusha u hekk. Ghidtlu: u bla hwejjeg? Jiena. Qalli: iva, bla hwejjeg. U bdejt nissika fuqha jiena. Ghidtlu: n-nanna bla hwejjeg? Qalli: iva, bla hwejjeg. Iktar u iktar kien ha jgennini, Iktar mill-istorja taz-ziju ghax dhalt f'affarijiet illi vera kienu ha jgennuni. Kont cempilt lill-Ispettur fil-ghodu, ghidtilha: Spettur dan qed

jghidli affarijiet, ghidtilha: jiena ha niggennen..' He explained *'U beda jghidli illi n-nanna gibditu fuqha, u beda jaghmel maghha, u l-parti tieghu ta' quddiem ghamlitu fil-parti taghha ta' quddiem. Imbaghad iddejjet qalli u bdiet taghmel: ahh, tghajjat ahh, ahh, ahh. Qalli: imbaghad imbuttadni u qaltlu: daqshekk. U qalli: waqafna. U beda jghid affarijiet ohra li fix-shower, iktar minn darba. Jiena staqsejt haga imbaghad: ghidtlu: affarijiet taz-zija u tan-nanna saru qabel inkun nafek jien ejw sa issa? Qalli: le, ilhom isiru. Qalli: kelli xi seven (7) xi haga hekk. Qalli: u sa issa baqghu isiru dawn l-affarijiet. Ghidtlu: issa meta kont il-Libja jiena, saru dawn l-affarijiet? Qalli: iva.'*

He then stated that he went to the Inspector and took him to the social worker. The child went inside alone. He confirmed that the child is taking therapy of a psychologist. He stated *'It-tifel mignun fuq dawn l-affarijiet.'* and explained that *'..gibtlu tfal biex jilaghbu mieghu messhom, hu qalli: li jiena naf li inti ha tkun fejn il-computer ghax jiena kont inkellem lil familja tieghi fuq l-internet u hekk u Omissis tidhol issajjar u Omissis gabitlu t-tfal tat-tifla jilaghbu play station u hadimha b'rasu. Lil kbir qallu: ilghab inti issa u liz-zghir gibdu wara u beda jmissu u dan iz-zghir mar id-dar u beda jaghmillu l-affarijiet li ghamillu Omissis fuq zitu. U bdew jistaqsu minn fejn gibthom u qallhom: Omissis beda jaghmilli hekk..'* He explained that he did it at school and a teacher told him to take care of him. He was not doing well at school. He stated that *'It-tifel la mdorri jinhasel, la jiekol, jekk tpogilu tazza halib jinhasel biha, mhux jixrobha. Jinhasel biha. Jekk taghtieh l-ikel fl-art mal-mejda, mhux go halqu. Jekk taghtieh l-imgharfa ma nafx kif jaqbadha, lanqas tista' timmagina. Xejn, xejn, xejn. Kalzetti ta' taht fuq.'* He said that the child is currently living with him. Asked where he told him that these happened with the uncle and grandmother, he answered at the grandmother's house.

He said that social workers were speaking to him and he was saying the same words he told him. He said that one day the laptop is always open and the witness was going to smoke a cigarette and told him not to touch the computer and to watch television. The child told him *'Qalli: ghal x'hiex ma mmissux? Ghidtlu: hekk, tmissux. Qalli: qed tibza li nara affarijiet pastazi fuqu? Ghidtlu: inti kif taf li l-computer fuqu hemm affarijiet pastazi? Qalli: le, le, le. Ghidtlu: issa, trid tghidli kif taf li l-komputer hemm affarijiet*

pastazi. Qalli: ha nghidlek: qalli: ghax in-nanna konna nkunu isfel, qalli: tghidli biex nixghel il-kompjuter u nidhol fuq l-internet. Qalli: taghalaq il-bieb, l-ewwel bieb li hu bil-hgieg u t-tieni bieb ta' l-injam. Qalli: u tghidli biex nidhol fuq l-internet. Qalli: imbaghad tpoggi bil-qieghda fejn il-kompjuter u qalli: tikteb S E X. S E X. Ghidtl: x'inh? Qalli: iva. Ghidtl: x'johrog meta taghmillek hekk in-nanna? meta tikteb hekk? Qalli: johorgu picture u mbaghad johorgu filmijiet. Qalli: imbaghad in-nanna tara ffit picture u qalli: imbaghad taghmel film, noqoghdu narawh, tinza l-hwejjeg. Qalli: tnezza lili kollox. Qalli: u noqoghdu fuq is-sufan. Huma ghandhom sufan din in-naha u faccata hekk. Ghidtl: jiena liema sufan. Qalli: noqoghdu fuq is-sufan. Hu qalli li jinza hu u n-nanna u qalli: immorru fuq is-sufan. Ghidtl: liema sufan minnhm? Qalli dak li kif tidhol jigi faccata. Qalli: in-nanna toqghodli bil-qieghda u ghamilli din il-mossa li toqghod qisha mistrieha, mhux bil-qieghda, bil-qieghda, qisha mitluqa naqra hekk. U qalli: taqbad in-nanna tpoggini fin-nofs biex naghmlilha fil-parti taghha ilsieni qalli u zzomli rasi hekk. Qalli: imbaghad hi taghmilli l-istess. Toqghod taghmilli 'halqha. Ghidtl: kif jista' jkun? Nanna qisha all right, waslet f'hiex waslet imma taghmel b'halqha u hekk qisek . . . Qalli: u toqghod taghmilli b'halqha. Ghidtl: x'iktar? Qalli: imbaghad toqghod taghmilli . . . tghidli biex naghmel subajja gol-parti taghha ta wara, qalli: u toqghod sejra: ahh, ahh, ahh. Qalli: u hi taghmilli l-istess. Subajja taghmiluli fil-parti tieghi ta' wara. Qalli: u jiena noqghod naghmel bhalha, noqghod naghmel: ahh, ahh, ahh. Qalli: u mbaghad tamilni fuqha, noqoghdu naghmlu. Qalli: sakemm nitarrax. Ghidtl: x'iktar? Qalli: imbaghad tghidli: issa daqshekk, issa mur ilbes. Qalli: nilbsu, titfi l-computer u hekk u nifthu l-bieb kif inhu s-soltu.'

He asked him if the grandfather did anything and he answered no. Asked about his mum and he said that he once went on her and tried to kiss he rand do these things and she pushed him, once at the grandmother's house and once at her home. Asked why he did not tell his grandfather he said that she told him not to tell anyone and everytime he used to go for him she used to tell him more than once not to tell. Asked how the grandfather did not realise and whether he was home, he said that he told him yes, him and the grandmother were upstairs and the grandfather was downstairs watching football. He said that they would realise that the grandfather is going upstairs since he would switch on the light and they would stop or they

realise with the dogs. He said '*Qalli: ma nkunux bla hwejjeg, hekk bla hwejjeg noqoghdu naghmlu hekk.*'

He said that there is a neighbour a girl, they sat, play and went hiding behind a car and they touch each others parts and once she told her grandfather that she and *Omissis* will get married and her grandfather laughed. He told him about his younger brother that when she wants to go out she use to take him to stay with them and they go upstairs, remove clothes till his knee '*mbaghad nghidlu dur u qalli: naghmilulu fil-parti tieghu ta' wara.*' He said a lot of things. He said regarding the grandmother, he said that they repeated themselves, took place in the kitchen, in his bedroom, in the bath. He showered with his uncle, they use to wash together. Asked if he would like to continue with these proceedings he answered '*Ija mela, mela.*' Asked if the child always mentioned that these took place at home, he answered yes apart from the girl.

PS 238 Clive Brimmer testified on the twenty fourth (24th) of June of the year two thousand and ten (2010) where his testimony was suspended.

Marica Mifsud testified on fourteenth (14th) September of the year two thousand and ten (2010) and presented a translation of the testimony of *Omissis* of the twenty fourth (24th) of June of the year two thousand and ten (2010) from the Maltese language to the English language carried out herself. This is marked as Dok MMX.

Inspector Louise Calleja testified again on the twenty fifth (25th) of October of the year two thousand and ten (2010) stating that she is exhibiting the birth certificate of the minor born on the twelfth (12th) of May of the year nineteen ninety nine (1999), exhibited and marked as Doc. XLC. She confirmed that the device mentioned by *Omissis* is not a recording device but a normal USB, he just told him that in order to make his son tell him what had been going on. The USB was exhibited in the acts of the proceedings against *Omissis*.

PC 1238 Clive Brimmer testified again on the twenty fifth (25th) of October of the year two thousand and ten (2010). He said that he went on the spot at the mentioned address where he took several photos of the house mentioned. He exhibited the report and the same photos, the first one was exhibited before Dr Lawrence Quintano and then on the twenty second (22nd) July of the year two thousand and ten (2010) and was asked to exhibit them. He testified again before the First Court on first (1st) December of the year two thousand and ten (2010) and exhibited a true copy of the Court report marked as Doc. B and photos marked and exhibited as Doc B 1 to Doc B 28. He confirmed that photos were taken by him in the residence, 431, Main Street, *Omissis*.

Stephania Sacco testified on the sixteenth (16th) of February of the year two thousand and eleven (2011) stating that she is the service area leader of Child Protection Services within Agenzija Appogg. She explained that usually when they receive new cases, she allocates the new cases to the social workers and so when she received the case of this young minor, she allocated the case to social worker Donatella Bruno who started interviewing the child and then a report had to be prepared for the vice squad police and what she usually does is review the report, see if there are any discrepancies or anything that needs to be clarified and then signs the report because she would have read it. She stated that that was her only intervention in the case.

She explained that the referral was about this young minor called *Omissis* who had been living with his maternal grandparents and maternal uncle and the referral alleged initially that the boy had been sexually abused by his maternal uncle and during the course of investigation it transpired also that the boy was sexually abused by the maternal grandmother. She never saw the maternal grandmother but her name is *Omissis*. The report is marked and exhibited as Doc. SSGH, which is the original report which she read and corrected. The boy continued to be followed by child protection social workers and looked after children because the boy started exhibiting behaviour that was related to sexual abuse and quite confirmed that he has

been through a traumatic period. She said that the boy is still followed by social workers.

Margaret De Battista testified on the sixteenth (16th) of February of the year two thousand and eleven (2011) stating that she translated the evidence given by *Omissis* on fifth (5th) March of the year two thousand and ten (2010) found at fol 107 to 127 and from fol 145 to 191 which is evidence given by *Omissis* on the thirteenth (13th) November of the year two thousand and nine (2009) given in the proceedings of *Omissis*.

Omissis testified on the sixteenth (16th) February of the year two thousand and eleven (2011) stating that she works at home and currently *Omissis* lives with her and has been coming and going for the last ten (10) years. She said that *Omissis* is *Omissis*'s son who will be eleven (11) years. He spent some time at her. She said that when his father returned from Libya he got him some things and '*nqalghet xi kwistjoni bejniethom ghax jiena kont ghand it-tifla u gejt.*' She then recalled one thing that happened before. She said that his father was getting the child a bit at him and a bit at his grandmother and she use to play and joke with him. She explained that once '*Il-persuna tieghu wieqfa, jhokk mieghi u sejjer 'ahh, ahh' u gie biex ibusni b'ilsien u go halqi. Jiena nghidlek is-sew inhsadt u nhsadt sew u mbaghad ghidtlu: isma Omissis, ghax lanqas irrid naghtieh li ndunajt b'xi affarijiet. Ghidtlu: isma, t-tfal ma jbusux mix-xufftejn. Ghidtlu: ghax inkella jiehdu virus. Ghidtlu: t-tfal ibusu minn hawn u jew minn hawn.*' The Court commented '*Hawn hekk ix-xhud wed tindika l-haddejn.*' and '*Il-mohh.*' He told her that he is going to tell her a secret about the uncle and grandmother but that did not want to say. She informed his father and the father told her that he had seen him kiss his grandmother on the lips and told her to see when she goes with him. She testified that it's true that she saw him kiss her on the lips.

She says that when she use to go to take a shower, he use to stay behind the door saying that he finished homework. When she is ready and opens the door, she hears him run away and found that he did not do any of the homework. She explained

that 'Ghidtu: hawn x'inhum dan il-homework u x'qaghad taghmel wara l-bieb tissemma? Qalli: biex forsi tghajjatli kif kont nidhol man-nanna ghax kont qed nimmaginak bla hwejjeg u minn dawn l-affarijiet.' She explained 'Ghax kien qed jistenna li - hu kien qed jimmaginani li jiena qieghda bla hwejjeg u kien qed jistenna li jiena ha nghajjatlu biexnaghmlu -affarijiet bhal ma jaghmel man-nanna, fhimt?' She explained that he had already told them what he use to do with the grandmother, regarding the bath. She knows that once the grandmother told him to switch on the computer and go on the internet and she wrote some letters for 'filmijiet pastazi'. 'Qal imbaghad in-nanna ghamlet dawn it-tlett (3) ittri li ma nafx x'inhuma.' She continued saying 'Imbaghad qal ghalaqna l-bieb u bdejna naghmlu jiena u n-nanna.', 'In-nanna jaghmlilha b'lsien u qal, imissilha sidirha, hi taghmillu b'halqha.' Explaining 'Li hi l-parti tieghu taghmiilulu f'halqha.' and that 'Qal imbaghad jien naghmel copy bhala naghmel taghha f'halqi. Indahlilha subajja wara.' Referring to 'Fil-patata.'

She explained that 'Li darba qal kienet fuq is-sodda u hu kien riegged u bdiet tghajjatlu: Omissis, Omissis. Qal jiena mort, sibtha bla hwejjeg xejn. Qal u bdejna naghmlu, mmissilha sidirha, mmissilha l-parti taghha, hi tmissli l-parti tieghi. U minn dawn l-affarijiet. U darba minnhom missieru staqsieh, qallu: allura n-nannu qatt ma nduna bikom? Qallu: le, qallu: ghax meta jkun barra nisimghu l-klieb jinbhu meta jasal. Qallu: u meta jkun gewwa jitolghu l-klieb qablu. Qabel in-nannu, inkunu nafu li n-nannu tiela.' She confirmed that she heard the child saying this. He said that he spent about eight (8) months almost nine (9) months living with them. He was obsessed about sex. The teacher had spoke to them and told them 'hawn hekk mhux biex jitghallem l-edukazzjoni biss qieghed, biex jitghallem kollox. U mbaghad semmieli sir li ghadna kif gibnieh maghna u dan.' Asked where they were when 'Meta gie hdejk u qaghad ihok mieghek' she answered in the balcony of her house in Chircop. She recognised the accused in the Court room.

Inspector Louise Calleja testified on the twenty fourth (24th) of March of the year two thousand and eleven (2011) stating that there were no seizures regarding computers, mobiles or other evidence in the residence of the accused. She confirmed

that there were scene of crime nominated who photographed the residence. She exhibited a birth certificate of the minor marked as Doc.ZLC.

Omissis testified again on the twenty fourth (24th) of March of the year two thousand and eleven (2011) and asked about whether someone from school spoke to him regarding *Omissis*, he answered yes. He said that when the child was with him, he was going to the school in Luqa and once the teacher went out and he was very angry and came out with *Omissis* and told him *'Ha nghidlek haga jien ma hadx pjacir biha ghal kollox, qalli, ma hadtx pjacir. Ghidtu: X'gara mela? jien. Qalli: Ghax it-tifel hawn mhux jigi biex jitghallem jikteb u jaqra biss, hawn ahna biex nghallmuh l-edukazzjoni. Ghidtlu jiena: X'gara? Qalli : Ghax it-tifel beda jaghmel certu mossi u jmiss xi tfal go l-iskola, qalli, jippona subghajh ghal parti tieghu u affarijiet hekk, qalli, u jiena dawn l-affarijiet ma hadtx pjacir bihom. Qalli: Trid tiehu hsiebu t-tifel.'* He said that his child is doing the Kids programme and asked who the social workers are he answered Nadia and Charles. He said that the child has a bit more in the programme if he does well since he said that there are certain other things he knows in 'Kids' itself. Asked who told him, he answered *'It-tifel u mbaghad staqsewh huma u kien qallhom x'ghamel mat-tfal hemm.'* Stating that he told him *'Qalli jien bist xi tifla hemm u mbaghad qalli hemm tifla ohra, morna fil-playroom fejn jaraw it-television, qalli: dawn li joqogħdu hemm, li jieħdu hsiebhom kienu fil-kcina qed isajrulhom, ilestulhom l-ikel. Qalli: u mort inmiss lil din it-tifla. Qalli: bdejt nitbewwes magħha. Qalli: bdejt inmissilha sorry, sidirha u bdejt inmissilha l-parti tagħha. ghidtlu: lilhom ma ghidtilhom? Qalli: le, ma ghidtilhomx. Imbagħad jiena ghidtlu biex jghidilhom . . .'*

In cross-examination he said that he lives with *Omissis* for almost ten (10) years who has a daughter but only he and her live together. The daughter lives in Safi.

Margaret De Battista testified again on the twenty fourth (24th) of March of the year two thousand and eleven (2011) confirming that she translated the testimony of *Omissis* in the case *The Police vs Omissis* tendered on the fifth (5th) of March of the year two thousand and ten (2010) from the Maltese language to the English language

and the translation is found at fol 107 to 127 and also confirms to have translated the testimony of *Omissis* in the case *The Police vs Omissis* given on the thirteenth (13th) November of the year two thousand and nine (2009) from the Maltese language to the English language at fol 145 to 191.

Inspector Louise Calleja testified again on the fourth (4th) of May of the year two thousand and eleven (2011) that the computer and mobile phones seized were regarding another investigation *Police versus Omissis*. The items were seized from the same residence since Borg is the son of the accused. She confirmed that the material found, examined and exhibited in Court has nothing to with the accused and that the material has nothing to do with this case.

Deputy Registrar Marica Mifsud reproduced on the fourth (4th) of May of the year two thousand and eleven (2011) presented a translation of the testimony of *Omissis* of the sitting of the twenty fourth (24th) of March of the year two thousand and eleven (2011) at folio 415 to 418¹³.

Deputy Registrar Marica Mifsud testified again on the thirteenth (13th) of June of the year two thousand and eleven (2011) and exhibited the translation of *Omissis* given on the sixteenth (16th) of February of the year two thousand and eleven (2011), marked and exhibited as Doc. MMV.

Martin Bajada testified on fourteenth (14th) October of the year two thousand and eleven (2011) stating that he was requested by the Court to present a copy of the report filed in the case *Police vs Omissis* and presented a true copy of the report. The annexed CD contents of which are that of a pendrive and translated the report into English. The report is marked as Doc. ZMB.

On the twenty first (21st) of November of the year two thousand and eleven (2011), the Court appointed Martin Bajada to make a transcript and a translation from the

¹³ From the acts, the translation is found at folio 320 - 324.

Maltese to the English language of the contents of the CD exhibited at folio 469¹⁴. **Dr Martin Bajada** testified again on the twentieth (20th) of September of the year two thousand and twelve (2012) stating that the CD was never transcribed in Maltese so it cannot be transcribed in English. He said that the CD contains a conversation from another case which is in Maltese, it was never transcribed.

The Court in the sitting dated the twentieth (20th) of September of the year two thousand and twelve (2012) extended the appointment given to Dr Martin Bajada to transcribe the content of a CD exhibited at fol 469¹⁵ and if the content of the said CD is in the Maltese Language, he was authorised to translate the said content from the Maltese language to the English language due to the fact that these proceedings are conducted in the English language.

During the sitting of the fifteenth (15th) of November of the year two thousand and twelve (2012), due to a change in the presiding Magistrate, the prosecution and defence exempted the Court from hearing all evidence already heard before the charges were read out and confirmed on oath once again in the sitting.

Dr Martin Bajada testified on ninth (9th) April of the year two thousand and thirteen (2013) and explained that he was requested by the Court to transcribe the contents of folio 470¹⁶ and carry out a translation from the Maltese language into the English language and presented a report marked as doc NC 1.

Inspector Louise Calleja gave evidence in cross examination on the sixth (6th) of November of the year two thousand and thirteen (2013) who confirmed that her investigation started when she had by *Omissis* regarding his son *Omissis*. Initially the report was regarding sexual abuse by another person. She explained that what they normally do as a procedure, they inform Agenzija Appogg where there are

¹⁴ Although the envelope of the CD is marked as 469, it is attached to folio 373 which was previously numbered as 470.

¹⁵ Ibid.

¹⁶ Ibid.

Social Workers in the Child Protection Services and together they interview the minor and *'we interview the minor as well'*. She got to know that besides allegedly being abused by this person, the nine (9) year old boy also referred to his grandmother as the person who also sexually abused him. The report was drawn up by Agenzija Apogg, there were no reports by legal persons. He went personally to her office and took note of what he said then referred the case to Agenzija Appogg and then Agenzija Appogg made a report regarding all allegations by minor Omissis. Mr Omissis never presented, he just lodged a verbal report. Asked if when he came to complain to the police headquarters whether they checked the history of Mr Omissis himself, she stated that she asked him various questions, he told her that he assumed paternity only lately and got to know about the child *'maybe month, just a year before'*. She explained *'I cannot recall exactly but it was at that very, very time period that he got to know about his son. He was telling me that he was in Malta way before when he had this relationship with the mother of Omissis Omissis ',* daughter of the accused. She asked him questions, he related many things himself and they checked his immigration position. Asked if she was aware that he had been away from Malta for about ten (10) years and that he was ordered out of the Island on the complaint of the accused and her family, she answered that *'I was aware, he was never deported from the island. Nothing resulted in that way. I mean he wasn't deported, he had left the island and than he came back.'* Asked about a complaint which Ms Borg made with the police authorities and was asked to leave the island, she replied that it never resulted and asked if she checked, she answered not even the accused, no one had ever come up with this situation. He told her that he was in Malta, ten (10) years before and actually had a relationship and then went back to his country and then to another country and then after some time he came back to Malta. Asked about a complaint on the part of the accused and her family against Mr Omissis and had to leave the Island and that he has borne a grudge against the family especially the mother ever since, she answered that no it never resulted.

She testified that from the investigation itself it never resulted that there were any complaints with Mr Omissis and he was deported and that maybe some complaints

led to his deportation. Asked if it resulted from her investigation that it is rather irresponsible on his part to spend so many years being the father of a child away from Malta, coming back and after a few weeks making a report against the accused and her family. She explained that *'Mr Omissis did not know about his child 10 years before I mean when he came back to Malta than he got to know about this child. He, I remember he did a paternity test when someone told him that Omissis had a boy and they told him the age. He did a paternity test, it resulted that he was his child and there was an agreement that the child could stay with him. He told me that since, because of his work he had to and come from Libya to Malta and it was him that he trusted, and he left the child with the family, with the nanna, the grandmother, maternal grandmother. It was his decision. He never ever objected to this. Actually he thanked them for this because in his absence from Malta he knew that he was with the family that he was brought up with. Si there was no complaint to that effect. There were no complaints'* Asked if it resulted from her investigation that when he came to Malta and before he reported to the police, a DNA test was effected to verify that he is the natural father, she replied that yes he did a paternity test, a DNA test.

Reference was made to the statement taken on the third (3rd) of November, where the defence counsel states that the inspector seems to throw doubts or give the impression that because there is only one shower or a bath, it is as if it is wrong. She explained that her interrogation, her interview was based on the allegation brought up by the child. The child was alleging that he was in the same shower, bathroom, he alleged certain acts, sexual acts and that is why she asked certain questions. She stated that all interrogations are based on allegations. Asked whether he is correct to point out that allegations suddenly surfaced because the father came to Malta, she states that the father was noticing sexualized behaviour by his son. Stating *'He spoke to a person and was telling him about his concern. The child even expressed, he was even behaving sexually with other persons and he had to talk to someone the father because it was the more he was being with the child, the more he was noticing this behavior and he decided that he has to speak out about them.'* Regarding *'sexualize behaviour'* asked to give an example of what he said, she said that one example would be that the partner of the

father, the child used to touch. He used to make advancements on the mother, on the partner of the father. Asked if she had the opportunity to speak to the child in front of the father, she replied that normally they do not speak with the children in the presence. They speak with the children in the presence of social workers and professionals. They had no problem with the child being on his own and the father had no problem of leaving the child with them and with social workers to be interviewed.

Asked about the gap between when the first statement was taken on the third (3rd) of November and the second on the nineteenth (19th), she said that there is no such gap- the only thing could be that they were conducting this exhaustive investigation and if she recalls well, the accused was released on police bail and given another date for continuation of the investigation. The defence made reference to fol 15 of the second statement stating 'and over here you ask various pertinent questions. One of them is, *Omissis* testified in Court that you used bedroom whilst you were naked having a shower. Second one *Omissis* also testified in court that there were instances when you were playing with yourself. Third one he also reported that you used to place *Omissis* hands on your private parts so that he will play with your genitals . Another one you even . . . *Omissis* private parts and each time my question used to deny'. The defence went on to read parts of this statement and stated that '*Only with his Dad and Leila he invented these things*' and asked if this aspect was born in mind when she carried out the interrogation or simply took note of the complaint and proceeded accordingly, she replied that she carried out an investigation as they are supposed to carry their investigations. They had a complaint, they inform the children even if of a certain age the consequences if they are lying. The child was spoken to by them, by social workers by the Court by the Magistrate and he was consistent about the version he gave. She said that the second statement was taken because not only before her and social workers the child alleged these things and even in Court.

Asked if he is correct that since he came to Malta shortly after he had been residing back in Malta he started legal proceedings to try and get care and custody of the child as a result of these complaints. She answered that if she recalls well he was already given care, she does not remember if it was joint custody or access. He had no objection for the child to be with the grandparents when he was in Libya and he was supposed to have access of the child. He never complained about the father. She said that the minor's behaviour was becoming so bad that he wanted to know how this child can be controlled. She conformed that he did not object to the grandmother looking after the child whilst he was in Libya. She confirmed that when he returned to Malta shortly after his return to Malta a DNA test was carried out that he is the natural father of the child. She said that Mr *Omissis* was in Libya for a long time, came to Malta. Eventually someone told her that *Omissis* had this child. He approached *Omissis* , did a DNA test. She stated that then afterwards he still continued coming and going to Libya because of work or business reasons and that is when he had access he could leave the child with the maternal grandparents. She confirmed that he got to know about the child only a few months or a year after he came to Malta so the child was nine (9) years when he got to know that he has a child. He never came to Malta in that period of time when *Omissis* had the child and the child was being brought up. She said that she never said that he was coming and going to Malta during those nine (9) years when the child was being brought up, afterwards he was coming and going to Malta because of work or business reasons. She does not think the child is living with the father at the moment. Asked if she is aware that the father put the child in a home, she answered that the child was with Agenzija Appogg, there were some agreements because his behaviour was becoming uncontrollable so something had to be done with this young boy.

Rianne Galea testified in cross-examination on the twelfth (12th) of December of the year two thousand and thirteen (2013) confirming that she was contacted by Inspector Louise Calleja following a complain initiated by the natural father of the child in question Mr. *Omissis*. Asked if she was aware about difficulties between Mr *Omissis* and the grandparents and family of the accused, she said that there were

some issues regarding contact. The father had not been involved in the child's life. He entered into the child's life at the beginning of the year two thousand and nine (2009). The father had not been aware that he had a son. He eventually through his investigations found out that *Omissis* might be his son, he proved this with a DNA test some months later, she believes in March of the year two thousand and nine (2009) and later went on in June two thousand and nine (2009) to obtain full care and custody of the child. She got this information when she was working with the looked after children services and were following the case. She said that the child has been followed by Agenzija Appogg since he was born. There were various social workers on the case till the father came in the scene when the child was circa nine (9). The father had never been in the picture before. He came in the year two thousand and nine (2009) and made contact and then they started to try and regularise contact. He was followed by Agenzija Appogg since the maternal grandparents were considered to be next of kin foster carers. She confirmed that Agenzija Appogg had a period of nine (9) years to monitor the growth and whether there was anything irregular with regards to the upbringing of the child. She said that there were issues which they were taking care which were related to cleanliness and clutter at home. When it came to hygiene which were matters which were being dealt with. The case had also been referred to family therapy at one point because the child grew up thinking that the maternal grandparents were in fact his parents and that his birth mother was his sister and that his maternal uncle was his brother so they were referred to family therapy however they never came for the session because they said that they had told him himself. She confirmed that there were social workers who would monitor and that if there was something which should have been noted, it would have been noted. She did not know whether he spent circa eight (8), nine (9) years away from the island. Asked if the police informed her, she said that she is no longer on the case so does not recall and she has to go back to her records to check. She was not aware that he had to leave the island. She spoke to Mr *Omissis*. Asked if he shows signs of grudges against the accused and her family, especially that he was asked to leave the island, was away from Malta for eight (8), nine (9) years, she replied that she does not recall.

Asked 'Were you aware when you had the opportunity to speak to Mr. Omissis that had a different agenda in this approach and he was basically using the child to hit back at the grandmother who is the accused and her family' she replied 'When we spoke to the child we spoke to him alone. He was very consistent. He kept coming with disclosures. We spoke to him always alone. We were always in two's. His behaviour is showed that he might have experienced some form of sexual abuse. He even needed psychiatric help to control his behaviour and attitudes therefore he was quite consistent in his disclosures. I think there was a Psychologist who accessed the child and who can prove further his credibility and reliability' She said that there were a number of arguments between both parties, meaning between the maternal grandparents and between Mr Omissis due to contact. They were intervening at the time to try and establish and regularise contact as soon as possible for the minor. She is aware of these 'quarrels' from both ends.

Asked 'Now from the way you gave evidence even your colleagues, it has been noticed that every time you get Mr. Omissis, make a complaint. After you speak to the child on a day Mr. Omissis comes back to Appogg and you investigate. Did you bother, did you notice whether the complaints and the way he was approaching Appogg was being . . . by Mr. Omissis at the expense of the accused, in other words you were being used, you were, kont qed tigi sfruttata' she replied 'The child was very consistent and he gave a lot of detail in his disclosures. Children when they come to disclose such issue which are very sensitive and over a number of years they disclose in different ways. Omissis chose to disclose yes the disclosures went on over a number of days. That's how he felt comfortable we always told him that we were there for him, we were going to be present if he needs to speak to us and tell us further details and he chose to do so. Even . . . you made reference to the report there is a lot of detail which Omissis gave us which is very even, he goes into nitty gritty details so that's why nitty gritty details of details so that's why'

She confirmed that the disclosure started when Omissis went to live with Mr Omissis. Mr Omissis had explained how Omissis had started talking to him about the abuse, it all started because he wanted to know why he was not calling him father and Omissis has just spent a period of time with no contact with his father. He said I have

a pen drive with all the details and he said I have recorded over here and it was from there that *Omissis* started with the disclosure. Asked whose was the pen drive she thinks the father's. Asked how the father got this information she replied from *Omissis*. The father then immediately went to speak to the Inspector at the Vice Squad who then contacted them at Appogg. Asked about when he made the report that it was all of a sudden a few days after he returned to Malta, she said that he was away for two weeks and returned and he took *Omissis* home with him. He had been in Malta from the beginning of the year two thousand and nine (2009), possibly end of the year two thousand and eight (2008). Asked about the pendrive, she said that it was a tactic that he used with the child. They did not physically ask to see the pen drive. He said that he had collected it the day when he went to pick up *Omissis* from his grandparents house. She confirmed it was on the twenty ninth (29th) of October of the year two thousand and nine (2009).

She said that they took the details and that he was always consistent. She confirmed that the father was very hurt because he was not referred to as papa by the child. Asked if she knows that the father had declared verbally and personally to the accused and her family that he is out of revenge against them because he was not in Malta, she answered that she does not recall. She did not continue the case once he gave the disclosure and that she moved to another service in April of the year two thousand and ten (2010). She said that the father had already obtained care and custody earlier. They wanted to try to make the transition as smooth as possible. The father knew that the maternal grandparents were a big part of his life and so he did not want to shut them out. It was obviously a shock for *Omissis* in the beginning to suddenly have all these changes in his life. He was more resistant towards contact however then he started to enjoy the contact with his father because it was more regular. At some time he was living with the father. The transition was taking place at a slow pace until eventually when he returned from his two weeks in Libya he would go and live with him while maintaining contact.

The defence counsel made reference to the witnesses' testimony and asked that *'Here we have a situation where Mr Omissis because this is what this issue is all about really, he wants to have his cake and eat it because as resulting from other evidence it seems that he doesn't have the financial strenght to maintain his son. He did have the financial strenght to institute these proceedings and to live with his partner Omissis who seems to be with to this very day but for a child no. Where you aware of these facts and do they result from your records, records of your Agenzija Appogg ?'*

She replied *'after Omissis has given disclosure as I said he starting exhbiting a lot of sexual behaviour, he had a lot of needs which needed to be seen to because of the behaviors and obsessive thoughts that he was having and we had recommended that he enters a therapeutic programme. Back then we had recommended that he enters the therapeutic programme of Kids which I believe he eventually did because it was in his best interests because of the disclosures that he had just given.'* Asked *'My question was and I just read over here that Mr Omissis had a different Agenda. He stated he had these difficulties, he doesn't have financial strenght to maintain his son ok but it seems to be, his main interest was to remain in Malta but he does have financial strenght to instate Court Action and try to get care and custody of the child and to live, it seems to this very day with his partner Omissis. Do you have these fact as a state of fact in your records to see whether Mr Omissis in fact was his complaint was a genuine complaint or whether he was manipulating the situation purely for his ends to get back at the accused'* She replied that she does not recall. The information results from information he had provided, which would be recorded.

Asked *'So in other words was this aspect being given proper weight in our assessment of this particular case? Did you bother to consider it?'* she replied *'No we listened to the child again we saw that the child was consistent, he gave detail, he was, there was a lot of consistency with the child. And his behaviors showed he could have experienced such abuse'.* The Court asked what the priority was at that stage, she replied that it was the best interest of the child and to ensure that the child is kept safe. She said that *'That's something that the child I guess can reply to when he felt safe he spoke. He then felt safe enough to speak to us. The child was being monitored before, he had never spoken about the abuses before. He spoke when he felt safe enough to do so.'* The defence noted that they

see consistently and systematically situation where the father comes pumps a complaint and investigations are carried out, asked if they bothered to consider whether all this was in fact genuine and the father was manipulating the situation in other words briefing the son in what to state, she answered *'We always spoke to the child on his own without the presence of the father . and then we would verify the information that he would have told the father which was the same '* Asked whether she looked into the pendrive she said no and explained that it was the tactic used with the child, they knew that there was probably no pen drive or that he told the child that there was this pen drive not that there was actually information in this pen drive. It was the tactic he used with the child for the child to speak and find out why he was not calling him papa not because there was all the information on this pen drive. Along the nine (9) months there was contact between the child and his father and did the DNA test, recognised him as his child and obtained care and custody. There was a process of what was going on, there was contact between him and the child. The child probably did not feel safe enough to speak to his father before, this was a new person in his life. He grew up thinking that his paternal grandfather was his father and then suddenly he finds out that this is his grandfather and then eventually finds out that he has a father. For a nine (9) year old, ten (10) year old child to meet a man for him he was a complete stranger. Then he started building his relationship with him that is why they tried to regularise contact. She confirmed that contact with the father took place during the week. Children are all different even as adults they are all different. She said that you cannot say when you feel safe with a person. It is up to the child to see when he feels safe. During the nine (9) months Appogg was trying to regularize contacts and monitoring the situation. Asked *'From the report, did it result 9 months and I would say previous to that l-Appogg had more, had ample opportunity to establish and to see if there was something irregular because the point or partenza of this issue is when Mr Omissis came to the scene. Did you bother to consider this point ?'* She replied that the child spoke when he went to live his father.

Asked 'And would I be correct in saying that is then when the problems began and Mr Omissis was really how shall I say venting his anger about his issue would I be correct in saying so ?' She replied 'I think he was looking at the best interest of the child as well. In fact that is why he went directly to the vice squad when the child started the disclosures' She stated that there were already difficulties along the entire year related to the contact. Asked whether he is correct in stating that at that age roughly the child becomes sexually active, she replied no its not normal. There were allegations of sexual abuse which were proved in Court as well because the accused admitted to the abuse. Omissis always stated that the uncle taught Omissis how to touch a woman, he would even watch films with him. He would tell him what to do and that is why then he approached his maternal grandmother. It was the child however the grandmother would not ask him to leave. She did so in one occasion but did not stop him. The witness said 'we were listening to the child and make sure even through questions open ended questions that we asked through that he would reply even and he was consistent in his answers'. The child was consistent and gave a lot of detail which probably over night would not have remembered such detail if the facts were given to him. He was a nine (9) year old boy however he was capable of expressing himself very well. She and other social workers were monitoring the child before this happened. Asked whether he was free to express himself in those nine (9) months, she said that he might not felt safe to do so before, he might have felt threatened.

Asked 'Did the child ever show or gave you to understand that he was not looked after well by the grandmother ? Or that she did not treat him properly ?' she replied 'There were issues of hygiene and clutter at home which we were dealing which also show' The Court clairified 'But what he is asking is did the child point out this issued himself or did you establish these' she replied 'No we established those when we would go on home visits. It wasn't the child who, the child only had as'. Asked 'Did the child ever give you to understand that he has, he is not treated properly by the grandmother' and replied 'No he never spoke negatively of her'. Asked 'So whenever you spoke to him did he always feel free in speaking to you when you spoke to him ha naghmluha hekk' and replied not always 'Sometimes because he would be in the presence of the grandmother and even when

sometimes visits would take place for example at School perhaps he would feel comfortable enough speaking in the School environment' She says that she thinks he felt he was being monitored. He would know that the Social Workers are going to visit him and so he would feel, he would know that there are welfare officers as they are referred to that are going to check and monitor the situation. She thinks the child was always careful with what he said in the presence of the social workers. She explained that '*I feel the child being a child who is very cautious himself and gives even knows a lot about of detail I would feel that he would restrict himself perhaps from saying certain things. He seemed to be comfortable within his environment*'. Asked '*So in these 2, 3, years and there was no father in the picture would a mentality of 9, 7, 8 6 he was already under pressure not to feel express himself at the age of 6 ?*' she replied '*he was perhaps felt more restricted. Perhaps he didn't feel comfortable speaking to the Social Workers who would visit once every 2 months, or every 6 weeks*'. She says '*Once every, I cannot say what the child was actually feeling. We would speak to the child openly, we would ask the child to speak to us back openly. However we wouldn't know exactly what he might have been feeling.*' She said that they tried to speak to the child even on occasions at school where he would be completely alone. Even at home there were occasions where they spoke to him alone and he would reply to their questions. He seemed comfortable within the environment. In fact that is why no action was ever taken before because obviously if they had any concerns they would either try and tackle them or would take further action. She stated that '*So no at the time our concerns were related to cleanliness and hygiene at home and those were the issues that we were tackling*'. Asked '*...I am sure there was something which was, which you noticed, you would have jotted down*' and replied '*yes and even when it came to him not knowing who his birth parents were, having the confusion of thinking it was his maternal grandparents that was a concern for us which we were working on as well back then*'. She knew that his mother was in Malta but she never wanted to maintain contact with them. There were occasions where the mother was present during home visits however she never showed any willingness to have contact with the child. The contact was always very random with the child. The child did not have a very good relationship with his mother and grew up thinking that she was his sister and didn't always get along. She confirmed that the natural mother had

difficulties with the child and lacked a certain maturity. They were aware that the mother willingly gave her child to her parents to bring up and that it was very clear that she felt that she was incapable of taking care of him and left it in the care of her parents.

The defence counsel asked *'So in other words the natural mother although she might be slightly naive and I say this with respect, she is naive she did the right thing in the circumstances. Was it noted therefore bearing in mind the psychological condition of the natural mother ok and what the natural father brought about vis a vis the natural mother, the consequence being the child, therefore Mr Omissis was in reality using the natural mother for his own purposes and the natural parents noticed this and they took the necessary legal action to kick him out of the island and is on revengeance streak'* She replied *'The mother could always express herself well from the little I've had contact with her. Therefore if she wanted contact or she had any of these concerns she would have brought them forward to us. She knew that there was Appogg monitoring the case. If she didn't want to speak to us she would have brought these forward through to her parents.'* The few occasions she spoke to Omissis were on very few occasions during home visits a maximum an hour or less. Asked *'Don't you think it is obvious when you speak to the natural mother that there are inherent limitations. You don't have to be an expert to notice. Was this borne in mind by the people of Appogg ?'* and answered *'yes we are aware but she can clearly express herself'*. The witness did not feel comfortable diagnosing her with any difficulties.

Rianne Galea continued giving evidence in cross-examination on the twenty eight (28th) of January of the year two thousand and fourteen (2014). She explained that there is a recording system, not audio recording but written recording. Case reviews normally take place once every six (6) months where there is a chairperson, there is the social worker following the minor, social worker following other parties in this case their foster carers. There were also ongoing sessions with the foster carers, with the grandparents, with the child as well. During the disclosure there were two (2) people, normally one person taking notes and they would verify that the informatin is correct. They are recorded in a written manner. She confirmed that what is written

down is approved by both. Reference was made to what she had stated in folio 25, 26 and 27 of the acts and asked 'Don't you think or did you consider or was it considered that all of a sudden these things came up when the father came in the scene ? Becasuse at no stage did you point out that before he was living a normal life, he was sleeping normallly and there were no difficulties. On the contrary we have evidence which shows he was playing normally. But when the father came on the scene all of a sudden a lot of prblems started to crop up. So my question is this. Did you bother to consider whether basically you were, I am not saying you are in bad faith, don't misunderstand me ta. That Mr. Omissis had an agenda on his mind and he was creating the situation and arguably he was using this institution for his ulterior motives at the expense of Mrs Borg', she answered 'The child gave a lot of details and he gave always a presice and very consistent. We asked him to repeaat the stories as well, the incidence and he always gave detail and he was always very precise. Added to this apart from allegations against Ms Borg he also alleged, initally said that his maternal uncle was also abusing him. And in fact he was sent to prison at the end of last year for those accusations. So he started off with the accusations against his maternal uncle and then proceeded to speak when he felt more comfortable about the accusations against Mrs Borg'. The child was ten (10) when this happened and interviews were carried out in two thousand and nine (2009).

The defence counsel made reference to the witness testimony where the defence counsel stated that 'in the 2nd of November of the same day Omissis alleged that he was sexuallly abuse, instigation of Mr Omissis. Fol 22 on the 3rd of November the following day Omissis contacted . . . Social Worker because he had cntact number and he told her that Omissis was saying further disclosures. Ha nkomplu. On the 4th November the folowing day Mr Omissis called the fostering house Soccial Work again becaause he had her contact number and told er that Omissis was saying further things. Alla jbierek dan. A fol 24 was on the 4th. O the 6th of November Omissis contacted us again and said that Jams was saying further things. X'imkien ghandna wkoll on the 9th ukoll.' The defence counsel pointed out that Mr Omissis had an agenda because he said that Mr Omissis also instituted civil procedures and went further in this matter, he says that if you love somebody so much and to give such graphic, such detailed information the way you have given evidence, it does not tally.

She explained that we always told *Omissis* that he didn't do anything wrong, we did not want to put any blame on him because it was not his fault. When he felt safe to speak he continued to speak about with further disclosures. He was always very consistent. *Omissis* at no point was inconsistent. She explained that '*He was always very consistent with his stories. Apart from the research suggest that children who speak about, disclose about sexual abuse they do not normally do si all in one sitting. They do so in over a number of days which is what happened in this case. The reason is it causes them a lot of anxiety which probably was his case and apart from that Omissis had to as well test his ground to see that he can trust others. Because he knew who I was however he didn't know who Donatella was so he obviously had to test the ground. Once he felt safe and when he kept reassuring him that it was not his fault he felt safer to speak and that's when he proceeded to give further disclosures*'. She explained that children young as 5,3,2 can test ground.

Asked '*So we agree that the child could be influenced in saying something which might not necessary be true*' she replied '*That's why we kept on asking him to repeat the stories to see that there was consistency and there was always the same*'. Asked if he could have been influenced in behaving this way against his grandmother, she replied that in any situation that could have happened however that is the reason, the method of interview they conducted open ended questions and that is why they ask him to repeat because they believe that if he showed consistency and he was not mixing up the details then there was more reason for him to be believed. Asked about the disclosure that after the grandmother closes the door she used to ask *Omissis* to switch on the computer and then she use to write sex. She said that she was not present for that disclosure. Asked about that the grandmother is illiterate, she replied that it is strange because she used to say that she use to help him with his homework aswell. They never knew of those difficulties. They use to have a volunteer to go and help *Omissis* with his homework but stopped going due to issues of cleanliness. Another volunteer went for a number of months and stopped due to issues of lack of hygiene and the family refused to have another volunteer and stated that will be helping him in his homework. She said she has it written in

her notes. She said she cannot verify something of this sort about whether she knew or did not know how to put on a computer although she recalls that there was a computer in the living room.

He was living with the father at the time of the disclosures. There was ongoing contact during the year through telephone calls, sms and physical contact. Sleep over started to take place around August and he was with him for around approximately three (3) weeks because they could not tell exactly. Then he went to Libya and on the thirteenth (30th) October he took to live with him on a full time basis and then disclosures were made on the second (2nd). He lived with his father for approximately three weeks and then back to the grandparents whilst he was in Libya. Asked that the problems began when the father came into the scene, she replied that because the issues relating to contact started to crop up. She confirmed that he was irritated that the child was not referring to him as *papa* before the disclosure started to take place. They took everything into consideration and checked for consistency with the child and he started offer disclosures against his maternal uncle which was proved to be through the Court and was in prison as well and admitted to the accusations.

The witness exhibited Dok RG1 and 2. She explained that she spoke to the father and son separately. The information is from visits, home visits, school visits, case reviews and phone calls. She said that at the beginning the father knew it was a shock for *Omissis* and even *Omissis* it was difficult for him to accept that he suddenly had a father and he had to make contact with his father. Contact then started to improve. The father said that he was previously not in Malta, he was coming and going. The father stated that he did not know about the child previously. In fact his version of the story is that *Omissis*'s birth mother *Omissis* had told him first that she was pregnant and then that it was a false alarm. He then told them that he left Malta. He did not tell them he was asked to leave Malta by authorities. It was the maternal grandfather that told them that he was asked to leave Malta. They also heard the version of the grandparents.

The defense counsel made reference to the notes exhibited where there is also written that the father expressed visa expiration concern, letter visa issued by Appogg stating situation and pending court case, his responsibility of the child, importance of being granted some form of benefit to maintain the child.

She said that disclosures were made by the child. The child spoke not on instigation of the father. The child was not allowed to go back to live with his maternal grandparents so they made sure that the child continued to live with him. It was obviously a concern for him that the visa was going to expire at the end of the year, so he did bring it to their attention and expressed his concern.

Donatella Cassar Bruno testified in cross examination on the eighteenth (18th) of February of the year two thousand and thirteen (2013) and confirmed that she did the write up of the report, prior to the report she worked on it with Rianne Vella but she did the write up. She said that investigation at child protection services also takes place by two (2) persons. She confirmed that Rianne knew what is written in the report. After the disclosure they use to go up to the office and write the report, what is written was with the approval of both and submitted to Stephania Sacco who at the time was the Service Area Leader. Each and every report after the disclosure were approved by the leader but the leader was not present during the disclosures. She confirmed that the final seal of approval would be given by Stephania Sacco.

She explained that she knew very briefly about the case because Rianne was *Omissis*'s social worker in another services within Appogg, she looked up after children services. Her role was to go and ask questions because Rianne was not a child protecting worker. It took five (5) disclosures and it happened over a period of a week, discussions were going on all the time and even the credibility of *Omissis* was being asked because the fact that two persons were mentioned that is the uncle and the grandmother and the abuse was very intense. She explained that '*I have seen*

a lot of sexual abuse cases nonetheless I can recall this is one of the most severe sexual abuse cases that I ever heard myself. So everything was being taken into context and that's why psychologists were also appointed. So we could see the credibility of Omissis. Omissis credibility over a period of a week how I said we took the disclosures frequently. It was on day to day basis. I recall cancelling my appointments almost every day to hear the child. Omissis gave a lot, a lot of details and this also shows credibility in his saying the abuse.' She confirmed that she took into consideration the credibility of the father. Asked if it was taken into consideration that perhaps the father had a particular agenda, she said all possibilities were explored. The fact that the child was not being taken care by the grandmother so the person in charge of the child being responsible of the child at the time was the father so the father was going to call the social workers. She testified that it is very natural in all cases, the parents or guardians who call social workers. She explained *'Now the fact, the father had mentioned the fact of the Visa. We are aware of that later when the Visa was going to be expired and he was not going to receive, he was not entitled for any benefit in Malta. But when you see Omissis credibility and Omissis disclosure the intensity, he was aware of time, space. He was so precise the child that it was sure, I can vouch on that, I have seen so many children saying and alleging sexual abuse cases that the child was saying that truth and even in his behaviour Omissis has also acted with other children. Has acted at the residential set up so this was evident that this boy from somewhere has learned and was exposed and has experienced this verbal abuse'*. They told the father not to take the child back to the grandmother because they were not sure of the abuse and until it was proven they needed to protect the child. They could not send him back. The child was saying that he is being sexually abused by two different persons.

She said that Omissis was ten (10) when he started disclosing the abuse. The child said that it happened when he was between eight (8) and nine (9) years old. She was not aware that the father was ordered out of the island. Asked how long he had been living with the father when this happened, she said that if she is not mistaken it is just one (1) day. The child did not come to Appogg disclosing about the grandmother, the child disclosed about the uncle and it was the uncle who had

taught him certain things which are stated in the report and the child acted on those things that he has been taught. He was not stopped by the grandmother when the child acted, so it was not the grandmother who started the alleged sexual abuse. It was the child who approached the grandmother and the grandmother there was an occasion when she stopped the child but she continued and never approached a social worker why the child is behaving in such a way.

She explained *'So initially obviously Omissis started disclosing as I've said already throughout the whole week. He did not know me, he knew Rianne so he was testing also me like all other children do. This is a Social Worker that pops up, she is asking me so many questions. She is trying to get details because it's not just we are going to get ahead that a person has touched me and I am going to stop there. I am going how, where, when and everything. So he was testing me, ok Leanne was present but he was testing me and he was also very concerned of what was going to happen to his Uncle and to his Grandmother. Because the child was really, really afraid that something would happen to them and he used to say it, I missed them because these were his family and I love them'*.

She explained that he did have good memories of the grandmother until these things happened and explained that *'until I have explained to the boy myself that who has done these things have to be punished because these things are not surely allowed and we cannot tolerate these things happen. Obviously when Omissis started to understand that what has happened to him is wrong and that he cannot continue to do so and he cannot experience this abuse any longer obviously he was being hurt, he was very anxious and you could see also through his placement. The child was, if the child was inventing all these things he would not have acted up . . . children and even residential placements where his father was not present'*. She confirmed that prior to this incident Rianne was the social worker to visit the house on a regular basis.

She is aware that the case was followed for a long time. She explained *'It doesn't meet because a Social Worker visits the house and the boy doesn't show any signs of any sexual abuse it means that it's not happening. Because we have had various children who have spoken not only after a year but also after more years have passed. So it doesn't mean because*

she was following and she was visiting and the child did not exhibit any behaviour doesn't mean that it was not happening'. Asked if the file was taken into consideration in preparation of the report, she replied that she did not have to check the file, it was not her job and she was getting the story from the child. There was no need to bring the file because when children disclose a sexual abuse case, the procedure is that they discuss with their service area leaders and take the case to Vice Squad. She explained that 'There could have been the most brilliant family, the most wonderful family, the most loving family and still an abuse was taking place. So even if I went to check Reane's file and took into consideration what a loving family or what Omissis had in this family it doesn't mean that I was going to write this report because I as a Social worker was bound to write this report and I was bound to inform the Inspector and Omissis also gave his testimony. And the testimony that Omissis even gave in Court was the same testimony that I have written here and what Omissis was saying over a period of time after the investigation was over when he was in the residential set up. And his behaviour when he was with the Psychologist and when he was with the Psychiatrist and when he was with the Doctor he was always maintaining the same details and if you can note this is a very, very, very detailed report.' Asked how long the child had been living with the father before this happened, she said if she is not wrong it was just a day when the father came to Malta after three (3) weeks absent.

Asked about 'threatened the child with a pen drive' she answered 'No it was not a threaten. It happened that Mr Omissis asked Omissis why he was not calling him daddy and if there was someone telling him not to call him daddy and then it was that he had pulled the pen drive in the Computer, Omissis asked him what he was doing and he told him I was going to see what's been happening at the father and told him no, no, no please don't do so, I will tell you. And the child started disclosing slowly slowly'.

The father was sorry for not calling him papa. Omissis disclosed that while he was living with the grandmother he has tried kissing his younger brother Omissis, under the roof of the grandmother Omissis was already showing sexual behaviour. The four (4) year old also slapped his brother for making such acts with him. It was also

happening under the grandmothers roof and Omissis also tried kissing another girl outside. Omissis was not being supervised all the time so something was going on. The child was exhibiting this behaviour on and on. In relation to the pendrive, Omissis thought that his father was going to see his sexual acts. The father was not present for the first nine (9) years in the child's life because the mother never told him that she had his child.

She explained that 'We did assess whether this child was being consistent due to the fact that when I see other cases it was a very intense case like I said before. The child was giving a lot of details and it is impossible that someone and in this case you're pointing out to the father has given all this information and detail. There are many things which involved sexual acts, adult sexual acts which a child of 8,9 10 years would not know if he was not exposed to these things. It was impossible that in a day the father would have showed all these sexual acts to the child, the child would have invented all this and in 5 days he would have reencountered all this and then kept on being consistent in this version. Because it's not only the five days we need to take into account here. We need to take in account that the child has been saying all these things all along with Vice Squad, with us, with other Social Workers, with the Psychologist and with the doctors'.

Asked about Rianne Vella monitoring the situation, she said that *'Rianne Vella as I told you couldn't just in a home visit or when you go and talk to the child, the child did not speak. But the child took his time to speak. The child could have said million other things which were happening at the grandma's house . The child has chosen to speak, since he could have chosen to speak when his father was here or when his father was not here. You are pointing out that because his father was here the father was put something in mind of this child but it is impossible because again the details given from a 10 year old child about the sexual acts it's impossible that someone has putted them in his mind when he has not acted on them. I have seen a lot and a lot of sexual, I done 3 years at Child protection services, I've been 8 years now Social Worker, I have never seen such case where a child gives so much detail. Omissis is a very very intelligent child, he is very alert. The psychologist has also pointed this out in the report so when you compare Omissis intelligence and what Omissis has disclosed I used to spend over an hour with Omissis in our counseling room getting answers from him and he*

used to explain, he used to do also facial expressions when I remember in and out. He used the word nerdahulek, and he put with his face how he's done that. It's impossible that this child could have inflict, someone has inflicted these things on him'.

She explained that children are resilient. *Omissis* said what had happened with the uncle and it was over a period of a week that the child had spoken. The Court stated that it does not rely on the report of Appogg but relies on the viva voce evidence which is presented before it. Regarding whether the child showed any negativity towards his grandmother, she replied that when *Omissis* spoke initially he did not say the abuse regarding the grandmother immediately because he was very concerned of what might happen to his grandmother. So for a long period of time his grandmother was his mother. She was the one taking care of him, she was the one feeding him and everything and he did miss his grandmother a lot but it does not mean that it did not happen. A lot of people love their children but do hurt their children. He gave a lot of detail about the abuse. They do not record children but notes are taken. Notes are transcribed into the report. They do the interview a joint session and there is no one and also to note in one disclosure if she is not wrong on the ninth (9th) November another person has joined her for the disclosure so *Omissis* continued on saying because Rianne was not available.

She does not recall how long the child had not been going to school but remembers that that the child did not have his school things and that they were taken to *Omissis* Police Station for the child to go to School because the things were all at the grandmother house. She does not recall telling the school what was going on. It was the child who was saying things and the father was bound to come and tell them and told the father if more things come up come to Appogg. She confirmed that the father was coming every day revealing something and they use to hear the father, the child and see if the child was again consistent.

Asked that the grandmother is illiterate, she replied that by what Reanne told them she is not illiterate and outside she does know how to use the mobile. The child did

not just talk, the child exhibited behaviour. She stated that *'if Omissis said that the nanna wrote it but if Omissis wrote the word sex ok the grandmother did not stop Omissis from seeing, ok she doesn't know he was writing sex but she does recall that those are pornographic films'*. She does not know that the grandmother is illiterate but Rianne told her that she is not illiterate. The minor's intelligence is not above average and his intelligence is according to his age. The child was taken to a psychiatrist, took the child to a psychologist who took the child for further investigations and his behaviour has showed not only his sayings but also his behaviour has shown that he has sexually abused. She read the psychologist report but not the psychiatrist report, from the psychologist report she recalls that the child was consistent, the child was very alert, knows his whereabouts. The child obviously wanted to test the grounds and is normal that a child discloses over a period of time because of anxiety it creates. The father was not present when the disclosures took place but was in another room. The father was not aware what the child was saying and when they spoke to the father the child was not aware of what they were saying to the father. He did not feel uncomfortable that the father was in another room. She thinks that at that point Omissis was feeling comfortable with the father because he was taking out what was happening and he was feeling safe. Asked how long the alleged abuse took place, she said that he did not recall the exact period but it was between eight (8) and nine (9) years. With the uncle he did specify September two thousand and nine (2009) when things stopped with the uncle. There was a period of time when the abuse that was going on with the uncle was also happening with the grandmother according to the child. Reference was made to folio 35 by the defence counsel and suggested that the grandmother does not know how to use the computer, she replied Omissis switch on the computer, asked about *'In-nanna kienet titfi l-Computer, she is Computer illiterate'* she replied *'But switching off the Computer is just a button'*. She explained that *'Rianne used to tell me that, I did not go to home visits ok so that room where the Computer was it was a common room ok so everyone could see how the Computer is switched on and switched off everyone could see how the Computer is switched on and switched off'*. She explained that *'But the point is who switched on and who switched off the Computer ok they are great details but the child has seen these things ok and it was the*

role of the adult in this case of the grandmother to stop what the child was doing'. She is not aware that the grandmother is computer illiterate. She explained that she wrote what *Omissis* told them and did not write what the father said.

Omissis testified on the twenty eight (28th) of March of the year two thousand and fourteen (2014) and stated that she has known *Omissis* for fourteen (14) or thirteen (13) years. She met the child when the incident happened but not before. Referring to *Omissis*, she explained that at the start '*jiena kont infisdu ghax jiena nanna ta' hamsa. Issa t-tifel meta ridna, gie filghaxija biex jorqod staqsejtu ghidtlu int ma' min trid torqod ? Ma' missierek jew mieghi ? Qallu norqod maghha. Issa kont inraqdu mieghi. Darba minnhom it-tifel rajt mossa minnu li beda jdahhal idu minn taht il-flokk ghal ma' sidri. Jiena lanqas ghaddieli minn mohhi dawn l-affarijiet. Nehhejtlu idejh. It-tifel rega' l-istess. Imbaghad wara ftit ergajt nehhejtlu idu t-tifel dar, beda jhokk mieghi. Insomma u dan u beda sejjer ahh, ahh. Jiena fil-verita' inhsadt ta' veru. Qomt, cempilt lil missieru u qed nghidlu hekk, hekk, hekk u hekk.*' She confirmed that when she first met him he behaved in this manner in bed. He might have slept with her before. It was summer. At the start the child did not sleep with them, they use to get him and take him. She explained '*Ghidlek fis-Sajf konna nifirxu fil-gallarija habba s-shana*'. He was nine (9) years old. She explained that '*it-tifel kien hafna pastaz u arroganti. Din l-ewwel haga pruvajt dejjem biex nirrangah u rrangajtlu hafna affarijiet milli kellu ta' veru imma din is-sitwazzjoni li dahal fiha ma seta' jirrangaha assolutament b'xejn.*' Stating '*Jiena mhux qed nghidlek fuq affarijiet ta' sess u hekk fil-bidu. Fil-bidu kien pastaz u dawn, arroganti, jirrispondi, jitla' fuq l-affarijiet, minn dawn l-affarijiet ifhem*'.

Asked whether she knows that the grandmother is illiterate, does not know how to write, she replied that she said what the child said and does not know whether she knows how to write or not. She does not know how long the child had been living with them before he said this about the computer, perhaps three (3) months but does not know exactly. Before the case that was taken to the police, they use to collect the child and take him back and then after remained with them and then the son's mother turned him on the father. Asked what made him say, she said that his father

was in Libya and got some things, went for the son to see him for a bit and the father said that the son made a panic and got him home. His father was doing something on the computer, had a pen drive and was going to do it in the computer. She explained '*Qabez dan it-tifel qallu, qallu dik x'inh? Dak ma nafx kif giet f'rasu qallu din qallu kienet id-dar ta' nantek qabel ma sifirt u rrekordjajt kollox biex nara x'hemm u x'hemmx*'. The child said no now I will tell you everything. She was not present but stated what Abdel told her. She was cooking. Regarding when she testified that '*it-tifel baqa' bl-istess hsieb u qalli issa nghidlek sigriet rigward fuq in-nanna u z-Ziju*', she said that that was at the start when the child '*ipprova jiehu xi haga minghandi*'. When she asked him what he wanted to say about the uncle and grandmother, he said that now he does not want to say anything. She does not know how much time passed from when this happened to when the pendrive incident took place, but perhaps a few days. She explained that he told her '*tohodiex daqshekk qalli ghax jiena qalli gieli rajtu jbus lil nanntu fuq xuffitha*'. Referring to the child kissing his grandmother, she stated '*Jiena ma tajtx kasha. Jiena mhux dik li rajt. Jiena rajt li t-tifel prova affarijiet ta' rgjel qalbi hi. Dik ma taghmilliex differenza. Issa jekk ibusha lin-nanna minn xuffitha u minn. Xorta propja jiena gbidtlu l-attenzjoni lit-tifel, ghidtlu tfal ibusu minn hawn mhux mix-xuftejn*'.

Regarding the shower incident where she had testified that that while she was taking a shower he went running, she said that he came from school, left him on a chair and told him that she will take a bath and for him to do homework so that then she feeds him. He was behind the bathroom door since when she went to open, he went running. She stated '*Jiena mort hdejh ghidtlu isma' ghidtlu inti kif homework ghadek m'ghamilt xejn qas bdejt. Qalli ghax kont qed nissemmalek wara l-bieb qalli ghax bdejt nimmaginak bla hwejjeg kif kienet tkun in-nanna u Hsibtek ha tghajjatli*'. Asked if he showed her that the grandmother behaved in a wrong manner or perhaps the child was curious, she said that she knows how he behaved with her but cannot say how he behaved with the grandmother. She explained '*Hu ma qalx li kien imur inemsilha lin-nanna, hu qal in-nanna kien imur maghha u tmissu u dawn l-affarijiet*'. She does not know how long he was with them stating '*dan fil-bidu gie mill-Libja u sar il-kaz qisu*'.

f'daqqa'. Asked 'Mela ara nghidx sew illi dan l-inkiwet, dawn l-affarijiet bdew meta Omissis gie ill-Libja minn hemm bdew dawn l-affarijiet, dawn it-tip ta' problemi ?' she replied 'Iwa mela minn hemm bdew dawn it-tip ta' problemi'. Explaining 'Mar ghalih u ghamel panic u mbaghad b'din tal-Kompjuter insomma eccetra, eccetra' She says that when he disclosed what happened with the grandmother he hadn't been coming at her house for a long time. When the father called her to listen to what the boy was saying, she heard the boy. She stated 'l-ewwel qallu ta' zijuh u t-tifel ma gidibx lanqas ghax ta' Ziju teka' veru. Heq issa ma nafx.' Asked why she did not state that the father was present, she replied since she was not asked, she does not know school. She stated 'Ghax missieru, ma' missieru kixef il-kaz it-tifel' She stated that 'All right forsi m'ghidtiex jista' jkun imma missieru kien hemm mhux jiena ghax il-kaz l-ewwel ma kixfu missieru mhux jiena. Qas ghaddieli minn mohhi jien dawn l-affarijiet ta' tifel'. The Court clarified 'Li qed jghidlek hu li t-tifel beda jghid dawn l-affarijiet meta beda jigi ghandkom' and replied 'heq ovvja nahseb jien'. She said that if she stated that he lived with her for nine (9) months *than yes he lived with her for nine (9) months. At first he was arrogant stating* 'fil-bidu kien hafna arroganti imma mbaghad it-tifel kif bdejt immexxih kif kelli mmexxih beda jgib ruhu sew, u ghallem insomma u dawn l-affarijiet u hekk uh'.

Omissis testified in cross-examination on the fifteenth (15th) of July of the year two thousand and fourteen (2014) stating that he is 43 years old and when he met Omissis, the mother's son he had about 26 or 25 years. He confirmed that there is a difference in age between him and Omissis. He does not know if when he got to know her she was 15 years old and was still going to school. He did not agree that there was a period of years that he could not come in Malta, He explained 'nidhol bil-visa kif tispicca l-visa mmur ingedded il-libja. tispicca ngedded nigi Malta tispicca l-VISA nerga' lura ingedded u nerga l-istess' Asked why he asked to do a DNA test so many years after the birth of his son, he said that he already knew that there is the baby, he knew when she was with him and so did her family. They had agreed that they will marry explaining that he spoke to her father and agreed that he would marry her. She then went with his friend, explaining that he had knocked at the house and they

were not their, knocked on the friend's door and the accused opened , he pushed the door and went in and found this person from Libya in bed *'rieqed bla hwejjeg bicca lizar fuqu u s-Sinjura Omissis illi in ghidt twajba hafna kienet fuqu bilqeghda. Xi tridni naghmel ? Immur maghha jien ? Qbadt ciao, ciao u daqshekk tlaqt 'l hemm. minn dakinhar ma nafekx'* He explained *'Ghax bdejt nitkixxef jien fuq it-tifel x'sar u ma sarx u bdiet tghid illi hi kellha zball li meta qaltli li harget tqila ma kienx veru. Qalet illi ttardjalha...'* Explaining that he put his mind at rest that there was no baby and explained that he had met a friend at the airport and got to know about the baby. He went were her grandmother use to live and found her uncle and told him that he does not know where they are and does not want to know. He use to go to Bugibbaa for a walk to see if he sees them but never did. In Chirstmas he was going with *Omissis* to buy for the children and saw her cross with the son. The child had nine (9) years.

He explained *'Ghax ahna l-Libjani forsi taf sewwa Sur Avukat, ahna certu nies forsi ma jaghtux kaz imma ahna fejn trabbejt jien naghtu kaz. U l-famija tieghi ma kienux jaccettaw dawn l-affarijiet. U jien minni kont ghidt la ghamilt l-izball jiena nirrangah l-izball u kont se nizzewwigha'*. He did not agree that her father did not want him with his daughter, he use to take the daughter and mother out and then spoke to the father. He explained *'U wara inqala li nqala. Imbaghad jiena kif inqala li kienet rajtha mal-habib tieghi jiena tlaqt 'l hemm u daqshekk bil-kwiet. Ghax jiena qed nghidlek kienet dardritli hajti hu u l-familja ghax m'humix nies, m'humix nies. U jiena kif inqala li nqala jiena bdejt niringrazzja lil Alla li jiena straht mhux huma strahu, jiena straht'*. He denied that he spent two days in Qawra with *Omissis* and they found her at his place and denies that the police knocked at his door stating that for long as he lived in Malta the police only knocked at his door once. He denied to was made to leave from Malta and that his three passports prove this. The social worker that was taking care of *Omissis* told him that they cannot say that he is truly the father without a DNA test. She use to do house visits. In the meantime he had met the son and the grandfather told him to speak to the social worker. He thinks that he took the son out once before the DNA test. Asked about opportunities to meet him he said *'Ma kelliex hafna ghax il-bicca l-kbira konna mmorru l-Omissis stess ghax is-Sinjura din kienet tmur il-Omissis*

tiehu xi cafe fejn il-Knisja u kienet tiehdu maghha u kienu jcempluli biex ninzel nigi narah hemmhekk' and he use to go for five (5), ten (10) minutes. He explained that 'fil-bidu int ma jafx min int u meta tghidlu int min int qisu biex jaccettak f'haftu u hekk bil-mod l-affarijiet. Millum ghal ghada ma tistennihiex li ha jghidlek pa u ha jghidlek hekk u ha jifrah bik u ha jaqbez fuqek din qatt ma tkun ghax jekk inkun jiena jigi xi hadd jghidli missieri ma nahsibx li ha naccettah f'dan iz-zmien kollu nghid iwa u naqbez fuqu dik zgur li le'. He explains that he had taken him out once but does not remember how many times and had met a few times with the grandmother out. He explains 'Sorry jiena lanqas magghom qatt ma kelli inkwiet qatt ma kelli nkwiet. Anke wara Omissis u hekk qatt ma kelli nkwiet magghom'. He kept contact with the social worker. Asked by the Court 'Imma nel frattemp qatt qalulek jekk osservawx xi haga mhux f'lokha jew Omissis kien qed igib ruhu mhu normali jew Omissis kien qed igib ruhu normali ?' and replied 'is-Social worker ma kienux jghixu mieghu l-gurnata kollha'.

Asked if social workers ever criticised the environment of Messrs Borg, he said that they did not say anything but when he spoke a lot of things changed. He confirmed that when he did the DNA test, the child continued living with the grandparents. He states that were no problems. He explained 'Anzi meta ghamilt id-DNA it-tifel sar jigi mieghi d-dar, kont niehdu komdu iktar anke jiena kont inhossni iktar komdi naf fic-cert li dak vera t-tifel tieghi u bdejt nohorgu bil-qalb, nixtrilu bil-qalb u nhoss, dak il-hin inhossu ta' veru jien'.

Defense counsel stated 'Jekk inti, toqghodx tghid hekk Mr Omissis ghax kieku inti verament thobb it-tifel qed jghix mieghek mhux qed jghix fejn qed jghix fil-prezent' and replied 'Ghex mieghi it-tifel u ghex mieghi u nehhejtu minn Maghtab, nehhejtu minn Maghtab it-tifel, minn Mizbla shiha kien go fiha . . .' Asked 'Ara nghidx sew Mr Omissis illi inti bhal ma ndikjatelek qabel li inti hlift li tpattilhom kif ghamilt id-DNA test bdejna bil-problemi' he replied 'Mhux minni la hemm go fiha. Qatt ma pattejtha lil hadd u lanqas hadd ma jien ha npattiha lil hadd. Jien min itini hawn intih in-naha l-ohra'. And continued 'Jiena mxejt magghom ta' ragel sal-ahhar minuta u ghadni s'issa nirrispettahom ghax m'hemm xejn kontriha. U jekk ikun hemm dak il-hin nitkellem imma issa s' issa ghadni bir-

rispett. Ma nghidx lanqas kelma mahmuga fuqha jien. Nghid dik is-Sinjura dika. . . kif tghallimt u kif trabbejt miexi jien. U jekk hawn il-Qorti jekk smajtux kelma kontriha hazina. Jinea ma nitkellimx lanqas ghax s' issa akkuzat s' issa' He says that there weren't any problems.

The defence counsel made reference to when the father went for the child and he did not want to go with him, he then took him home and did not want to speak. He explained 'Jiena li kien gara jiena kont kelli bzonn immur il-Libja. It-tifel ghax inti dejjem tghid li kien hemm l-inkwiet u ghadek issemmiha hemm il-problemi, hemm il-problemi meta hadt it-tifel fuqi jien u kelli dritt illi lanqas jarawh ma kellhom id-dritt huma jiena li thassarhom lilhom u mort jiena ntihulhom it-tifel u accettajt li jiena narah darba fil-gimgha u jghix it-tifel normali ma' nanntu kif kien. Jiena li ghamiltha mhux huma. Jiena meta kelli d-dritt li huma ma jarawhx. Jiena thassarhom u mort hadtulhom jien u ghidtilhom lest jien it-tifel jghix komdu u tghixu mieghu komdu ghax jiena nista'. Hekk ghidtilhom. Jinea nista' nghajjixkom lilkom u lit-tifel komdi. Kull ma jonqos jiena nhallsu. Qaluli minhabba children allowance u mhux children allowance ghidtilhom kemm qed itukom jiena ntikom id-doppju tieghu u t-tifel kull ma jonqos it-tifel jiena nhallsu. Irrid it-tifel tieghi jghix kuntent kif kien. Mhux inthom ghidtu maghna tajjeb jiena rridu tajjeb'. He explains that he has family in Libya and goes when needed. He says he never lied. He continued 'Jiena kelli bzonn immur il-Libja. Mort il-Libja. Meta gejt lura u mort qabel nitlaq il-Libja mort ghandhom. Mort bil-flus, mort b'kollox. Jekk jonqsu jonqsu, jekk tonfqu tixtrulu li hemm bzonn u jekk tonfqu tal-mija ntikom mitejn. Hekk il-kliem tieghi kien. Hekk kien il-kliem tieghi qabel ma nitlaq minn hawn ok. U meta mort il-libja kelli bzonn noqghod hemmhekk gimgha, hmistax, ghamilt li hemm bzonn u gejt lura. Xtrajt lit-tifel tieghi mill-isbah affarijiet li hemm, l-aqwa hwejjeg minn kollox xtrajtlu u gibthomlu. U meta cempilt it-tifel kellimni kien jumejn qabel, jew gurnata qabel'. He continues 'kellimtu u kollox kif suppost li jiena xtrajtlu l-affarijiet. Mort kif wasalt hemmhekk sa kemm wasalt hemmhekk jiena kelli li ha niltaqa t-tifel tieghi, qed nimmagina kif ha niltaqa' mieghu, kif ha jifrah kif ha jara l-affarijiet, kif ha jiehu pjacir. Dik li kont nimmagina jien. U li gara kif hemm miktub hemmhekk u nerga' nghidulek kelma kelma ittra ittra ghax ma ninsih qatt f' hajti jiena dak li gara. Jiena skantajt u jiena bqajt imbellah milli gara dakinhar. U waqqaft, inzilt vera mill-van u bdejt inhares 'l hemm u 'l hawn x'qed jigri, x'gara, x'gara vera x' gara', he continued 'it-tifel hallejtu sa kemm jiena

sejjer kollox kif suppost tajjeb hafna, qiegħed ma' nanntu u mohlhni mistrieh xejn ma kien hemm'. He continued 'u jiena ma chadthomx minnhom dan', 'jiena meta kelli d-dritt qed ngħidlek kelli dritt li niehdu jiena u ma jarawhx b'ghajnejhom ghax għandi forsi l-kuntratt u miktub hlief ommu biss ok m' għamiltiex jiena'.

Asked 'Imma l-problema huwa fl-ebda stadju, veru fl-ebda stadju ma ssemma illi t-tifel kien qed ikun skomdu ? Kien qed jigi attakkat ? Naqblu jew le ? Hadd ma tkellem hawnhekk illi t-tifel għandu problemi. Il-problemi bdew meta bdejt inti bil-pen drive, iva jew le ?' he answered 'Hekk hu vera'. He says 'Inkixfu hafna affarijiet bil-pen drive u harget il-verita''
Asked before the incident regarding the pen drive if he ever observed something which was not 'f'lokha', he answered yes. He says that he was once out at the airport and he attacked Omissis. This was after the DNA test. Before the DNA test he met him once, took him around Omissis, bought him sweets and things and another two or three times he met him with the grandmother and then told him that he cannot see him because there is nothing to confirm that he is the father. Regard the DNA, he spoke to the grandfather who said all right and said that even they will feel more comfortable and they will know the truth, even the grandmother. He says 'Anke hi jiena m'għandi xejn kontriha qabel' and that 'Qatt ma kelli kontriha qatt'. He spoke to Omissis once and he had asked her if it is true that the child is his before seeing him and she said yes. He confirmed that there were no difficulties from the accused, her husband and Omissis said that he is probably his child and with a DNA test he would know if it is true. Asked 'Jigifieri huma kkoperaw miegħek mija fil-mija mhux hekk ?' answered 'Mhux ezatt imma ngħiduha'. He said that he did not want to take away the child after she kept him all those years.

He repeated that 'Jiena qatt ma kelli, qatt ma kelli kontrihom qed ngħidlek. Qatt ma kelli kontrihom'. and that 'U t-tifel jiena poggejt u fidejhom, jiena bir-rieda tiegħi tajtulhom'. He said that when he took care and custody the child was living with him and explained 'U kont stedinthom anke lilhom. u stedinthom apposta biex nurihom id-differenza fejn qed jgħix it-tifel issa għal mandra li jgħix fiha għandhom'. He explained that the child did not immediately live with him when he obtained care and custody. After

obtaining care and custody he took the child to live with him for a few months. He explained that *'It-tifel kien mieghi. Wara jiena hadtu ghand nanntu u tajtullhom jien u ghidtilhom naccetta jiena narah darba fil-gimgha u t-tifel jibqa' maghkom bhala skola jibqa' mal-hbieb tieghu fl-iskola u kollox u fit-triq fejn jghix jibqa' mal-hbieb tieghu u l-firends li ghandu. Fid-dar jibqa' ma' l-istess persuni hekk . Wara li nqala dan, wara' He explains 'Jiena mort nara t-tifel tieghi normali. Jiena l-ebda hsieb ma kelli hazin'. He said that he use to ask the child if he is all right with the grandparents and he use to say ok, ok. He said that 'Anzi jiena kont kif kien joffendiha fil-karozza tieghi konna mmorru nixtru jew xi haga u jibda jghidilha shut up u hi titkellem shut up, kont jiena nghidlu dik mhux innanna, dik ommok kont nghidlu. Ommok ghax hi hadet hsiebek, hi rabbietek'. He said 'Ma kienx jittrattaha sewwa jien ghalija ma kienx jittrattaha nanntu sewwa'.*

Asked with reference to folio 23 where he said *'Harget Omissis u sorry bdiet tghidli kliem baxx'* what were the words, he replied *'Kliem bhal fuck you, ma nafx affarijiet jekk'*. He said *'Lanqas jien ghalija ma kien hemm l-ebda sens. Jiena ma kienx hemm l-ebda sens ghal x'hiex gara hekk. Jiena stess bqajt skantat ghal x'hiex gara hekk. X'qed jigri ? X'qed jigri ? Ghax bqajt hekk qisni iblah hekk fil-karozza bilqeghda fil-van x' gara ? X' gara ?'*. The defense counsel expressed that it neither made sense to his client, and the witness replied *'taghmel ghax forsi dak il-hin kienu qed jaghmlu l-pastazati li kienu qed jaghmlu u telliftullhom hi. Dak li kien nahseb jien'*. He says that he was near the door in the van and that he did not use to go in since it was dirty and there was a bad smell so he use to stay in the van and the boy goes out. He gave an explanation regarding the pen drive in his house where he told the child *'Ghidtlu issa din ha tghidli kollox x'gara u ma garax. Iggenen, iggenen it-tifel, le, le nghidlek jiena kollox, nghidlek jiena kollox. U beda hergin l-affarijiet wahda wara l-ohra'*. Asked if the grandparents and at school he knew the computer, he replied that he thinks all children know something on the computer. Asked then why was the child scared if he knew what a pen drive is, he said that if he knew what it was he would not have asked.

He said *'Jiena 'ghidtlux din pen drivew jew mhux pen drive. Hu staqsieni, kull ma staqsieni dik x'inho li ghandek f'idejk ? Dik x'inho ? U jiena kienet hekk u kienet iddur hi biex tinfetah.*

U kienet maghluq. U kellha minn fuq buttuna sewda hekk u jien ghidtlu, qed taraha din ? Ghidtlu din qed taraha din il-buttuna sewda? Din kif naghfasha din qabel nitlaq il-Libja naghfas il-buttuna s-sewda u tfajtielkom hemm fejn is-sufan, that is-sufan u din toqghod iddur god-dar u tirrekordja bis-sound u bil-video. Hekk il-kliem tieghi kien. Hu issa jaf pen drive, ma jafx jiena ma nafx. Hu saqsieni dik x'inh i ? U jiena t-twegiba tieghi hekk kienet li dik iddur god-dar u waddabtielkom u jiena l-hsieb li kelli biex inkun naf ghal xiex ghajjat u ma riedx jigi mieghi biss u mhux iktar. Jiena qatt ma kelli hsieb hazin fuq dawn l-affarijiet. U jien anke meta Omissis darba qaltli, illi t-tifel attakaha qisu u biesha u qed jaghmel affarijiet mhuex suppost. Jiena kont rajtu jbus lil dik minn xuftejha u kont ghidtilha lil Omissis u ma hadtiex bi kbira. Ghidtilha Omissis jista' jkun dawn l-Inglizi hekk ? Ghax jiena qatt ma kont maghha. Ghidtilha jbusha lil nanntu minn xuftejha, ghidtilha forsi ghalhekk. U kont hadt lil Omissis mieghi. Ghidtilha issa tara kif inkunu, intuhulha jew nohduh it-tifel jaqbez fuqha u joqghod ibusha fuq xuftejh. U anke meta qaltli Omissis ma tajtx kaz il-verita', ma tajtx kaz it-tifel imdahhal f' dawn l-affarijiet jew jaf dawn l-affarijiet. Ghamiltha qisu tat-tfal biesha u daqshekk'

He says that he was not offended that his son does not call him daddy, he says that it does not worry him since the son spent ten (10) - eleven (11) years with them. He says that he had lost all contact in the ten (10) years and when he went searching for them, he did not find them. Regarding the pen drive he explained 'Ghax beza' minn dik il-pen drive ghax dik ha tikxfu u Tikxef l-affarijiet. Ghax jien kif hargitli jien illi din ha iddur god-dar u tirrekordja bil-video u bis-sound. Mela jiena ha nkun naf hafna affarijiet. Hu dik li beza' minnha li ahjar jghidli u daqshekk. Hekk fehma hu. Issa kif saru l-affarijiet jiena qed nghidlek. Jiena ma nafx. Jiena kull ma kelli l-hsieb li din il-pen drive, l-istorja tal-pen drive illi jghidli x'gara dak il-hin, ghal x'hiex ghamel hekk dak il-hin'. He went for him at 6pm, 5. Only the son and grandmother were present. He knew he was going to collect him but did not know the time. He did not say everything at that time, 'Beda l-ewwel fuq iz-ziju tieghu, l-istorja taz-ziju dik li beda jghidli. U jiena kif qalli dik l-istorja qabzitli. U Omissis baghTitni ghand dan il-habib tieghi Omissis Pulizija biex niehu parir minghandu'. He says that Omissis was in the kitchen cooking. When she came from outside she asked him what happened because he had told her that he will just go and give him the things and did not tell her that he will bring the child with him. He

expected that the boy would tell his grandmother who is almost his mother twenty four (24) hours with her about what his uncle did to him. Asked '*Allura x'gara skuzi jekk kien ilu jghix snin maz-ziju ma kienx hemm problema ta' xejn*', he replied '*Mhux problema qiegħed il-habs ? Qed jghidek hu stess li għamiltom l-affarijiet issa tghidli mhux problema din. Jekk dan it-tifel ma setax jitkellem miskin*'. He said '*Jiena smajt mit-tifel, gejt il-Qorti, gejt is-Social Workers, gejt għand l-iSpettur Louise, għidtilhom x'hemm kelma kelma xi smajt u hafna affarijiet li lanqas ridt nisma' iktar ghax iddejjaqt hajti kwazi kont se naqbez b'li kont nisma' u hallejt f'idejhom tobba u min kollox u jiena hrigt kwazi 'l barra lanqas irrid nisma' ghajjejt, ghajjejt. Ghax kont se naqbez hawn il-Belt ghax iddejjaqt milli nisma ok. U mbagħad tigi issa tghidli li mhux veru. U zijuh stess qal li kollu l-kliem minnu. Minnu jew le ? Qiegħed il-Habs jew le ?*'

Omissis continued testifying in cross-examination on the eight (8th) of January o the year two thousand and fifteen (2015). Asked about when a teacher spoke to him about his son's behaviour, he states that he does not know his name but knows that he lives in Zurrieq. He was the son's teacher. It was not the first time that he spoke to him. He does not remember what the teacher use to teach his son. He use to tell everything that happens to the social workers and police and the social worker had to go to school but did not speak to him back about this. He took interest and was waiting when children go out to ask how his son did at school that day and he was telling him today better and that he use to sit down with him to teach him how to write, do maths and how to behave with children and the teacher. Asked if he sworn that he would pay Messrs Borg back for what they did all these years taking care of his son. He replied '*Imma fejn? Fejn hlift jien? Jiena fejn hlift? fejn? Int rajtni? Smajtni? Semghani xi hadd? jiena qed ngħidlek jiena minn meta kont naf li għandhom it-tifel u li hemm it-tifel jiena dejjem imxejt ta' nies magħhom, jiena dejjem ta' nies magħhom imxejt u dejjem, dejjem anke t-tifel sal-ahhar minuta, sal-ahhar minuta dejjem bdejt ngħidlu dik mhiex nanntek dik ommok ghax hi rabbitek*.' He was asked '*Illi inti stess konversazzjoni inti stess f'obversazzjoni għidt dan l-inkwiet kollu huwa tort tat-tifel ghax hu ha nikkwota: "Liba".*' and answered that he never said that. The child has not lived with him for two (2) or three (3) years. Asked about '*Dan l-inkwiet ilu għaddej*' he confirmed that

since two thousand and eleven (2011). That he no longer takes care of the child since there is an order from the Ministry that takes care of children not to go near him. He himself stated that he does not want to see him. Asked if he abandoned him he replied no, that he took care of him in relation to school, to teach him, for him to be better than others, he ried mornings and nights so he will be like other children but it was for nothing. He was telling the social worker to help him since he never raised children and to show him where he is mistaken and he was in contact with them. He was going for his son to each other and he received a call from the police station that someone wants to talk to him. He went and found the social worker. This was about two years ago. So he has not seen him for the last two (2) years. He explained that *'Jiena minn dakinhar, minn dakinhar jiena t-tifel kien ghamilli hafna affarijiet ippruvajt minn kollox u minn kollox pruvajt illi, u dik li kienet hallitni vera mort hafna l-boghod mhux hafna li beda jistenna lili jiena stess li naghmel mieghu. Illi jiena nidhol fil-kamra tal-banju ninhsel insibu wara l-bieb u darba minnhom smajt is-siggu jiccaqlaq tal-kcina ghax kien tfajtu jistudja ghidtlu sakemm nidhol ninhasel hu jistudja. Sakemm dhalt fil-banju smajt is-siggu jiccaqlaq u ghandi l-bieb qisu minn taht vojt u nzilt mill-ewwel bdejt nittawwal minn taht il-bieb insibu wara l-bieb. Ftaht u hrigt nigri jien.'* This happened when he lived with him. He said *'Harab jigri fil-kcina. Ghidtlu: "Omissis x'kont qed taghmel wara l-bieb tal-banju?" "Le xejn, le xejn." Ghidtlu: "Omissis x'kont qed taghmel wara l-bieb tal-banju?" and "Qalli: "ghax forsi trid taghmel mieghi bhal ma kont naghmel maz-ziju." "Ehe", u minn dakinhar vera ghidt minn illum dan it-tifel jiena ma, ma.'* He said that he tried all roads and he is not use to these things. He said that he had informed Appogg and informed Riana, Lisa, Nadia and Charles. He said that he told them. If something happened in the evening, he would go in the morning and tell them. If it happened during the day, he would go and tell them the next day. He spent about two (2) years living with him and did a lot of things and almost reported every day. He reported every thing that happened with him.

In re-examination, he said that *Omissis* is today 15 years old. He said that he was going out and received a call from the station in Zurrieq and asked him to go so they speak to him. There were two women and told him that they have a paper that he

cannot see his son. The prosecuting officer said '*care order*'. She told him that this is an order from the Minister. He does not know what a care order is and replied that they did not read it. Asked if although there is a care order, he still took interest to see the son, he said that he was worried and did not sleep. He said that he took great interest and told the teacher that he did not raise him himself and to tell him if he sees something bad stating '*Jiena nteress kbir hafna kelli imma meta sibt illi dan qisu kuljum l-istess diska sejrin biha Omissis mhux hekk, Omissis mhux hekk, Omissis mhux hekk l-affarijiet ma jigux hekk, Omissis orqod bhan-nies, Omissis itfa' mohhok fl-iskola, Omissis l'hemm tasal x'imkien. Hawn din it-triq mhiex tajba, Omissis hekk, Omissis u kollu ghalxejn imbaghad xi tridni naghmel jien? Xi tridni naghmel? Jiena kif ghidtha lit-teacher stess ghidtlu jekk hu ghamel dawn l-affarijiet sorry eacher hi ghidtlu jiena ma rabbejtux jien, dan it-tifel hadtu issa f'idi jien. Imma jekk tara xi haga ohra jiena minn hawn il-quddiem jiena nista' fejn tara xi haga hazina kellimni u jiena niprova minn kollux*'. He said '*Jiena li ghaddejt minnu ma ghaddiex minnu hadd nahseb fid-dinja b'dan it-tifel*.' and added '*U ma dawn il-familja*.'

The accused **Omissis** testified on the twenty sixth (26th) of May of the year two thousand and fifteen (2015). She confirmed that her daughter *Omissis* got to know *Omissis*'s father fifteen (15) years ago. *Omissis* met him in Bugibba and he wanted to marry her first. She was 16 and he was around 20. The accused said no because she was underage. He had known *Omissis* for around a week. She only knew him when *Omissis* got pregnant and she reported him and he kept coming to her house. She was around sixteen(16), three (3) months when she got pregnant. She never brought him home. *Omissis* knocked on the door and said that he would buy her everything if he married her, and the accused said no because she is under age. She reported him to the Qawra Police station because she is under age and they said he had got back to Libya for ten (10) years. She confirmed that he was expelled or asked to leave the country. *Omissis* lived with her for those ten (10) years and there was no contact between *Omissis* and *Omissis* during the ten (10) years. He came back, '*down the square where I lived and asked could I see him*' and she said yes. He came up to her house and he said to *Omissis* I've got all the money in the world and one day you

could have it. She told him that he had to get use to his son first and then he did not really like him. After a while he got used to him and told him he could have him for weekends, but every weekend he took him on a Thursday and would bring him back home on Friday because he said he was working and you could look after him. It lasted about three (3) months.

He kept taking him and bringing him back to her, he did not want to look after him because he said he had to go to work. He worked in three places. *Omissis* was working as a painter and decorator with her friend John. He went to Gozo to pick up staff to take to Libya. She explained that *'Well I told him to pick him up weekends but every time he picked him up he brought him back the next day and he was geting on my nerves because . . . take him on a weekened I say take him all the weekend. But every time he took him he bring him back next day'*. She explained that *'Then he got mad at me because one day he picked him up at my house he pulled him from my house and slammed his head on the door', 'because he was in a bad mood. So he came back to me and he swore at me. I said well if you take him the weekends properly'* When he came and took him, he never brought him back and he hit *Omissis'* head on his car door and she said to him *'what are you doing'* and he said *'well I am taking him and he did take him and he didn't bring him back cause I reported him,'* At that time the child ws registered in her surname. He wanted to know that he was his real son and paid a lot of money. She is not aware of any legal proceedings. When *Omissis* came, he would not let him play with his friends or go to Church.

She explained that *'He was all right with me but he didn't like his Dad cause his Dad kept coming, going, coming, going. And then he went to Libya, he said he had to go to Libya cause his father was bad, Omissis said that. And he went there so long he didn't come back for a while'*. She would tell *Omissis* to speak to his father properly because every time *Omissis* came to her house he brought Leila with him. He did not want to see him. He used to take him and then he used to bring him ack so that is why *Omissis* did not like him because every time he would take him weekends he brought him back th n ext day. She does not know what he was telling him in the van since *'Because we*

learnt Omissis pop away I did and go to school and every time he come back he was saying I wont work in Libya. He was trying and make me speak Libya. And Omissis was saying words and I didn't like him'. There was no contact in ten (10) years, Omissis knew where she was living with the son because Omissis told him.

Asked how she took care of *Omissis* in this ten (10) year period, she replied that she used to take him to school, used to pick him up, take him to different places or *Omissis* took him mostly with his friends and *Omissis* friends use to come to the house as well, they used to play on the computer or laptop. He use to sleep with *Omissis*. She said that the house has two bedrooms.

Appogg use to come every week, they came before ten (10) years because she and *Omissis* asked them to because she and *Omissis* got into a row, they use to fight. She use to blame her for things that *Omissis* was doing. Appogg use to come once a month or once a week. There was a John and an Ann. There were no negative reports from Appogg, they wanted to see if *Omissis* was alright and she use to go to listen what they have to say. There were no problems. *Omissis* was good, there were no problems. She confirms that Appogg was monitoring the sitation very cloesly. Asked what happened, now that *Omissis* came into the picture, she answered '*Well I don't very know because he used to come to my house Omissis and everything. I don't know what went wrong because he promised Omissis everything*'. He said if he dies he'll give him all his money that are in Libya, he said it in her house. Her son *Omissis* and her husband were present, *Omissis* and *Omissis* were also present. *Omissis* was the one that used to live with *Omissis*. She use to all the time come to the house. She said that *Omissis* started lies, she said she use to watch her in her shop, when she was taking *Omissis* to school but she never saw her. *Omissis* told him where she lived because she used to live in Bugibba then moved to *Omissis*. Whenever *Omissis* went with him he used to tell him different stories, and *Omissis* came back and say it. Asked how she reactedd, she replied '*Well I didn't mind because I knew Omissis was telling me a lie because he said he could . . . Libyan, by miracle speak English and Maltese*'.

She never went to school, she is capable of reading because she learns herself but cannot read everything. Asked if she is capable in writing she replied '*yeah I can write my name*' and '*I can write bits and pieces*', asked if she knows how to use a computer, she said no. *Omissis* had his own computer. *Omissis* could use it and she bought him a play station.

Her relationship with *Omissis* was friendly at the beginning but then he got funny in the middle of it. Asked that she asked the police to expell him from the island she said because he wanted to marry *Omissis* and she said no. They treated each other properly because she said he could come to her house when he wanted because she knew him with her daughter *Omissis* . There was no quarrel with *Omissis*. There were lots of times where *Omissis* was angry with her because first he wanted to take *Omissis* then he didn't and she used to say to him when you bring him back weekends take him one day and bring him back, '*why do you keep bringing him back all the time and then keep him for the weekend?*' Asked if *Omissis* was angry that he was asked to leave the island and because he had not met his son for ten (10) years, she replied no. Asked about his reaction after the DNA, she said he was happy to know that he was the father of *Omissis*. He was good at the time and then he changed. *Omissis* did not want him to see his mother. *Omissis* said that his dad was in Libya is ill so he kept going back now and then. *Omissis* was staying with her.

Asked '*You had Omissis for 10 years, Omissis came to the picture, the DNA tests were carried out, he was seeing him for three months, within that period of time was there any problem ?*' she answered no. She confirmed that problems began after the DNA test was carried out. Aunty Emily is her husband's sister who died and *Omissis* had *Omissis* at the time and they called him to ask *Omissis* to come to the funeral but he did not want him to know all his aunties and uncles. She confirmed that things changed a lot once the DNA test was carried out. She has three (3) children and gave birth through a cesarean and has a scar. She uses a costume when she goes to swim because she does not like the sea and does not like going swimming. Asked if the scar was seen by *Omissis* she replied '*Yeah when I've been bad yeah*' meaning '*Passed*

out and all that. Because I have fits'. She testified that she has epilepsy fits, she started having them every week with *Omissis* and the doctor started injection in her spine to make her come around.

There are five (5) rooms in the house, a kitchen, then the dining room, then the front room. Then you go up the stairs in the bedroom the first one, then go about five (5) more stairs and there's *Omissis* room. Asked about how she behaved, regarding a change of clothes, she said *Omissis* was always downstairs with her husband or with *Omissis* because she would not let him come in her room. When she was showering she would not let him go in and when she swam she wore costume '*because I have myself cause of the scars*'. She says that '*I love everybody, I still love Omissis but I don't know why*'. She used to give him everything he needed, he used to come home from school and then he used to eat and go visit Church or play. He used to tell her that she loved him all the time, there wasn't nothing wrong with him. Asked '*In other words did you ever embrace him ?*' she replied '*No I used to love him that's all*' When he used to come home from school and do homework they used to sit at the table and do it for her, do the homework and if he got stuck on a word, *Omissis* would tell him the word and he used to explain it to *Omissis* because she could not read. *Omissis* used to take him on weekends. She took care of him because *Omissis* was awaiting another child. *Omissis* has five (5) kids altogether. Asked '*What was so, if she has 5 children altogether is that the reason why Appogg used to come along ?*' she replied '*yeah because 2 was from a Libyan, and Omissis that was three, and the other two one was an African and one was a Maltese.*' She has not been living with her for about three (3) to four (4) months because she told her to look after herself not keep living with her but kept contact.

She confirmed that *Omissis* was declared a natural father of *Omissis* and problems began. She used to get on with Appogg and they use to come to her house. She could not learn Maltese and they came and told him how to do it. They stopped when *Omissis* made the report about *Omissis*, they did not speak to her. She said '*They stopped coming then when they made the report because Omissis went to Prison and*

then I was taken the next day'. She never met Omissis again when he was taken. She confirmed that the inspector explained the nature of the report. Asked how it is possible that Omissis came into the bathroom with her she said no because she would not let him. She stated that 'I would wait to have my shower when my husband was home and Omissis was home. So Omissis was with them, he wasn't with me'. Asked how Omissis can say that she has a scar, she answered 'because when i was bad they used to pick me on the bed'. She explained 'they used to put me on the bed and the doctor comes and put injection in my back. So Omissis knew it was there because he used to look. Because Omissis kept running all the time when I was bad to see if I'm all right'. The doctor was present and her husband too. She said 'used to go with Omissis all the time Omissis. But he never was with me on his own'. She spoke to Inspector Calleja for five (5) times she thinks. The accusations were the same that Omissis made a report about Omissis. There were no variations. She said some of it was right and some was wrong. She said 'What was wrong when Omissis used to come in the shower and all that that was a lie' She said 'And Omissis was never with me . . . rather with his granddad or Omissis used to take him out a lot with his friends'. She said 'And it was only when he come home from school till everyone come home from work'. Asked about what was right, she said she cannot remember. She only met the Inspector once when 'she put me in the jail cell' when Omissis made the report. She testified that Omissis was arrested first because he had sex with Omissis but it is not true. She was going to see Omissis and he was gone when she got there. Asked if she had the opportunity to meet Omissis in between when he was arrested and then she was arrested she replied no. The Police took the computer, she does not know how to use a computer and was not shown anything on the computer. She does not know whether anything interesting was found on the computer.

In cross examination regarding when Omissis got pregnant from Omissis, regarding the report made to the police she said that he kept knocking on her door and did not want him to marry Omissis because she was sixteen (16). She looked after Omissis since Omissis was drinking a lot at the time so she looked after him because she could not do it. Omissis had custody of Omissis. Omissis was married at the time

she had *Omissis*. The accused lived in Bugibba with six (6) bedrooms there. It was her mother in laws house. When she had *Omissis* they were living in Bugibba and *Omissis* was ten (10) when they moved to *Omissis*. *Omissis* was not living with her all the time. She has three children, *Omissis* , *Omissis* and *Omissis* who lives in England. *Omissis* went to England five (5) years ago. Regarding the DNA test, she said he asked her and said of course he can because she knew he was *Omissis* dad from the beginning. There were no problems. She never had any problems with *Omissis*, not even when the report was made. She confirmed that the inspector told her that *Omissis* was making the allegations, '*But Omissis was only about 8 then, he couldn't understand*'. She confirmed that *Omissis* use to be with *Omissis* and she confirmed that she told the Court that *Omissis* got arrested and also taken to Court for things that were not true. Asked where *Omissis* is at the moment, the defence objected and defence counsel stated that '*her son was badly represented*'. She said everyone was in the house when Appogg was there. She could hardly read or write and understand Maltese enough and they came there to teach *Omissis* Maltese. She confirmed that *Omissis* use to say wrong words when he used to be with *Omissis*. He was trying to teach him Libyan, Leila was always there and used to sleep there. Asked whether she understands Libyan, she relied no and how can she tell they were wrong words, she replied because *Omissis* used to explain it to her. *Omissis* knows Libyan, she has been in Libya. She did not report this because there is nothing wrong in it, he had to learn it. She confirmed that he was taking *Omissis* every now and then and he was going to Libya and heading back to Malta because of work and that there were no problems. She confirmed that he used to bring *Omissis* for her to take care of him. She confirmed that before he got to know about these allegations *Omissis* use to bring *Omissis* to stay with her. She knows how the read a few words and write a few words. *Omissis* taught *Omissis* how to switch on a computer and had two computers at home, one was of *Omissis*. The other computer was downstairs in the front room. She confirmed that when she was at the Police headqaurtes they only spoke about allegations made by *Omissis* and that he was spoken by social workers and that she was always informed about what was going on. She was arrested the day after *Omissis* was arrested. She spoke to *Omissis* before

she got arrested. She had no problems in the beginning with *Omissis*, *Omissis* was sometimes at her house when she invited her to the house. The husband stopped working recently and *Omissis* was working at a boat shop painting boats.

She confirmed that there were times when she was alone with *Omissis* after she picked him after school and during holidays. Appogg stopped monitoring after *Omissis* came back. Regarding *Omissis*, she said that *Omissis* used to spy on her by the shop but she did not believe her. This was in the beginning when she came with *Omissis*. She said sometimes she did because she used to see her there when she used to take him to school. She never spoke to her before that. *Omissis* came back after the ten (10) year period '*near of Summer*' but she cannot remember exactly.

In re-examination she said that she did not mention *Omissis* when she was interrogated because she did not know her. She confirmed that she does not recall the police asking any questions about *Omissis*. She testified that *Omissis* got mad when because he asked to marry her and the accused said no because she is only sixteen (16) and did not want her to be married explaining '*he just got mad, he said why cant I marry her. I said she is only 16 and you are not marry her at that age because I don't believe in it*'. He did not know *Omissis* very long. *Omissis* asked her if he can marry her and 'baby' but still said no and he went back to Libya because she reported him. She asked the Police to deport him because he started swearing because she would not let him marry *Omissis* '*Because he said that him and Omissis decided to get married and that would be it but Omissis didn't know nothing about it because Omissis said no afterwards*'. She does not remember if he was saying anything because of his anger. They told her that he was asked to leave the island. *Omissis* is now nearly thirty one (31).

Omissis testified on the twenty third (23rd) of February of the year two thousand and sixteen (2016) stating that they have been married for thirty seven (37) years and resides with his wife. He has three (3) children, *Omissis*, *Omissis* and *Omissis*. *Omissis* is *Omissis*'s son. *Omissis* was underage when he was born, she was about

fifteen (15), sixteen (16). He had to sign in hospital for the child. *Omissis* was the father but he did not know that *Omissis* was going out with *Omissis*. The first time he met him, he went knocking on his door and told him that *Omissis* is going to have a child from him and he wants to marry her. He said no because she is underage and *Omissis* got very mad. He was not very happy. Then he left and kept ringing everyday to his house for this, for that and made a report to the police about him. The witness says that he went to the Qawra police station and made a report about him that he was bothering him about *Omissis* and that he kept on ringing. Then about a week after, *Omissis* went missing for about two (2) days. She did not come home at all. He looked for her nearly all night to see where she is and an old man told him that he saw his daughter outside the house in a flat in Bugibba. He went to the Qawra police made a report that she was missing for about two (2) days and there was this gentleman who told him that he saw his daughter outside this house. Two (2) policemen that came with him and went there. They knocked on the door and asked where is *Omissis*, there was a Libyan but not *Omissis*, there were three of them in the flat, they said no and the police went inside and found his daughter inside the house with *Omissis* and there 'were 2 of them'. They arrested them and took them to the police station in Qawra, She was only in a t shirt. He told the police that they broke the law, she is underage and that he does not want to see him again because he keeps coming to his house knocking the door. He keeps ringing all the time and wanted him to disappear. After about two (2) weeks, he had a phone call from the police and they told him that *Omissis* has been sent back to Libya. He is not in Malta anymore. The child was not born at the time but shortly afterwards.

He testified that *Omissis* did not know that *Omissis* was pregnant but confirmed that when he came to knock on the door he told him that he was going to marry *Omissis* because *Omissis* was pregnant. *Omissis* came back after ten (10) years. *Omissis* had a boyfriend who was Libyan, she got married to him behind his back and then had two (2) children and he told her to go to Libya for a week to see his parents and she never came back. She was missing for about three (3), four (4) years. So they were thinking what they are going to do about the child and so went to Appogg. He told

them that he would like to foster *Omissis* because they did not know if she was coming back to Malta. They did the course with Appogg which took about six (6) months and they agreed that they foster *Omissis*. They use to come to the house once or twice a week to talk to them, to *Omissis* and they used to go to Appogg for appointments to be seen by the doctor of Appogg. The leader was John Role. Asked if there were any negative reports about the way the child was brought up, he replied no, they were always happy with them and the child. Even the doctor of Appogg was happy. They were happy about the premises, they saw the house and where *Omissis* sleeps. He says that if they were not, they would not give them permission to foster *Omissis*. *Omissis* was happy with them, he had everything.

He testified that then *Omissis* came to Malta, *Omissis* said that she use to spy on her when she used to take him to school and use to follow her everywhere. She found out where they live. *Omissis* came to them and told them that *Omissis* is in Malta and wants to see his son. He did not say no because he is his father. He says that the child was about five (5), six (6) years. He means he was young. He was not indicated as the father on the birth certificate. Asked how he behaved when he came to the house, he said *Omissis* was very nice, he accepted him and said that if he is the father he has the right to see his son. He was very nice to them. He wanted *Omissis* to live with him because he said that if anything happens to him he has a big house in Libya and other business and all that. He thanked him for looking after him and said that he is ready to pay all expenses for them for the last ten (10) years they took care of him. He met *Omissis* for the first time inside the house. The child was not very happy '*he said to me you know he said to me I don't like the look of him you know Omissis*'. He told him that he will never take the child away from them. He did a DNA test in Rabat. The witness, his wife, *Omissis*, *Omissis* and *Omissis* were present for the test. They went home and '*he ws going off with Omissis , she slept in his flat as well all this and he said to her, if you give me the custody of Omissis I am ready to look after you and Omissis and I do everything for you. And then she gave him the custody, we didn't know nothing about it eh, They've done it behind my back*'. His wife and *Omissis* were going to England to see the duaghter, *Omissis* in Manchester, booked the ticket and

went to Valletta to do the passport for *Omissis* and *Omissis* was with him but did not say anything to him, and told him that they cannot do it for him because his name is not Borg, it has been changed. The witness was mad with the daughter for not telling him, Mrs Borg did not know about this. *Omissis* was still living with him at the time. He had to cancel everything and *Omissis* gave *Omissis* custody.

He testified that '*And then she gave him the custody and about a week something like that, about a week something like that Omissis came back to my house again and he said to me now you do what I tell you about Omissis*'. He confirmed that his attitude changed. He explained that '*Then he said to me, he said to me I would like some things for Omissis. I said what ? He told me I don't want Omissis to go to church, I don't want him to go Muzew, I don't want him to plaay with kids and I had to stop as well the football Nursery for him as well*'. He confirmed that there was a religion issue. He said '*if I find out he is doing these things I get Omissis and take him to Libya and you won't see him again*'. He confirmed that he did not mind *Omissis* continuing living with them. He confirmed that when he got custody, problems began and that once he got custody he turned sour.

Then he wanted to take *Omissis* out once a week and *Omissis* did not want to go with him. When *Omissis* used to come for him, *Omissis* used to go upstairs and hide. He said I do not want to go with him, he had no choice. He was nice to *Omissis* because he was scared that if he does something wrong or this or that he would take the child away from them so he was being very polite to him. Then *Omissis* started to go out with him and every time he comes back *Omissis* kept telling him that he is always talking about him, explaining that '*he said I didn't see you the last 10 years because of your Granddad because he kicked me out of Malta*'. He said that he was telling things about them for not taking care of him properly,. He first says thank you very much for looking after him very good and then he is telling the opposite. *Omissis* used to come back and tell him that he does not want to go out with him again because he was not very happy with him and because he is always talking about you and that '*if i say anything to you he is going to take me to Libya*'. He did not confront *Omissis*. He

says that the manner he says these things is aggressive and it had been going for a while. *Omissis* was living with them but he use to come in the weekend and say he is taking *Omissis* to his house for the weekend. The witness went to *Omissis*'s house who was living with *Omissis*. He went twice to *Omissis*'s house. First to see and the second to pick up *Omissis* to go for a day at splash and fun. He did not want *Omissis* to see her son because he said what is happening is all her fault. He was not very polite when he said this. *Omissis* said don't let me find out his mother is seeing *Omissis* and confirmed that he was say this in a threatening manner. *Omissis* testified that '*if she saw him he would took it away from us right away*'. He did everything he told him because he did not want to lose *Omissis* because he knew that if he had done something the opposite he would come and take him away, right away from them.

He testified about when he was at work and so was *Omissis* and his wife phonws him at around four o'clock and said that *Omissis* came, opened the front door, didn't even knock on the door, went straight inside the house without permission, picked up *Omissis* and dragged him from the house to the car and even knocked his head on the door of the car. His wife went after him, he closed the door and left. Then she went to the Police and made a report at the *Omissis* police and the police said that they can do nothing because he has custody. Asked if he managed to contact *Omissis* after that, he said that no, he rang him once and '*I say something to him or all that ok, so he went to report me to the Police all this time and I had to come to Court because of him*'.

He remembers that when his sister died, *Omissis* wanted to come to the funeral '*And then as I spoke I said no he is not coming, I didn't let him come ok. And then he said what's happening here is all his fault*' *Omissis* said it's *Omissis* fault '*he said he made all the story up himself. And then he told Omissis your son is a Liba*' and '*he cut the phone*'. The witness was with *Omissis* when she was on the phone. He explained '*And Omissis she went with him you know and she told him you never call my son a Liba*'. He explained that he is not allowed to talk to him, if he rings him up they would arrest the

witness. The police came to his house after a few days and arrested his son because Omissis said a lot of things that he had done all these things to Omissis in his bedroom. They knocked on the door and came in and Omissis was upstairs with his girlfriend. Omissis was not there. *'And I said why ? They said because we got an arrest for him. I said what for you know. They said they will give you the papers. They went upstairs, they arrest him and all this'*. They gave him a paper and took his son to the depot. He went to the police station in Omissis to show the paper because he did not understand it much and they told him because abuse on a child. Then the day after the Police came back and arrested his wife, the accused. He was at work and had a phone call from the depot and told him that his wife is under arrest, asked for the reason but they did not tell him so he went there to find out. They kept her all day from morning till night time and she came home again. She showed him the paper with all the questions they asked her and all this *'You know I was amazed you know when I saw the paper. I told her i don't believe that', 'With all the questions there is in there', 'The things I've seen on the paper like showing films on the Computer'*.

He explained that *'She cant even use the Computer my wife'*, he explained *'Yeah films on Computer, I mean she doesn't know nothing about Computers, even Omissis knows that that she doesn't know nothing about Computers', 'If I say a mouse she thinks its one that runs not the mouse'*. He confirmed that Mrs Borg is practically illiterate and does not know how to use computers. The only time that she uses a computer to play a game, which he does for her himself. He explained that *'If she wants to play a game I used to draw a game for her just to play it. Even Omissis sometimes he does a game for her. Otherwise she doesn't know nothing else about internet. First of all she doesn't know my password on the internet to go in the internet so how can she turn the internet on if she don't know the password'*.

Regarding what struck him from the interrogation, he said *'they said as well that she got in shower and all this Omissis is with here which is not true, not true'* Asked if there were any queries, any difficulties during this period of time, he said no. He explained that Omissis was very happy with them, everybody loves Omissis even his

family. He stated *'They used to take him out, I used to take him with me to the Hotel when I used to go to work in the Kitchen because he wants to come with me. And even the people at the Hotel they loved him so much you know. I mean he was a happy boy really you know I mean we do have problems you know with the child but no big problems you know usual things you know. Otherwise he was happy, he was happy a school as well heq you know. He was happy playing outside with his friends'*. He explained that he slept in the same bedroom as his son, it is a two (2) bedroom house. They used to sleep in one room but separate beds, they used to stay together and play together with the computer play games or play station but every time his girlfriend comes Omissis never goes to the bedroom. Always downstairs playing with the play station.

He testified that the relationship between Omissis and his wife is very good. She looked after him quite good, every time she goes out she takes him everywhere with her. She never left him alone, if she has one (1) cent in her pocket, she spends it on him. He was intelligent, knows between wrong and right. He explained that *'As the Appogg said we are happy with Omissis I mean you know he is all right. He is happy with you and all this, he talks about you a lot because he is very happy.'* He explained *'and the Doctor of Appogg said I am very happy with him there is nothing wrong with him that boy'*. Asked if Omissis used to speak freely, he said *'yes, yes he goes in the dining room talking on their own'*. When he asked Omissis what he thinks of his father he said he is not happy because he does not like to go sleep in his house because Omissis sleeps on the floor with Leila and Omissis use to sleep in the bedroom and said *'Even he told me every time I go for a wash or this she always comes behind me and she used to watch me herself you now he did not like'*. Regarding Omissis, he stated *'He didn't say nothing much about him. All he said to me Omissis you know he was making him sit on the table you know and don't even move and don't even go out nothing. And stay in the house all day'*.

Regarding Mrs Borg's behaviour, he said *'I mean I think she brought him quite good, she looked after him you know. I mean she used to go and wash him because he was young you*

know. I mean I am not going to leave that boy on his own you know heq. I mean everybody told her you know you look after Omissis very good'. He explained that one day she was in the shower and her sugar dropped and she fainted, she is diabetic. He was at work and Omissis went in the bathroom to pick her up, 'she fell hit her head more or less and he ran there to pick her up'. He explained that 'Then he sat her down in the bath. And then came and rang me up at work'. He gave him his telephone numebrs if anthing happens to ring him up and told him to come home because 'mum she is not very well'. A doctor was not called since he knows what to do if she is like that. He went home and picked her up 'She was naked I tell the truth ok she was naked ok', 'And I put on the bed', she was drowsy. He put her on the bed and covered up and gave her some sugar and drink and slowly she came around. He explained what needs to be done when a diabetic person faints. He stated that Omissis was in the bathroom, 'He was looking after her and I came. When I came I said ok now you can leave ok and went out. She was in the bath shaking like this you know like give her fits like this. I gave her something in the bath to calm her down first and I took her out and put her on the bed. Then 15 minutes', she came back to her senses. He was very pleased with Omissis. He explained that 'then after that, after that I said to my wife don't ever have a shower again if I am not at home to have a shower'. He explained that 'Told her you have a shower when I am home only that's it. And every time she goes for a shower or that Omissis never been upstairs.' He stays downstairs with him playing the play station.

Regarding when Omissis had the child, he said he went to Appogg for fostering because Omissis was in Libya for around three (3) years. After four (4) years, she came back without her children and she has not seen her children since then, they kept them. She did not show that much interest in Omissis. She was not very happy with fostering Omissis without her permission. They had a six (6) month course and went there nearly every week and never missed one (1) meeting and then were recommended for Omissis. He says that Omissis has been abandoned, he is in a home. He does not want to see his father, he is about fifteen (15), sixteen (16). He says that he was not allowed to come in contact with Omissis.

Asked if he recalls any particular comment he passed by putting the blame on him vis-a-vis Omissis, he answered that Omissis told Omissis he blamed everything on the witness for not letting him marry Omissis and kicked him out of Malta. He stated '*he promised you know as I said he would pay me back for the last 10 years*', he said '*10 years for taking care of Omissis but I don't think about the money*'. He explained '*My wife used to buy the clothes for him for school we used to tell Omissis he never gave us a penny*'. After getting custody, he did not thank him no more and gave him too many orders on Omissis. Asked if he promised anything, he answered no. The only thing he promised is ok he is never going to take Omissis away from them. When he came in the picture he thanked him for looking after the son, he was very kind and appreciative. He confirmed that when he got care and custody, his tune changed and was not really appreciative. He says he promised to pay him back, he promised him that he was going to pay them back. He did not say how he is going to pay him back. He said it in a nice way to him, '*he said to me I am very happy for looking after him and he said I am ready to pay you back*'. He said '*When he was angry as I said he wanted me to stop a lot of things for Omissis ok. As I said like going to Church, muzew, playing with kids all things*'. He promised that he would take Omissis away from us and take him to Libya.

He explained that '*..because he is happy to stay with us Omissis. He said I will come and take him for a few days then I'll bring him back and he used to come on Fridays sometimes to take Omissis, take him to his house for 3 days and then bring him back again on the date in the afternoon because he said I can't look after him because I have to go to work. And then one day he said that he is going to Libya because his father was very sick is dying his father and he left Omissis with us*', he continued '*And then we found out that one wasn't the truth, there was nothing wrong with his father. We found out he went there for business. And then he came back about 2 weeks after from Libya*'. He confirmed that Omissis already had care and custody when he did this, so he lied to him.

Omissis testified again on the eight (8th) of April of the year two thousand and sixteen (2016). A photocopy of a diabolic card was presented and marked as Doc

GA1 and copy of the cards with appointments marked as Doc. GA2 and GA3. He testified that his wife is diabetic, she has been diabetic since she was about five (5) years old *'I mean she suffers you know sometimes as hypos'*. They married in 1976 and he knew she was diabetic. The card is in her wallet in case something goes wrong and she needs somebody to help her. If they see the card, they know what to do. Asked how regular are her visits at hospital, he replied for diabetic maybe six (6), twelve (12) months. He testified about when she was having a bath and he was at work he had a phone call from *Omissis* saying that *'mum is not very well, she is in the bath'*. He explained *'She's not moving, I said all right then, okay. I got permission from work so I can leave from work.'*, then went home and talked to *Omissis* what happened. *Omissis* told him that he was downstairs playing the playstation and heard mum calling for help. *Omissis* is the mum who is the grandmother but he calls her mum. Then he went upstairs to see what happened and found her in the bath, she was naked in the bath, the bath was empty so he thinks *Omissis* *'took the plug from the bath to empty it'*. He confirmed that he would have seen her naked, she was unconscious, shaking, trembling. As a diabetic, she carries things in her handbag, sugar drops and sweets. When he went himself, he picked her up from the bath and put her on the bed and gave her something to bring her round. *Omissis* was in the bedroom when he put her out of the bath, he saw her in that state. He told him well done and that he was proud of him.

Ten (10) years passed when *Omissis* appeared on the scene again. He was very nice to him, very polite and *'tried to make things up between us'*. He said *'I'm never going to take the boy away from you'*. He said he has a house in Libya and if something goes wrong, he will give it to him. He testified that he thinks he was interested to get the boy in his name, on custody. He was very nice to his daughter *Omissis* and she used to stay with him in the flat, takes her out everywhere until she gave him custody and then everything changed. He stopped him doing lots of things like going to church, duttrina, football nursery. He was a bit aggressive, he used to tell him if *'I find out anything the opposite what I said to you I will take Omissis to Libya and you won't see him again.'* He said that before he came into the scene, social workers used to come to the

house twice a week. There were no problems with social workers, they were happy with them and with *Omissis*. The doctor of Appogg was very happy with him as well. He confirmed that problems began a bit with social workers when *Omissis* came into the picture. He does not know where *Omissis* is, as far as he knows he is in an institute and that *Omissis* is not taking care of *Omissis*. He explained that '*all in all I think just to take the boy away from us, to pay me back what I have done to him I think.*' He thinks *Omissis* wanted to pay him back because he said a lot of things to *Omissis*, that he blames his grandfather because he kicked him out and stopped him from marrying his mother. He has not seen *Omissis* because he says they are not allowed because he has a paper from Court that they are not allowed to speak to *Omissis* or go near him, even his daughter. He stopped her seeing the boy. There was no contact with *Omissis*, stating '*I mean I can do nothing with him, I mean if I try to get in touch with him you know or I ring him up heqq he goes report me to the police.*'

In cross examination he said that he had sent a message to *Omissis* and had to go to the police station and received a warning since he cannot get in touch with *Omissis*. He confirmed that he was warned because he cannot contact the child and the father. He confirmed that *Omissis* was fostered by them not adopted and signed papers for fostering with Appogg. He says they did a three (3) months course with Appogg and then got approved. They came home before and after the approval. He does not remember how old *Omissis* was when he was fostered but was not a baby. Social workers kept on coming to the place till the wife was arrested, they had been about two (2) days before. They use to come twice a week and used to take him to Appogg for meetings. He and his wife use to take him to Appogg to see the doctor. He use to take leave to take him. When he came he promised them he was not going to take the boy away. He, his wife, the child and *Omissis* went with *Omissis* to carry out the DNA test. Asked after how many months or weeks did *Omissis* take *Omissis* with him to stay, he said he took him out for a day, *Omissis* did not want to go and he used to tell him to go with him because he is your father. He said he used to sleep on the floor on the mattress in the balcony and Leila used to sleep next to him on the floor. He thinks he told Appogg about this. He confirmed that there were sleepovers

and then ended up with his father and they had access. He would bring him back to them. He confirmed that when *Omissis* went to Libya he left the son with them. He says it was not true that the father was dying but he went for business. He used to bring *Omissis* to them when he needs to do something but otherwise he won't bring him with them. Asked '*There was no issue at that time, I mean he never complained or anything correct?*' and replied '*But all I want to say, I don't know, I mean you know, I don't know why Omissis said all this*'

He confirmed that his son got arrested before his wife did. Asked from that day onwards he did not see *Omissis* again, replied that he could not see him before, referring to a few days. Asked '*so there was no problem until Omissis made these allegations about your son and your wife correct?*' and replied '*Yeah, yeah that's right, I mean that's what I'm saying I don't know why, I mean there's another thing I don't agree about these things.*' He made reference to a DVD that *Omissis* gave which he says '*I mean that DVD that Omissis gave you what does it mean he matches*' and stated '*The interview to his own son in the flat on his own.*'

Asked about the time the witness was working, he said that he used to work between eight (8) - seven (7) o'clock and finish at about two (2) and then start again at six (6) o'clock and finish at nine (9) o'clock, five days a week. He confirmed that most of the time *Omissis* was with his wife. The wife and his son were staying at his place. His son worked in the morning and evening sometimes. He confirmed that if he had holidays he was with his wife alone. He confirmed that he had two computers and one of them was *Omissis* and one his. His was downstairs in the front room, the sitting room. He confirmed that when you go in the place, you see the computer.

Regarding the incident when the wife was unconscious, he does not remember when it happened but *Omissis* was about five (5) years. He confirmed that following this incident *Omissis* was still staying with his wife but that she never had another shower or bath unless he was home. He was home when she ever had a shower or a bath. He had lodged a report at Qawra police station when *Omissis* went missing,

he made reports before because he used to come and knock on his door, that was before *Omissis* was born. Regarding after ten (10) years when he came back, he said that he told Appogg that he was not very happy with him. He remembers Appogg came to his house, he thinks her name was Graziella who spent about two (2) hours in the house talking to *Omissis* and talking to them. He told her what was happening with *Omissis* '*he'd take him away from us. He'd bring him back any time he wants because he wants to go to work.*', this was about two (2) or three (3) days before his wife got arrested. Then he remembers that Appogg, he thinks Graziella said to him '*be careful because he's something, he's got something under his knees.*' He did not tell the Police about this, this was said in the presence of his wife.

In re-examination, he does not know how long had *Omissis* been in Malta. He says that his wife is not computer literate. He does not understand why they did not take his computer away like his sons if they said there are things on the computer.

Inspector Louise Calleja testified again on the twenty first (21st) of June of the year two thousand and sixteen (2016) who was requested to provide all information regarding the complainant Mr *Omissis* as well as any reports lodged by Mrs Borg and her husband *Omissis*. She said that she went through the database regarding the reporting system and got Mr *Omissis* and Mrs *Omissis*'s identity card and searched through the reporting system and found reports. Two date back to the year nineteen ninety eight (1998) which are reports regarding the failure of their minor daughter *Omissis* who had left home and failed to return so they were reporting her missing. This is dated the eighteenth (18th) of October of the year nineteen ninety eight (1998) marked as Doc FT 1, the second report concerning a missing person the daughter *Omissis* lodged on sixth (6th) July of the year nineteen ninety eight (1998) exhibited and marked as Doc FT 2. Another report concerns a miscellaneous incident report regarding an accident marked as Doc FT 3. Another report dated the tenth (10th) of

November of the year two thousand and seventeen (1997) which the first report regarding their daughter Katie Borg.

She explained that the system dates back to the year nineteen ninety seven (1997). This was lodged by *Omissis* and exhibited as doc FT 4. The next report is dated the seventeenth (17th) of November of the year two thousand and one (2001), lodged by Mr *Omissis*, who reported that his daughter *Omissis* had gone to Libya with her husband¹⁷, exhibited as doc FT5. Another report lodged by Mrs *Omissis*, the accused concerning theft which is marked as doc FT 6.

Regarding information relating to the immigration status of *Omissis*. She said that he was born on the thirteenth (30th) of November of the year nineteen seventy (1970), married to a certain *Omissis*. He was issued with an exempt person status by citizenship and when she asked for any previous records available, there were no records available. Regarding working permit, she said that they can ask the Employment Training Corporation. She said that that is the information provided by the same section she is working in, security immigration.

PL Quentin Tanti gave evidence on the fourth (4th) of October of the year two thousand and sixteen (2016) and presented translations of the testimony of *Omissis* from the Maltese language to the English language. The translation is marked as Doc. QT1.

Omissis testified on the fourth (4th) of October of the year two thousand and sixteen (2016) stating that she is the daughter of the accused. She met *Omissis* with her friend *Omissis*. They went out one day to Hamrun and met *Omissis*. *Omissis* was going out with his brother. They started going out after about one week. He came to Bugibba and they met nearly all the time. She says that she was with him over one (1) year and then she got pregnant and she told him. He came to speak to his dad because he wanted to marry her. She was sixteen (16) when she got pregnant and started going

¹⁷ Per copy of the report found in fol 974 et seq this relates to a report regarding several missing items.

out with him when she was about fifteen (15). He went to speak to her dad to marry her and her dad said no. She did not tell them that she was going out with *Omissis*. During the year they went out together she did not tell her parents about him till she got pregnant. *Omissis* was not present when she told them she was pregnant and they were not happy and then *Omissis* came into the picture. Then *Omissis* came to speak to her dad and they were talking outside, she was not present and they started to argue because her dad said that she is young to marry. She was inside. She could hear them arguing and then after, her mum and dad told her what was going on. Her dad reported him to the police and she never saw him again. *Omissis* would not leave him alone so her dad went to the police in Qawra. She stopped going to school, she was sixteen (16). He went to report *Omissis* to leave him alone. She did not go with him but her dad told her. After reporting him to the police she went to look for him but did not find him, he never contacted him again, she saw him after nine (9) years. She did not enquire and did not see him for nine (9) years. She was working and he called her so after work she met him in *Omissis* by the church, *Omissis* was nine (9) years old. They were talking and told him that she has to tell her mum and dad if he can see him because he is not with her. He said okay and said now when he sees *Omissis* he will make him rich. She said she has to ask dad for permission because her mum says she fostered him. In those nine (9) years, she went to Libya and got married to Am Walid, Walid Abushuku and she got stuck in Libya for three (3) years. *Omissis* was with her mum and dad. She came back after three (3) years, she lived with him a bit and then she left and *Omissis* remained with her mum.

When she met *Omissis* outside the church, his attitude was 'Normal'. She says he said he wanted to see *Omissis* and so she went to tell her mum and dad that he wants to meet his son and that they should let him and that he started to meet him and she says that she and *Omissis* use to talk all the time. She testified that he came to her house once and 'he says can we change the, we change the custody and stick it on my name so then me and you can be a family we'll be together and I believed him and then I done it and then he didn't tell me again he loose contact. He never talked to me, he told me leave me alone and I said what about the contract? He said it's finish, I don't want to talk to you again

and then problems started to come as well and then one night I found, the police called, someone called me and said your mum and brother is being arrested.'

She says that he was very nice to her for about two (2), three (3) months. She confirms that when he signed the papers his attitude changed and did not talk to her again. She testified that she signed the paper and then phoned him, he never answered the phone and then saw him when she came to Court. She did not know that *Omissis* was asked to leave Malta. Asked if he told him what happened to him when he met after nine (9) years, he said that he had to get out of Malta because her mum and dad reported him to the police. She says she was young and her dad was a bit mad that she was young to marry him and that she should not have been with him. She says *Omissis* had lied about his age because he was supposed to be ten (10) years older than her but in Court she found out he is much older. The last time she saw her son was when the Court cases against her brother and mother started. She says he thinks he should not see him if she can't. She does not know if he goes to see him and asked by the Court if she goes and see her son she replied she is not allowed to but she wants to see him. She testified that she saw him once with the social worker throughout these proceedings. They told her *Omissis* does not see him. Asked if he abandoned the child, she said yes he does not see him.

In cross-examination, she said that that *Omissis* is sixteen (16) years old, he was born on the twelfth (12th) of May but she was not sure of the birth year but then said two thousand (2000). The witness is thirty four (34), born in nineteen eighty two (1982). She was sixteen (16) when he was born. After she got pregnant she never spoke to *Omissis*, she heard he was sent out of the country. She was never spoken by the police or by the authorities. She went to look for him and never found him. Asked if she had another male friend when she was with *Omissis* she said 'No, him only.' Then met someone else and got married. She was seventeen (17) when she got married. She got married after she had *Omissis*. *Omissis* and her father were arguing outside when he asked him to marry her. They were living in Bugibba at the time. She was inside but could hear. She went to look for *Omissis* because she

was happy with him. She told him she was pregnant, she then states '*I tell him my period didn't come*', then did a pregnancy test and told him that she is pregnant. She was on her own. She first told *Omissis*, then her mum and dad. She confirmed that he got to know that she was pregnant before he lost contact and went to her dad while she was still pregnant and wanted to marry her.

Asked about the time between when she had last seen *Omissis* till the time she met the other Libyan, she said that she was friends with him. Asked whether *Omissis* found her with this person who was naked, she replied that he was not naked and that they were just talking and *Omissis* found her there and he got mad. She told him that they are just friends, she says that when she was pregnant she was a bit upset and had to talk to someone. Asked if *Omissis* left because he found her with this friend, she said no, he came to speak to her dad and then did not see him again.

She had a social worker and then she met *Omissis*'s social workers, a man and a woman. She does not know the names. She saw them at Appogg last year. She testified that her social worker was Brian. She said '*I had a social worker and then I told him about Omissis I want to meet him and that, so then I saw this man and the women that one of them lives in the home with Omissis he helps them*'. *Omissis* said that it's been a long time and she said it is not her fault, the Court stopped her.

She explained that when *Omissis* was born, her father took care of him because she left because she was under age and got pregnant again. She was in Malta and when *Omissis* was one (1) she went to Libya supposedly for one (1) week but spent three (3) years. *Omissis* was with her mum and dad. *Omissis* was four (4) when she came back and used to live with her mum and dad. *Omissis* was always with her mum and dad. When she came back there was the social worker and her mum and dad said they fostered him because she was gone a long time. Her brother *Omissis* was also living at her mum and dad's house. They moved from Bugibba to *Omissis*. *Omissis* contacted her when *Omissis* was nine (9). A DNA test was carried out. The last time she spoke to *Omissis* was since Court because he told her to sign the paper to change

his surname and she believed him because he said that they will be a family, she, him and *Omissis*. However when she signed the paper he never contacted her again. She was in Malta with her son. She has five (5) children , two live with her and the others are in Libya.

PL Quentin Tanti testified on the fifteenth (15th) of June of the year two thousand and seventeen (2017). He presented the translation from Maltese to English language of the evidence of *Omissis* Mohammed *Omissis* given on the fifteenth (15th) of July of the year two thousand and fourteen (2014), marked as doc QT1.

Considered;

That the facts of the case in brief are the following:

1. That *Omissis* was born out of a relationship which *Omissis* had with *Omissis* ;
2. That *Omissis* had left Malta and there are conflicting facts as to whether *Omissis* knew that he had fathered a child when he left Malta;
3. That following a DNA test that confirmed that *Omissis* was *Omissis*'s father, he obtained care and custody of his son who was approximately nine (9) years at the time;
4. That following this, when *Omissis* needed to go to Libya, he left *Omissis* with the son's maternal grandparents;
5. On *Omissis*'s return, his son did not want to go with him when he picked him up and when his father then managed to take his son, the son did not want to talk;

6. That according to *Omissis*, when he was at his home, he had a pen drive and the son asked what it was and the father in order to make his son speak and tell him what was wrong, told him that he had left it at the maternal grandparents before he left to Libya to record what goes on;

7. That *Omissis* upon this, did not want his father to view what was in the pen drive and told him that he would tell him everything. He disclosed acts committed by his maternal uncle *Omissis*. The father reported this to the police who subsequently referred the case to Agenzija Appogg who took the child's disclosure;

6. On the next day, after the father asked about the grandmother and told him that he will check the pen drive, the minor disclosed what was going on with his maternal grandmother. The father informed Agenzija Appogg who took the child's disclosures. Other disclosures were made in the next days.

7. The accused upon being interrogated by the police denied all allegations;

8. Charges were issued against the accused.

That the appellant's appeal is mainly based on an appreciation of facts brought forward before the first Court. As has been established, the Court of Criminal Appeal does not disturb the First Court's conclusions unless it is satisfied that the First Court could not legally and reasonably arrive to the conclusion it arrived at. In the decision in the names **'The Police (Supt. Pio Pisani) vs. David Rigglesford'**¹⁸, the Court considered that:

'Now it has been firmly established in local and foreign case law that both in cases of appeals from judgements of the Magistrates' Courts as well as from judgements of the Criminal Court, with or without a jury, that the Court of Criminal Appeal does not disturb the

¹⁸ Decided by the Court of Criminal Appeal on 31st May 2007 (Criminal Appeal number: 6/2007)

evaluation of the evidence made by the Court of first instance, if it concludes that that Court could have reached that conclusion reasonably and legally. In other words this Court does not replace the discretion exercised by the Court of first instance in the evaluation of the evidence, but makes a thorough examination of the evidence to determine whether the Court of first instance was reasonable in reaching its conclusions. However, if this Court concludes that the Court of first instance could not have reached the conclusion it reached on the basis of the evidence produced before it, than that would be a valid – if not indeed a cogent reason – for this Court to disturb the discretion and conclusions of the Court of First Instance (confer: “inter alia” judgements of the Court of Criminal Appeal in the cases :“Ir-Republika ta’ Malta vs. George Azzopardi”¹⁹; “Il-Pulizija vs. Carmel sive Chalmer Pace”²⁰; “Il-Pulizija vs. Anthony Zammit”²¹ and others.)

*This Court also refers to what was held by LORD CHIEF JUSTICE WIDGERY in “**R. v. Cooper**”²² (in connection with section 2 (1) (a) of the Criminal Appeal Act, 1968) :-*

“assuming that there was no specific error in the conduct of the trial, an appeal court will be very reluctant to interfere with the jury’s verdict (in this case with the conclusions of the learned Magistrate) , because the jury will have had the advantage of seeing and hearing the witnesses, whereas the appeal court normally determines the appeal on the basis of papers alone. However, should the overall feel of the case – including the apparent weakness of the prosecution’s evidence as revealed from the transcript of the proceedings – leave the court with a lurking doubt as to whether an injustice may have been done, then, very exceptionally, a conviction will be quashed.”²³

*In “**Ir-Republika ta’ Malta vs. Mustafa Ali Larbed**” decided on the 5th July, 2002 by the Court of Criminal Appeal, presided over by three Judges, it was held that even if from the evaluation of the evidence conducted by this Court, for argument’s sake, this Court comes to a conclusion different from the one reached by the jury, it still will not disturb the judgement of the jury in the evaluation of the evidence and replace it with its own when it is evident that the jurors had not made a manifestly wrong evaluation of the evidence and they could*

¹⁹ Decided on the 14th February, 1989

²⁰ Decided on the 31st May, 1991

²¹ Decided on the 31st May 1991

²² ([1969] 1 QB 276)

²³ (Confer also : BLACKSTONE’S CRIMINAL PRACTICE (1991) , p. 1392)

therefore reasonably and legally have reached that conclusion.

In Criminal Appeal : “Ir-Republika ta’ Malta vs. Ivan Gatt”, decided on the 1 st. December, 1994, it was held that the exercise to be carried out by this Court in cases where the appeal is based on the evaluation of the evidence, is to examine the evidence, to see, even if there are contradictory versions – as in most cases there would be – whether any one of these versions could be freely and objectively believed without going against the principle that any doubt should always go in the accused ’s favour and, if said version could have been believed and was evidently believed by the jury, the function, in fact the duty of this court is to respect that discretion and that evaluation of the evidence.

This Court has accordingly evaluated the evidence anew with a view to establishing whether the Court of first instance could have legally and reasonably found the accused guilty of the charge of involuntary homicide proffered against him.' (References and details of the quoted judgments as cited in **'The Police (Supt. Pio Pisani) vs. David Rigglesford'**²⁴ are found in the footnotes)

Considered;

In view that the appellant's appeal is mainly an appreciation of facts brought before the First Court, this Court will be considering all grounds of appeal together. The appellant firstly provides that she is insisting upon her innocence and that there exist several facts which give one to understand that the accusations levelled against the appellant accused were intended to do her harm when the accusations did not take place. For the appellant, it was relevant that she was made to answer to four accusations and was found not guilty of the second and fourth charge.

The Court starts by making it clear that the First Court found the appellant guilty of the first charge relating to 'By lewd acts defiled minor Omissis aged 9 years' and the third charge which reads 'Took part in sexual activities with minor Omissis'. The

²⁴ Decided by the Court of Criminal Appeal on 31st May 2007 (Criminal Appeal number: 6/2007)

appellant was not found guilty of the second charge that reads '*Without a lawful order from the competent authorities, and saving cases where the law authorities private individuals to apprehend offenders, arrested, detained or confined minor Omissis against his will and this as a means of compelling the said Omissis to do an act or to submit himself to submit himself to treatment injurious to the modesty of his sex*' and since the Court considered the fourth charge which reads '*Committed violent indecent assault on minor Omissis*' as an alternative to the first charge, it abstained from taking further cognisance of the said charge.

The appellant submits that the fact that she was found guilty of two (2) from four (4) charges militates in her favour and shows that the accused was made to answer for charges which should never have been raised, speculative charges which are unacceptable when a person is innocent until proven guilty.

The Court makes it clear that it does not agree with the appellant's line of reasoning in this second paragraph of this section of the appeal dedicated to the grounds of appeal in view that it is at the discretion of the Executive Police to decide which charges they deem fit to issue depending on what they believe to be the case, but it is then up to the Court to consider whether from the evidence brought forward before it, charges have been proven beyond reasonable doubt or otherwise. The fact that the Court did not find the accused guilty of all the charges brought against the appellant does not in any way mean that as the appellant states '*give one to understand that the accusations levelled against the appellant accused were intended to do her harm when the accusations did not take place.*'

Considered;

That the appellant then provides that to accuse a person of something which is not true is very serious and could lead to a miscarriage of justice and alleges that this is happening in this case. The appellant then goes on to provide a '*background story*' and provides that the wrong appreciation of these factors and their importance have

given rise to a wrong conclusion. The Court will now consider the submissions raised by the appellant in her appeal and will consider the evidence brought before the First Court in order to decide as to whether the First was legally and reasonably justified in finding the appellant guilty of the first and third charge. As has been considered, this appellate Court will not disturb the conclusions of the First Court unless it finds that it could not have legally and reasonably arrived at its conclusions.

The appellant provides that *Omissis* wanted to marry *Omissis* the biological mother of *Omissis*, who is the daughter of the accused when she was fifteen (15) years old while she submits that *Omissis*, a Libyan national was in his twenties. The accused and her husband refused to let their daughter get involved. She submits that '*Some of the objections raised were that he just wanted to use their daughter for his **own ends**, particularly to get a visa and remain here in Malta. Furthermore, she was too young and did not have the necessary maturity to think of these matters. Moreover, she was **too trusting** as a person and of **weak character** to resist what was being proposed with the parents wanting to protect their daughter. Their reservations and sense of protection was justified moreso when full advantage of *Omissis* 's weakness was taken in getting her pregnant with the intention of using the situation hoping to remain in Malta! The accused, together with her husband *Omissis*, reported the matter to the Police and they were eventually informed by the police that he was to be deported from Malta. *Omissis* had vowed to the accused, particularly her husband, that he would seek revenge on the matter.*'

This Court considers that no evidence in relation to the allegation that *Omissis* wanted to use the daughter to obtain a visa and to remain in Malta was brought before the First Court. Both *Omissis*, the appellant and her witnesses have their own version of events which they believe led to *Omissis* leaving Malta approximately nine (9) to ten (10) years before he met his son. *Omissis* testified that they had agreed to marry but he had left the country since he found the accused's daughter *Omissis* with another man and that after telling him that she was pregnant, she had then told him that she was not pregnant. He testified that when he got to know that she

had a child, he looked for her but did not find her and only found her when the son was nine (9) years old, while the accused and the defence witnesses testified that the father did not approve of Omissis's proposal to marry Omissis with the result that several reports were made in view of Omissis's insistence which according to the defence led to his deportation.

That no evidence was brought before the first Court confirming that Omissis had been deported. Neither does it result that *'he had vowed to the accused, particularly her husband, that he would seek revenge on the matter.'* Omissis who gave evidence on twenty third (23rd) of February of the year two thousand and sixteen (2016) testified that Omissis had told him that *'he promised to pay me back. He promised me that he was going to pay us back'*, and then asked whether he said it in a nice way, answered *'In a nice way he said to me, he said to me I am very happy for looking after him and he said I am ready to pay you back.'* While in his testimony dated the eight (8th) of April of the year two thousand and sixteen (2016) asked *'In an institute, in other words Omissis is not taking care of Omissis after all is he?'*, he then replied *'No, he's not he's just ... all in all that I think just to take the boy away from us, to pay me back what I have done to him I think.'*;

On the other hand, when the accused testified on the twenty sixth (26th) of May of the year two thousand and fifteen (2015) asked:

'Dif: Did you have any quarrel with Omissis?

Wit: No not one

Dif: Not one. Was any situation where Omissis was angry with you ?

Wit: yeah lots of times

Dif: because first he wanted to take Omissis then he didn't and I used to say to him when you bring him back weekends take him one day and bring him back, why do you keep bringing him back all the time and then keep him for the weekend ? He said because I got to go to work, I can't leave him with Omissis because

Dif: Ok know don't forget Omissis had not seen his son for 10 years, in other words, when Omissis was 10 years old then he came into the picture again

Wit: yeah

Dif: How did this, did this factor and the factor that he was asked to leave the island, did he show any anger because of this ?

Wit: No

Dif: Do you recall, try to think Mrs Omissis not just answer the question just like that, understand the question then answer. Was he ever angry because he had not met his son for 10 years ?

Wit: No

Dif: Do you remember or don't you remember ?

Wit: He wasn't angry

Dif: He wasn't angry. Did he ever, when he found out, so he effected a DNA test am I correct ?

Wit: yeah

Dif: What was his reaction when the DNA test was made ?

Wit: He was happy to know that he was the father of Omissis

Dif: That he was the father of Omissis. And when he found out officially that he was the father of Omissis how did he behave ?

Wit: It was good at the time and then it changed

Dif: And then what happened ?

Wit: Then he wanted him and then he didn't. he wanted him and he didn't. I didn't know why he didn't keep him for the weekend because he kept bringing him back to me'

That the appellant also provides that for a period of nine (9) to ten (10) years, there was no contact between Omissis and Omissis was was being brought up by the accused and her husband as foster parents. Agenzija Appogg got involved with constant monitoring and were very pleased with the way the child was being brought up. Rianne Vella, a social worker who worked within the Looked After Children service within Agenzija Appogg in cross-examination on the twelfth (12th) of December two thousand and thirteen (2013) asked whether there was any irregular situation/behaviour explained that 'There were issues which we were taking

care which were related to cleanliness and clutter at home'. She explained 'Cleanliness and clutter at home. When it came to hygiene which were matters which were being dealt with. The case had also been referred to family therapy at one point because the child grew up thinking that the maternal grandparents were in fact his parents and that his birth mother was his Sister and that his maternal uncle was his brother so they were referred to family therapy however they never came for the session because they said they had told them himself'. She stated that 'he seemed comfortable within the environment. In fact that is why no action was ever taken before because obviously if we had any concerns we would either try and tackle them or we would take further action. So no at the time our concerns were related to cleanliness and hygiene at home and those were the issues that we were tackling'. She explained that 'even when it came to him not knowing who his birth parents were, having the confusion of thinking it was his maternal grandparents that was a concern for us which we were working on as well back then'.

From the acts, it results that even though Agenzija Appogg was monitoring the minor's family throughout the child's life and explained that the main issues were related to cleanliness and clutter at home, Agenzija Appogg did not notice any irregular behaviour. Whether this is of any relevance will be considered into greater detail when considering whether the child is credible;

Considered;

That the appellant also provides that *Omissis* appeared on the scene after so many years. That he knew that *Omissis* gave birth to a child but he never pursued the matter during his absence from these islands. He never provided any maintenance or took an interest in the well being of the child during his absence from these islands. The appellant in her appeal submits that she and her husband were given to understand by local authorities that *Omissis* was ordered to leave the islands but no records to this existed. She submits that *Omissis* did not bother about the child throughout all this period of absence from the islands and that he never provided

maintenance or inquired about the child and that he found it convenient to see the child was well taken care of and getting the best of both worlds.

Omissis explained in cross examination in the sitting of the fifteenth (15th) of July of the year two thousand and fourteen (2014) that 'Jien kont diga' naf li hemm il-baby. Jiena kont diga' naf meta kienet mieghi. U kienu l-familja taghha jafu. U konna miftehmin sal-ahhar illi ahna se nizzewgu dan il-ftehim. U kienu l-familja taghha jafu. U konna miftehmin sal-ahhar illi ahna se nizzewgu dan il-ftehim. Jiena u missierha ok. Li jiena kif indunajt li hemm it-tifel u hekk mort ghand missierha u tkellimna u ftehemna li jiena nzewwigha u jiena lest ghal kollox. Wara, wara marret ma' wiehed habib tieghi...' He explained 'Ghax bdejt nitkixxef jien fuq it-tifel x' sar u ma sarx u bdiet tghid illi hi kellha zball li meta qaltli li harget tqila ma kienx veru. Qalet illi ttardjalha...'. He explained 'Li ttardjalha l-period u affarijiet bhal dawn ma kienx minnu li kien hemm baby. U jiena serraht rasi mela m'hemmx baby m' hemm xejn mela jiena mohhi mistrieh li din telqet straht minnha ghax kienet bazwritni u dardruli hajti l-verita' u straht minnha darba ghal dejjem. Ghadda z-zmien iltaqghet ma' wahda kienet habiba taghha kienet dejjem tkun maghha l-airport u kienet qaltli mhux sewwa hekk. Ghidtilha mhux sewwa x'jigifieri ? U bdejna nitkellmu. Qaltli mhux sewwa qaltli inthom kollha taghmlu hekk. Ghidtilha mhux sewwa x'jigifieri ? Qaltli baby u mhux baby u gejna nfittxuk ma gejniex infittxuk u affarijiet bhal dawn...'

Omissis says that he was not aware that he had fathered a son and that when he got to know he tried to find them but did not manage. He then met his son when his son was nine (9) years old. On the other hand, the appellant in her appeal says that *Omissis* never maintained him in nine (9) years and was not interested. The appellant states that there was no objection in *Omissis* to be declared as the natural father and that 'even so, the law was such that no objection in this regard was regarded as acceptable since the legislator did not want to deprive a minor in being declared the legitimate child of the real biological parents!' The appellant submits that after being declared as such, his behaviour changed overnight. In her appeal, she submits that his sense of revenge started becoming obvious and his harboured spitefulness started to take full force.

That *Omissis* was swayed. She provides that what is interesting is that throughout all this period, Agenzija Appogg was constantly monitoring the child ensuring that everything was being done properly, that it never reported anything irregular and reported that they were quite pleased with the way things were being handled. The appellant states that '*Agenzija Appogg started to show that they were only interested in their reputation and saving face. Agenzija Appogg showed that in reality they were not an effective body in the monitoring of the child and that if, as Dr. Veronica Ellul declared that the child was '...a very intelligent child'*²⁵, therefore this means that the child also took Agenzija Appogg for a ride.'

The appellant contends the child's tender years were taken full advantage of by the biological father who vowed that he wanted a sense of vengeance for not getting his way. In her appeal she submits that '*the child also seemed to have been **swayed** by Omissis whose invented story was well learnt by the child who showed that he depended on his father for survival!*'

Considered;

That the appellant also provides that she is practically illiterate and states that it was admitted that she had no knowledge in operating a computer. The appellant states that it is here that the child proved to be weak on this point. When the accused testified before the First Court on the twenty sixth (26th) of May of the year two thousand and fifteen (2015), she stated that she never went to school, asked if he is capable of reading she answered '*Now I am because I learn myself but I can't read everything*', asked if she is capable of writing she replied '*yeah I can write my name*' and '*I can write bits and pieces.*' Asked if she knows how to use a computer, she answered '*No*'. She said '*Omissis could use it and I bought him a play station...*' She confirmed in cross-examination that one of the computers was downstairs in the front room. When *Omissis* testified on the twenty third (23rd) of February of the year

²⁵ *Vide a fol 69.* (Footnote 4 in the appeal)

two thousand and sixteen (2016) referring to the accused, he explained that 'she doesn't know nothing about Computers, even Omissis knows that she doesn't know nothing about Computers', saying 'If I say a mouse she thinks its one that runs not the mouse' confirming that she is illiterate and that 'The only time that she uses a Computer to play a game which I do for her myself' stating 'If she wants to play a game I used to draw her a game for her just to play it. Even Omissis sometimes he does a game for her. Otherwise she doesn't know my password on the internet to go in the internet so how can she turn the internet on if she don't know the password'. Even though the defence through Omissis alleged that the accused did not know the password to use the internet, the onus was on the defence to prove that the computer had a password in order to use the internet and that the appellant or minor did not know the password however no such evidence was brought before the First Court.

When the minor testified on fifth (5th) of March of the year two thousand and ten (2010), he said that 'In-nanna kienet qaltli biex nixghelulha l-computer u jien xegheltu', asked if she knows how to switch it on, he answered 'Hi ma tafx hi. U nahseb issa taf, nahseb.' Asked about that time, he said 'Le ma kienetx taf.' Explaining 'Qaltli biex immur fuq l-internet.', 'Ghamilthomla' and that 'Le, mhux jien fittixt. Hi.' and that she wrote 'S E X' and 'U mbaghad bdiet tara r-ritratti tal-pastazi. Rat per ezempju nisa gharwenin u film imbaghad. Imbaghad ghamlet hekk, nezghet il-hwejjeg imbaghad.' He explained what there was on the film, explained what took place between his grandmother and himself and then stated 'bdejt inbusha u mbaghad messejt sidirha u l-parti taghha fuq quddiem 'l fuq u 'l isfel hekk u hi l-istess. U mbaghad hi tfiet il-computer u hekk, libset u mbaghad marret tiftah il-bieb terga.' When the minor testified in the proceedings '**Pulizija vs Omissis**' on the 13th of November 2009, he stated that 'Darba kont isfel man-nanna, in-nanna ghalqet il-bieb ta' barra, qaltli biex nixghel il-computer, xeghelt il-computer, qaltli biex immorru fuq l-internet u jiena mort fuq l-internet u mbaghad, meta mort fuq l-internet, kitbet lil pastazi.' He explained 'Kienet tara ritratti, per ezempju, nies arwenin u hekk u mbaghad kienet tara film, imbaghad kienet tnehhi l-hwejjeg, nehhejt tieghi, gejt fuqha, bisitli xofftejjha tmissni l-parti ta' quddiem u mbaghad tiftah halqha, taghmel il-parti ta' quddiem...' and continued explaining what took place and that

'Imbaghad regghet ghamlitli fuqha, bdiet tbusli xufftejja, ticcaqlaq u messet il-parti ta' quddiem u tmur titfi l-computer.' He explained that these happened at the grandmother's house downstairs where there is the television, behind the door.

On twenty eight (28th) January 2014) when the defence suggested to Rhianne Galea during her cross-examination that the appellant is illiterate, she replied *'Strange because she used to say she used to help him with his homework as well. We never knew of those difficulties'*, explaining further *'No the maternal grandmother during previous visits she used to say that she used to help him with his homework. In fact we used to have a volunteer to go and help Omissis with his homework. The volunteer stopped going due to issues related to cleanliness. Another volunteer went for a number of months. stopped due to issues of lack of hygiene following the family refused to have another volunteer go home and they stated that they will be helping him in his homework'*.

When the accused testified in cross-examination on the 26th of May 2015, she answered that she did not know how to switch on a computer and explained that they have two computers, one is of *Omissis* and another one which was downstairs in the front room. This therefore coincides with the minor's description of where the computer in question was and also with the photo marked on the back as 09CFX102 exhibited by Ps 1238 Clive Brimmer on the 1st of December 2010 . The minor did not testify that the accused switched on the computer, he made it clear that it was him who switched it on upon the accused's request but that it was the accused that wrote 'S E X' and who eventually switched the computer off. While both the accused, her husband *Omissis* and the minor himself confirm that the accused did not know how to use a computer, the Court also noted that *Omissis* explained that the accused played games on the computer which he did for her.

Considered;

That the appellant also submits that *Omissis* gives away the idea that he had a good relationship with his grandmother, the accused and that she did not shout at him.

The appellant also submits the lack of sincerity on the part of *Omissis* who did not take care of him since the child is not living with him and hardly visits him. The appellant made reference to '*the Camilleri case*' and to the *in dubio pro reo* principle and asked if the Court is '*going to let itself be misled twice, and possibly other situations which have not come to light where an accused is wrongly condemned for something which did not take place?*'

Reference is made to the decision in the names **'Il-Pulizija (Supretendent Sharon Tanti) vs Tristan Falzon'**²⁶ where it was considered that:

'Illi din il-Qorti tinsab rinfaccjata b'zewg verzjonijiet tal-fatti kompletament konfliggenti. Huwa principju baziku pprattikat mill-Qrati taghna fil-procediment kriminali, li sabiex tinstab htija l-imputazzjonijiet iridu jigu pruvati sal- grad ta' oltre kull dubbju dettat mir-raguni. F'dan ir- rigward issir referenza ghal sentenza moghtija mill-Qorti tal-Appell Kriminali fil-5 ta' Dicembru 1997 fil-kawza fl- ismijiet Il-Pulizija v Peter Ebejer, fejn dik il-Qorti fakret li l-grad ta' prova li trid tilhaq il-Prosekuzzjoni hu dak il-grad li ma jhalli ebda dubbju dettat mir-raguni u mhux xi grad ta' prova li ma jhalli ebda ombra ta' dubbju. Id-dubbji ombra ma jistghux jitqiesu bhala dubbji dettati mir-raguni. Fi kliem iehor, dak li l-gudikant irid jasal ghalih hu, li wara li jqis c-cirkostanzi u l-provi kollha, u b'applikazzjoni tal- buon sens tieghu, ikun moralment konvint minn dak l-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 short of that will suffice."

²⁶ Decided by the Court of Magistrates (Malta) as a Court of Criminal Judicature on 15th March, 2013. (Number: 901/2006)

As considered in '**Il-Pulizija Vs. Joseph Azzopardi Edward Vella**'²⁷:

'U issa ghalhekk wiehed jistaqsi xi tfisser verament presunjoni tal-innocenza ? Din tfisser li l-akkuzat ma jrid jipprova xejn dwar l-innocenza tieghu; l-Prosekuzzjoni trid tipprova l-htija tieghu. Ghalhekk peress li hija l-Prosekuzzjoni li allegat l-htija tal-imputat, l-onus generali tal-prova, u cioé tal-prova tal-htija tistrieħ fuq il-Prosekuzzjoni; li għandha ghalhekk tipprova kull element tar-reat partikolari sabiex tasal għal din l-istess konkluzzjoni.

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

As the First Court rightly considered, in proceedings where there are allegations of sexual abuse, the Court is more often than not faced with conflicting versions where the victim recounts the incident or incidents of the abuse and the accused categorically denies the allegations. In the case under examination both in his testimony in the acts of the other proceedings against the maternal uncle as well as in cross examination, the minor gave a very detailed description of the activities that took place with the accused. The First Court noted that there is no other evidence which corroborates either the minor's version or the accused's denial. This Court notes that social workers, the father and *Omissis* testified about what the child told them.

Evidence provided by professionals such as social workers who testify about what the child said is admissible to confirm what the child said and not as evidence that what the child said that happened, actually happened. In this regard, the Court makes reference to the decision regarding preliminary pleas in the names '**Ir-Repubblika ta' Malta vs Mario Azzopardi**'²⁸ where it was considered that:

²⁷ Decided by the Court of Criminal Appeal on 4th September 2018 (Appeal number: 470/2017)

²⁸ Decided by the Criminal Court on the 24th of October, 2011 (33/2010)

*'Il-każ li mhux l-ewwel darba li gie citat b'approvazzjoni dwar il-hearsay rule f'kawżi ta' natura kriminali huwa **Subramaniam v. Public Prosecutor** fejn insibu dan ilkliem:*

'Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made. The fact that the statement was made, quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made.'

Jekk wiehed jimxi mal-prinċipji ta' dan il-każ allura ċerti persuni li magħhom ikun tkellem l-allegat vittma jistgħu jkunu prodotti (per eżempju, psikologu, għalliem jew social worker, il-ġenituri jew qraba fil-qrib tal-allegat vittma).

Dawn jistgħu jixhdu li l-allegat vittma tassew qal hekk. Tali xhieda hija biss prova li l-allegat vittma tassew qal hekk, iżda mhux li dak li qed jgħid l-allegat vittma huwa tassew minnu.

*Jekk wiehed jeżamina l-ewwel sentenza tal-artikolu 599 tal-Kap 12, wiehed jista' jikkonkludi li l-hearsay rule fil-Liġi tagħna mhix daqshekk assoluta. U filfatt hekk qalet il-Qorti Kostituzzjonali hija u tiddeċiedi il-każ '**Joseph Mary Vella et versus Il-Kummissarju tal-Pulizija**'²⁹ fejn il-Qorti kkonfermat digriet tal-Prim'Awla biex jithalla jixhed Prokuratur Legali li kien marbut bis-sigriet professjonali. Dan thalla jixhed mingħajr ma kellu jikxef isem it-terza persuna li kienet qaltlu biex il-fatti li fuqhom kellhom jixhed il-Prokuratur Legali. (Emphasis and underlining were added by this Court and details of the decision cited in the judgment are found in the footnotes)*

Peress li d-depożizzjoni, li tista' tkun hearsay, tista' tkun prova diretta li ntqal xi haġa, ma tistax tiġi eskluża fl-istadju tal-eċċezzjonijiet preliminari.

*F'dak li huma deċiżjonijiet kriminali, il-Qrati tagħna issa ilhom sew isegwu il-prattika dwar il-hearsay rule. (Ara dwar dan il-punt: **Ir-Repubblika versus Meinrad Calleja**). Reċentement il-Qorti tal-Appell Kriminali diversament preseduta qalet hekk:''*

²⁹ Decided on the 13th of January, 1998

*' Fil-limit tal-użu li għamlet l-ewwel Qorti tal-okkorenza msemija, ma hemm xejn irregolari. Hu ben stabbilit li waqt li prova hearsay ma hix prova tal-kontenut ta' dak li jiġi rapportat li ntqal, hi prova li dak rapportat li ntqal fil-fatt intqal fiċ-ċirkostanzi, data, post u hin li ntqal u in kwantu tali hi ċirkostanza li meħuda ma' provi u ċirkostanza oħra tista' wkoll tikkontribwixxi għall-apprezzament li tagħmel il- Qorti.'*³⁰ '

Considered;

That the minor gave very detailed testimonies, both in the proceedings against the maternal uncle as well as in cross-examination in the acts of the case in question. When he testified in the proceedings **'Pulizija vs Omissis'** on the 13th of November 2009

regarding the grandmother, he stated '*Tan-nanna, darba kont fuq is-sodda tieghu- le, kont isfel man-nannu u ma nafx jekk kontx isfel man-nannu, imma kont isfel.*', he continued explaining '*Ehe imma kont isfel, imma ma nafx jekk kien hemm in-nannu. Imma kont isfel jien u n-nanna kienet tpoggi fuq is-sodda tagħha, bil-hwejjeg, u jien bl-hwejjeg u mbagħad mort hdejja, imbuttajtha, qbist fuqha, bdejt inbusilha xuftejjha, missejt sidirha, missejt il-parti ta' quddiem.*' He said '*Għax li tghallimni z-ziju, għamiltha jiena.*' He explained '*Qaltli biex nieqaf u komplejt u mbagħad kompliet mieghi.*' Saying that it happened more than once.

Giving more detail, he said '*Qbadt imbuttajtha fuq is-sodda, imbagħad qbist fuqha, bdejt inbusiha, missejt sidirha, missejt il-parti ta' quddiem u mbagħad qaltli, 'leqaf,' komplejt u mbagħad kompliet mieghi.*' Asked '*U kif kompliet mieghek?*', he replied '*Tbusni*', saying '*U mbagħad bdejt incaqlaq hekk.*' Recounting another incident he said '*Darba n-nanna nizlet il-hwejjeg u marret gos-shower, tinhasel, jiena ghidtilha u mort magħha gos-shower.*

³⁰ 'Il-Pulizija versus Fabio Schembri' decided on 1st April 2011 and presided by Chief Justice Dr Silvio Camilleri.

Bdejt inbus xofftejjha, missejtilha sidirha u missejtilha l-parti ta' quddiem u hi bdiet tghidli, 'Ieqaf.' u mbaghad meta komplejt, kompiet miehi. Missitli l-parti ta' quddiem.' Saying that this happened more than once. Regarding the computer, he stated *'Darba kont isfel man-nanna, in-nanna ghalqet il-bieb ta' barra, qaltli biex nixghel il-computer, xeghelt il-computer, qaltli biex immorru fuq l-internet u jiena mort fuq l-internet u mbaghad, meta mort fuq l-internet, kitbet lil pastazi.'* Stating further *'Kienet tara ritratti, per ezempju, nies arwiena u hekk u mbaghad kienet tara film, imbaghad kienet tnehhi l-hwejjeg, nehhejt tieghi, gejt fuqha, bisitli xofftejjha u tmissni l-parti ta' quddiem u mbaghad tiftah halqha, taghmel il-parti ta' quddie-hek nista' nghid?'*, explaining *'U mbaghad bdiet taghmel hekk u mbaghad jiena ghamilt l-istess, ftaht halqi u ghamilt l-istess u bdejt naghmel hekk u mbaghad dahlet subajjha, taghha, gol-patata tieghi, bdiet taghmel dak u jien bdejt naghmel dan. Sorry ta, hallejt naqra, meta ghamilt halqti mal-parti ta' quddiem, hi kienet hekk u mbaghad bdiet tghaffeg qisu qed tghaffeg ras. Jien bdejt nghajjat, 'Ah,' u hi bdiet tghajjat, 'Ah.'* Imbaghad dahlet subajjha taghha gol-patata tieghi u bdiet taghmel hekk, iccaqlaq up and down. Bdejt nghajjat, 'Ah.' U mbaghad jien bdejt naghmel l-istess u hi kienet hekk. Imbaghad dahhaltha, bdejt naghmel up and down ukoll-'. He continued testifying *'Fil-patata u mbaghad bdiet tghajjat, 'Ah.'* Imbaghad regghet ghamlitli fuqha, bdiet tbusli xufftejja, ticcaqlaq u messet il-parti ta' quddiem u tmur titfi l-computer.' Asked what she had written on the computer, he replied *'Sex. S-e-x.'* He explained that these took place at the grandmother's house downstairs while the uncle and grandfather were at work. Explaining that she used to close the door and then after open it again. Explaining that it took place before and after he got to know his father.

When the minor testified before the First Court on the fifth (5th) of March of the year two thousand and ten (2010) which was presided by a different Magistrate to the one that delivered the judgment under appeal, he explained that the grandmother had told him to switch on the computer and he switched it on, and told him to go on the internet and then she wrote 'S E X' and that *'U mbaghad bdiet tara r-ritratti tla-pastazi. Rat per ezempju nisa gharwenin u film imbaghad. Imbaghad ghamlet hekk, nezghet il-hwejjeg imbaghad.'* Explaining that on the film there were people kissing without

clothes. He does not know how many times it occurred but several times. He explained 'Jien nezzajt il-hwejjeg lin-nanna, hi nezzghet tieghi u mbaghad gejna fuq xulxin bla hwejjeg, imbaghad inbusha u hi wkoll, l-istess hi.' He explained 'U mbaghad missejt sidirha, imbaghad il-parti taghha, ta' quddiem hekk 'il fuq u 'l isfel u hi l-istess u mbaghad hi b'halqha, hekk fethet haqlha u ghamlitieli fil-parti ta' quddiem, hekk tikka 'l gewwa, taghmel hekk,ghamilt hekk. U mbaghad hi dahlet subajjha fil-parti tieghi ta wara, hekk 'l fuq u 'l isfel u hekk, jien ghamilt l-istess; dahhalt subajja u l-istess 'l isfel. U mbaghad ergajna gejna fuq xulxin u mbaghad ergajna. Busejna u messejtilha sidirha . . . ' He explained ' bdejt inbusha u mbaghad messejt sidirha u l-parti taghha fuq quddiem 'l fuq u 'l isfel hekk u hi l-istess. U mbaghad hi tfiet il-computer u hekk, libset u mbaghad marret tiftah l-bieb terga.'

On the 14th of October 2011 Martin Bajada exhibited a report filed in the *Police vs Omissis* case which included a CD with contents extracted from a pen drive. This Court is understanding that these video recordings (which are not visibly clear) were recorded by the father *Omissis* who recorded what the minor narrated after the minor had already narrated the incidents in question. The Court arrived at this conclusion in view that when *Omissis* testified on the twenty fourth (24th) of June of the year two thousand and ten (2010) even from the acts of the proceedings it does not result that he presented the pen drive, he stated 'Jiena ghandi camera kont xtrajtha minn ghand wiehed, din video u kienet il-video taghha mhux tajjeb. Wara ma xtrajtha indunajt li ma kienx, il-kulur mhux tajjeb. Imma sound tirrekordja, tirrekordja hi imma persuni hekk ma jidhrux. U din beda bdejt nitkellem ma Omissis, wara bdejt inkellmu bil-mod, ghidtlu ejja fehemni ghax hawwadtni, ghidtlu: ejja niftiehm u erga ghidli mil-bidu. Ghamilt din il-camera hdejja taparsi jiena qd insewwsiha, u ghandi battery u affarijiet hekk u ghamiltha tirrekordja l-kliem tieghu. Ghax jiena l-verita, l-ewwel darba li smajt dawn l-affarijiet. Lanqas qatt ma ghaddejt minnhom. U bdejt nirrekordjh u hadt din bil-laptop b'kollox, hadthom ghand l-Ispettur li kienu s-surgent u l-pulizija hemm...'

Martin Bajada also testified on the 9th of April 2013 and exhibited transcripts of the recordings of the CD 'at fol 469' ³¹in Maltese and a translation in English. At folio

³¹ Although the envelope of the CD is marked as 469, it is attached to folio 373.

457, 'Male 1' stated 'Imbotta n-nanna fuq is-sodda, qbist fuqha, bistha xuftejha, idejha, il-parti ta' quddiem', 'U darba fis-sodda kont inzajt b'dan s'hawn.', 'S'hawn, imbaghad ridt namilha kif ghallimni iz-ziju hekk.', 'Imbaghad, mort hekk fis-shower tal-kamra taghha, bdejt inbusha hawn' and asked when he went in the shower with his grandmother, how was his grandmother and what did they do, he stated:

'Male 1: Hekk, bla hwejjeg, meta tmur fis-shower tinza.

Male 2: Tinza biex tinhasel.

Male 1: E

Male 2: U dhalt inti fis-shower maghha.

Male 1: E

Male 2: U x'ghamiltu?

Male 1: Bdejt inbsha fuq xuftejha, idejha u il-parti ta' quddiem taghha. Imbaghad hi ghamlet idejha fuq il-parti.

Male 2: Hi ghamlet idejha fuq il-parti tiegek? Ijwa jew le?

Male 1: Ijwa. Bdiet taghmel hekk.

Male 2: Thokk mieghek hekk? E.

Male 1: U ahna s'hemm konna wasalna. S'hemmek kont ghedtlek jiena.

Male 2: E, dak ta' fuq is-sodda importanti jiena, dak ta' fuq is-sodda, kemm il-darba sar.

Male 1: Ma nafx.

Male 2: Ijwa, hafna, darba?

Male 1: Le. Iktar minn darba. '

The Court noticed that at folio 455, a part of the transcript presented in the report of Dr Martin Bajada regarding one of the recordings reads 'Ijja, jiena n-nannu xejn ma ghamilli imma. Hu ghamilli' but this Court in a close listening of this recording³² in the CD³³ heard '...in-nanna u n-nannu xejn ma ghamluli imma. Hu ghamilli.' The Court arrives at the conclusion that this recording took place before the minor disclosed what he alleged happened with his grandmother since the child in other recordings in the same CD narrates what took place with the grandmother.

³² With file name 'dd'

³³ The CD is in an envelope marked as 469 but attached to folio 373

That this Court notices instances where the Court understands it is the father in the recordings where he insists and asks a lot of questions to the minor, for instance at folio 458 et sequitur:

'Male 2: Fis-shower kemm il-darba dhalt man-nanna?

Male 1: Ma nafx kemm

Male 2: Iktar minn darba li ghamilt dawn l-affarijiet man-nanna fis-shower.

Male 1: U fuq is-sodda?

Male2: Kemm il-darba?

Male1: Ma nafx kemm il-darba.

Male2: Titla hdejha u taghmel hekk kuljum?

Male 1: Le, ma nafx kemm il-darba.

Male 2: L-istess haga taghmel man-nanna. U meta tkun fuq is-sodda, tmissilha l-parti taghha?

Male 1: Liem?

Male2: Tmissilha l-parti taghha jew le lin-nanna?Fuq is-sodda

Male 1: E

Male2: Meta tkun inti man-nanna fuq is-sodda, Tmissilha l-parti taghha jew le?

Male 1: Ijwa liem?

Male 2: Il-parti ta' quddiem. Tmissilha jew le?

Male 1: Ehe....'

Another part of a transcribed recording at folio 460 et sequitur provides:

Male 1: Ghadni nghidlek Omissis, tigdeb fuq hadd ghax anki il-giddieb imur in-nar eh. Ghid il-verita', il-verita' biss biss biss. X'gara u ma garax. Ghid.

Male 2: Ha nibdilhom hekk ta' pa. Kienet bilqieghda in-nanna fuq is-sodda, giet imbuttajtha, qbizt fuqha, bdejt inbusha, missejt, missejtilha il

Male 1: Sidira eh

Male2: u dak tal-quddiem il-private imbaghad

Male1: meta imbuttajtha qaltlek le jew xi haga jew ma qalet xejn?

Male2: l-ewwel bdiet tghid hallini

Male 1: kif?

Male2: Lewwel qaltli hallini imbaghad meta komplejt ma qaltli xejn.

Male 1: Imbaghad mhux din il-gurnata, gurnata iehor marret fis-shower gharwiena bla hwejjeg, imbad jien inzajt il-hwejjeg, imbad jien inzajt il-hwejjeg, bla hwejjeg.

Male 1: Inzajt tieghek inti jew in-nanna kienet bla hwejjeg. Ejja kompli.

Male2: U hi dahlet fis-shower u jien inzajt tieghi. Imbaghad mort fis-shower mahha. Bdejt inbusha fuq xuftejha, missejtilha sidirha.

Male1: Taghmillek ekk b'idejha eh

Male2: U li tghallimni iz-ziju ekk kif taghmilha u hekk ghamiltilha fis-soda.

Male 1: Imma tlajt fuqha? kif ghamiltilha din, mhux nifimha.

Male2: Eh

Male 1: Tlajt fuq in-naanna fuq is-sodda. Gharwiena jew bla hwejjeg in-nanna?

Male 2: Le dak il-hin kienet bil-hwejjeg.

Male1: Dak il-hin kienet bil-hwejjeg orrite.

Male2: Imbaghad kont fis-sodda, tieghi, tieghi is-sodda u nehiet il-hwejjeg u ghajtitli, Omissis, Omissis, Omissis, Omissis bdiet tghajjatli. U mort.

Male 1: Fejn kienet hi?

Male2: Fil-kamra taghha. Imbaghad bdiet tghajjatli Omissis, Omissis. Imbaghad hi kienet dak idha fuq il-private ta' quddiem, taghha, taghha stess.

Male1: Imma bla hwejjeg kienet dak il-hin jew?

Male 2: Le, bla.

Male 1: Kif kif?

Male 2: Bla.

Male1: Eh

Male2: U qabdet idi, ekk fuq tieghi.

Male1: Idejha jew idejk?

Male2: Hi qabdet idi hekk u ghamlitha fuq tieghi.

Male1: Taghha jew tieghek?

Male 2: Le tieghi.

Male1: U inti titkellimx, ha nisma., issa li qallek inti hallih halli jghidulhi darb'ohra.

Male2: Qabdet idi, ghamlitha f' tieghi imbaghad ghamlitha, il-private tal-**diskors mhu car** qed nghid, tieghi imbaghad ghamlitha fuq taghha.

Male1: Ijwa, ijwa qed nifhem.

Male2: Idi.

Male2: Qabdet idejha hekk u bdiet tgahmel hekk.

Male1: Orrite.

Male2: Bdiet taghmel hekk ticcaqlaq, imbaghad gibditni fuqha, fuqha.

Male1: Kif gibditek? Inti kont wieqaf hekk fejn is-sodda? Fejn kont?

Male2: Eh, eh. U gibditni fuqha. Imbaghad bdiet taghmilli hekk li taghllimni iz-ziju, u bdiet tbusni hawn.

Male1: fuq xufftejk

Male2: Imbaghad missitli dak x'jismu, imbaghad regghet missitli il-parti ta' quddiem, togod taghmel hekk. U hi kienet taghlaq il bieb.

Male1: Tal-kamra tas-sodda?

Male2: Taghha.'

The minor gives a lot of detail in these recordings as well as before the Court via video conferencing. The Court also notices that when the minor testified on the thirteenth (13th) of November of the year two thousand and nine (2009) when asked 'Kienu jsiru dawn l-affarijiet man-nanna meta kont ghaddek ma' Ms. Grech?', he replied 'Ija. Tas-sodda. Ill. insejt nghidlek tan-nanna...', giving the impression that he did not want to forget to mention anything that took place. The Court also notices that the child's narration of events is graphic, even though he could not say in a definite manner how many times these events took place, he provided a lot of detail.

As the First Court considered in its decision 'This Court has read and reread the testimony given by the minor and viewed the relative video-recording and it has also examined in great detail the versions which the said minor gave to the social workers during disclosure stage. This Court could not fail to note the detail and precision with which the minor concerned explained the various incidents where sexual activity took place between him and the accused. During final submissions Defence Counsel suggested that the minor

was lying and that he started making these allegations only when his father came into his life and this is therefore an indication that the boy is making such allegations because he was instigated to do so by his father. The Court completely disagrees with this submission primarily because of the detail provided by the minor. From its experience in such cases it is practically impossible for a ten year old boy inventing a story or repeating one suggested to him by third parties to provide such details about what has occurred without faltering and without being caught out changing versions or getting mixed up.'

The Court also notes the detail, consistency in the versions given to the minor to various people he spoke to during the course of the investigations and also the fact that he also admitted that he had started things off with his grandmother. As the First Court rightly considered '*The Court also took into consideration the fact that the boy had no qualms in admitting that he was the one to start things off with his grandmother and that he also out of his own accord gave information about two incidents with his brother and a girl at school whereby he had been the one to make advances. These are all clear indications that the boy is saying the truth about what had happened to him over the years in his grandparents' home. Moreover the Defence's argument that the boy cannot be believed because he is repeating things which his father told him to say cannot hold ground because there appears to be no reason why the father should have made the boy invent such a story after he had already obtained custody.*' This Court notes that the incident of the girl was mentioned by Omissis on the twenty fourth (24th) of March of the year two thousand and eleven (2011) where in relation to his son's attendance in the Kids programme, he said '*It-tifel u mbaghad staqsewh huma u kien qallhom x'ghamel mat-tfal hemm.*' Stating that he told him '*Qalli jien bist xi tifla hemm u mbaghad qalli hemm tifla ohra, morna fil-playroom fejn jaraw it-television, qalli: dawn li joqoghdu hemm, li jiehd u hsiebhom kienu fil-kcina qed isajrulhom, ilestulhom l-ikel. Qalli: u mort inmiss lil din it-tifla. Qalli: bdejt nitbewwes maghha. Qalli: bdejt inmissilha sorry, sidirha u bdejt inmissilha l-parti taghha. ghidtlu: lilhom ma ghidtilhom? Qalli: le, ma ghidtilhomx. Imbaghad jiena ghidtlu biex jghidilhom . . .*' The child in his testimony of 13th of November 2009 stated that he plays with a girl in his grandmother's street where he stated '*Imbaghad hemm dawra hekk, morna hawn u ma-kien hemmx nies u karozi, mbaghad bdejna mmorru sa hawn, poggejna u bdejt imbus hawn, missejt il-parti ta' quddiem, dahhalt idi u mbaghad din*

ghamlet l-istess dahlet idha u jekk jghaddi xi hadd, nies, jew karoza, nieqfu. Imbagħad darba marret tpoggi ghax hemm hanut hdejna u kien magħluq u poggiet u qaltli, 'Isma 'l hawn ha nkellmek.' Mort nara xi trid. Qaltli, 'Jien u hija,' il-kbir Brandon, qieghed Year 6, meta kien Year 5, qaltli, 'Ahna bdejna, taparsi qegħdin nizzewgu, bdejna nitbewsu u missejtlu l-parti ta' quddiem,'

Considered;

That in reality to the minor's credibility, the Court notes that in the transcript found at folio 479 of the recordings regarding a conversation between the Court understands that the child, father and a female, the minor is asked several times whether he is saying the truth. For instance, at folio 479 et sequitur.

'Female1: Jiena li nghidlu, imbasta ma jigdibx dawn mhux affarijiet tal-gideb. Inti zgur minnu ma gdibtx fuqha in-nanna?

Male2: Ehe zgur.

Female1: Omissis dawn affarijiet kbar mhux zagħar.

Male1: Inti tafl li dawn kbar dawn l-affarijiet jew le?

Female1: veru saru dawn l-affarijiet man-nanna? Veru in-nanna għamlitlek hekk

Male 2: mhmm

Female 1: zgur, zgur, zgur?

Male2: Ehe

Female1: jekk m'hux veru m'hux veru Omissis

Male1: Jekk hemm xi hadd qallek.

Female1: Jekk mhux veru għid li mhux veru.

Male1: Zgur m'hemm had qallek biex tghid fuq in-nanna dawn il-kliem?

Male2: Le hadd.

Male1: M'hux forsi qed tivvinta fuq in-nanna.

Female1: Jew forsi tivvinta int?

Male2: Le

Male1: Għamlithu hekk kif qed tghid inti bl-ezatt.

Male2: Ijja zgur, qed nghidlek hadd ma qalli, mhux qed nivvinta.

Female1: Igifiri zgur mhux gdibt fuq in-nanna int. Qieghda nghidlek ta' l-ahhar, dik in-nanna.

Male1: Taf dik min hi inti. Anzi mhux in-nanna.

Female1: Anzi, ommok ax rabbietek. Zgur inti ma vvintajx xi haga fuqha.

Male2: Le zgur.

Male1: Hadet hsiebek, u dawn l-affarijiet inti tafhom kollha suppost, ghax hi u n-nannu hadu hsiebek.

Female1: Promise ma vvintajtx fuqha.

Male2: le

Female1: Zgur igifiri?

Male1: Dawn huma li hadu hsiebek, li wassluk s'hawn, mhux qed tigdeb fuqhom. Ijwa jew le.

Male2: Mhux qed nigdeb fuqhom.'

That when the minor gave evidence on the fifth (5th) of March of the year two thousand and ten (2010), the Court at the end of the minor's testimony asked:

'Qorti: Sewwa. Imbaghad b'tan-nanna. Tan-nanna, Omissis, gara veru?

Xhud: Le. Vera.

Qorti: Vera li gara?

Xhud: Ehe vera.

Qorti: Mhux qed tivvinta?

Xhud: Le.

Qorti: Inti taf id-differenza bejn li tghid il-verita u tigdeb? It-tfal kollha jigdbu u xi daqqiet anke l-kbar jigdbu. Imma kulhadd jaf id-differenza meta jiena qed nigdeb u meta qed nghid il-verita. Issa hawn hekk . . .

Xhud: Tan-nanna.

Qorti. Tan-nanna, ma tistax tigdeb. Trid tghidli l-verita.

Xhud. Il-verita.

Qorti: Da kollu li ghidtli llum u l-ahhar darba fuq in-nanna, huma kollha l-verita?

Xhud: Ija, l-verita.

Qorti: Vera graw?

Xhud: Ehe vera.

Qorti: Xi haga ohra?

Dr. Farrugia: Xejn, thank you.

Qorti: L-ahar domanda, Omissis, ghal li jista' jkun, mhux il-papa qallek biex tghidhom dawn l-affarijiet hux?

Xhud: Ie, lili hadd ma qalli biex nghidhom. Jiena ghidt il-verita u daqshekk hux. Ghidt il-verita.'

In the transcript of a recorded conversation found at folio 474, asked 'In-nannu u in-nanna x'kienu jghidulek fuqi?', replied 'Biex ma nghidlekx daddy', 'Biex nibza minnek', 'Ghax tohodni il-libya u ma nergax nigi', 'U ekk biex nigdeb fuqek', 'Biex nigdeb fuqek ezempju ma ssawwatnix u nghid li ssawwatni'. He said 'Huma ma qalulix ma min jew hekk, qaluli kemm tigdeb.', the person referred to as 'Male1' stated 'Kemm tigdeb? u vvinta fuqhi kemm tiflah. U inti xi hsibtek li ha tigdeb fuqi jiena?', replied 'Ghamiltha, u taf li ghamiltha', Male1 states 'Iva, naf li gdibt fuqi u ghedt li sawwattek u mhux vera.', Male2 then replied 'Taf, ghax hekk edt li Rihanne.' Asked 'Kien vera dak li sawwattek jew kien gideb dak ta' Rihanne?', he replied 'Kien gideb'.

That when Veronica Ellul a clinical psychologist testified on the 21st of January 2010, she testified that 'I carried out a clinical interview and used four (4) psychological tests and my conclusion is that the minor is a credible witness based on the fact that he presented himself as oriented in time and place. He was able to distinguish between fantasy and reality and he was sort of also lucid during the clinical interviews and presents himself also as a very intelligent child.' She presented a report, found at folio 73 and marked as Dok VE. In the report presented by Dr Veronica Ellul, specifically in folio 79, she states 'Omissis did not give all his disclosure in one session, however he gave it in four different occasions. Children who have been sexually abused do not usually give their disclosure all at once, first of all because what they have been through it is too anxiety provoking for them to speak about the abuse all at once and secondly children need to test their ground before actually disclosing everything at once. After his first disclosure Omissis found people that supported him and that believed him and thus felt safe in the next sessions to disclose more of what happened. Furthermore, despite the time elapsed from one disclosure to another Omissis was still very consistent in what he said and this gives a stronger indication of a true disclosure.'

That Dr Veronica Ellul in her report concluded that in her opinion '*Omissis is a credible witness as it is evident that the child is oriented in time and space and he was consistent in his allegations. Moreover, the child is exhibiting obsessions with regards to sex which are not age-appropriate, indicating that the child must have experienced a traumatic experience throughout his childhood.*' She made the following recommendations:

- '*Urgent need for Psychiatric help in order to receive help for his obsessional thoughts;*
- '*The child would benefit from a residential therapeutic program such as the Kids program primarily to be in a contained environment in order to learn social skills which he was unable to learn. Both the father and his partner are having difficulties caring for the child and thus this is not helping the child's psychological well-being. An intensive program will also reduce the risk for him to learn not to act out his sexual thoughts.*
- '*Urgent psychotherapy, preferably Cognitive Behavioral Therapy at least twice weekly so that the child will be able to reduce his obsessional thinking and the anxiety triggered by such thoughts;*
- '*The child would benefit from attending some extra-curricular activity such as football in order to reduce his anxiety.*'

Considered;

That the appellant in her appeal also submits that '*Various legal principles come into play in this very delicate case which deserve to be highlighted. The credibility of the parte civile who is only interested in seeking vengeance in not getting things his way. Serious doubt also prevails in the evidence collected giving rise to the principle that in dubio pro reo is to reign. The necessary intention let alone whether the child, when at such a tender age is to be believed when he had the full pressure of his father who wanted to use the child for his ulterior motives. This case reminds one of the very serious case- the Camilleri case- when was exposed when an individual, in very similar circumstances, was sent to prison and spent some time there when in reality he was innocent. It resulted that the daughter was encouraged by the mother to give false evidence and is now having to face criminal*

proceedings for what happened. What is interesting is that the investigating officer is the same one involved in this case! This point was raised after the prosecuting officer, in her summing up pointed out that children say the truth. What happened in the Camilleri case? Are we going to have a repetition? Is the court going to let itself be misled twice, and possibly other situations which have not come to light where an accused is wrongly condemned for something which did not take place?'

That the first Court decided upon facts brought before it when it decided that the child was credible. Rianne Galea in the sitting dated 28th January 2014 asked in cross-examination:

'Don't you think or did you consider or was it considered that all of a sudden these things came up when the father came in the scene ? Becasuse at no stage did you point out that before he was living a normal life, he was sleeping normallly and there were no difficulties. On the contrary we have evidence which shows he was playing normally. But when the father came on the scene all of a sudden a lot of prblems started to crop up. So my quesion is this. Did you bother to consider whether basically you were, I am not saying you are in bad faith, don't misunderstand me ta. That Mr. Omissis had an agenda on his mind and he was creating the situation and arguably he was using this institution for his ulterior motives at the expense of Mrs Omissis', she answered 'The child gave a lot of details and he gave always a presice and very consistent. We asked him to repeat the stories as well, the incidence and he always gave detail and he was always very precise. Added to this apart from allegations against Ms Omissis he also alleged, initally said that his maternal uncle was also abusing him. And in fact he was sent to prison at the end of last year for those accusations. So he started off with the accusations against his maternal uncle and then proceeded to speak when he felt more comfortable about the accusations against Mrs Omissis'.

Rianne Galea explained that *'He was always very consistent with his stories. Apart from the research suggest that children who speak about, disclose about sexual abuse they do not normally do si all in one sitting. They do so in over a number of days which is what happened in this case. The reason is it causes them a lot of anxiety which probably was his case and apart from that Omissis had to as well test his ground to see that he can trust others. Because*

he knew who I was however he didn't know who Donatella was so he obviously had to test the ground. Once he felt safe and when he kept reassuring him that it was not his fault he felt safer to speak and that's when he proceeded to give further disclosures'.

The appellant states that 'Agenzija Appogg started to show that they were only interested in their reputation and saving face. Agenzija Appogg showed that in reality they were not an effective body in the monitoring of the child and that if, as Dr. Veronica Ellul declared that the child was '...a very intelligent child'³⁴, therefore this means that the child also took Agenzija Appogg for a ride.' Donatella Cassar Bruno testified on eighteenth (18th) of February of the year two thousand and thirteen (2013) in cross-examination explained that 'It doesn't meet because a Social Worker visits the house and the boy doesn't show any signs of any sexual abuse it means that it's not happening. Because we have had various children who have spoken not only after a year but also after more years have passed. So it doesn't mean because she was following and she was visiting and the child did not exhibit any behaviour doesn't mean that it was not happening'. From the evidence brought before the First Court, it does not result that the child decided to disclose the occurrences with his father on his own initiative, it was only when the father told him that he had a pen drive that recorded what went on at his grandparent's house, that the child decided to speak out, with the hope that the father would not watch what took place, disclosing first about the maternal uncle and then on another day about the grandmother.

In fact, Omissis in his testimony dated 24th June 2010 regarding a pendrive stated 'Din gibtha mieghi mill-Libja, kelli programm fuq il-computer jien biex naghmlu fuq tieghi hawn. U kif hrigtha kont fejn il-computer jiena u kont bil-qieghda. Qalli:dik x'inh? U jiena qisu xi hadd qalli . . .', 'Ghetlu: din Omissis, nghidlek x'inh? Qalli: x'inh? Ghidtlu din jiena qabel nitlaq minn hawn, mhux gejt ghidtlek li jiena sejjer? Qalli: iva. Ghidtlu: dhalt ghand in-nanana jiena, ghax nidhol ftit fejn il-bieb, qalli: iva. Ghidtlu: din tarha hawn? Qalli: iva. Ghidtlu: il-bieb, qalli: iva. Ghidtlu: din qed tarha hawn? Qalli: iva. Ghidtlu: ghafastilha din il-buttna tfajtielek taht is-sufan. Ghidtlu: din toqgod iddur god-dar u issa

³⁴ Vide a fol 69.

nkun naf il-verita kollha b' din. Ghidtlu: ghax issa jien meta gejt ghalik, ghidtlu: rajtni dhalt jiena gewwa? Qalli: iva. Gidtlu: dak il-hin jiena tbaxxejnt, hadtha u tfajtha fil-but. Ghidtlu: issa din tghidtlil l-verita kollha. Issa jiena li kelli f' rasi li t-tifel jghidli x' gara ghal dak il-hin, ghal x'hiex ghamel hekk. U dan it-tifel kif ghidtlu hekk iggennen. Taghamiliex, taghamiliex, taghamiliex u jghajjat u jwerzaq! Nghidlk jiena, nghidlek jien. Ghidtlu: all right, ha naghmlulha hawn u ghidli int. Jiena dak kollu, ghax hu t-tifel la papa ma jghajjatli u la daddy, xejn. Ghax dawn hekk qalulu, biex lili ma jghajjatlix dawn l-affarijiet. U ghidt jiena nohodha bil-kwiet sakemm jidra t-tifel. U dan it-tifel qalli: issa nghidlek kolloxx. Ghidtlu: ok, ejja ghidli. Jiena stennejt nisma' ghal x'hiex ghamlu hekk u ghal x'hiex ma jghidlix papa u dawn l-affarijiet. U beda gej bl-istorja ta zijuh, illi z-ziju . . .'

He later on in his testimony explained that 'Issa meta hadtu ghand l-Ispettur u lest u mort ghand Omissis u qed nghidlu x' gara u x' ma garax ghand l-Ispettur, u poggejna jiena u Omissis qed nitkellmu. U bdejt nghidlu b' dak il-kaz li gara ma Omissis. Ghidtlu ghax hu kien diga qabel ghamel hekk, hekk u hekk lil Omissis. Qalli: ha nghidlek haga, qalli: fuq in-nanna staqsejtu int? Qalli: la mess lil Omissis, fuq in-nanna, qalli: la qallek fuq iz-ziju, qalli: staqsejtu fuq in-nanna jekk hemmx xi haga? Ma ghandix ghalxiex nistaqsi ghax hu attakkah zijuh, ma semmiex lin-nanna. U dejjem meta semmejtlu lin-nanna ghal x'hiex ma ghidtiliex ma ghidtiliex u daqshekk. Qalli Omissis: inti ara l-affarijiet sewwa. Staqsieh. Mort id-dar u lil Omissis ghajjatlu ghidtlu: Omissis, ghidtlu: qed tarha din? Qalli: iva. Ghidtlu: bhal ma rrekordjat ghand in-nanna, din irrekordjatli hawn, din god-dar l-istess, iddur u tirrekordja. Ghidtlu: u bdejt nara fuq il-computer li inti ghamilt hekk u hekk lil Omissis u hu meta ghamel hekk lil Omissis, qallha: ha nghidlek sigriet fuq iz-ziju u fuq in-nanna, t-tifel. U kif ghidt lil Omissis qalli: meta staqsieh, ara s-sigriet tan-nanna x'hemm. Ghidtlu: smajt illi inti ghidt lil Omissis ili hemm sigriet fuq iz-ziju u fuq in-nanna. Issa s-sigriet taz-ziju ghidtuli. Ghidtlu: issa jekk ma tridx tghidli tan-nanna, inpoggi din fil-computer.

L-istess: le, le, le, le tghamlux u nghidlek jiena kolloxx. Jiena nghidlek kolloxx. U beda. Li n-nanna ddahlu maghha fix-shoer, tnezzghu, tinza hi, joqoghdu jinhaslu. Qalli: l-ewwel darba mbotta lin-nanna u beda jbusha u jmissilha sidirha u mbuttatu u mbaghad kompliet u mbaghad darba ohra l-istess, imbuttatu u kompliet...'

When the minor testified via video conferencing on 5th of March 2010 asked by the Court '*Omissis, ser nerga nistaqsik, xi hadd qallek biex tghidhom dawn l-affarijiet kontra n-nanna jew verament graw?*', he replied '*Le ha nghidlek li gara. Hekk, ghax missieri kien ghamel video, hekk god-dar u imbaghad meta mort ghandu, hekk qalli biex nghid x'gara u ghidtlu l-verita. Jigifieri biex nghid per eżempju hekk, mhux jghidli per eżempju: ghid hekk u hekk, per eżempju jghidli: hekk. Biex nghid, per eżempju nghid li hrigt hekk, nghidlu li hrigt. Jghidli fejn fhimt? U jien ghidtlu l-affarijiet.*' Asked where his father found the video, he replied that he does not know and asked what was in the video, he replied that he did not see it.

Considered;

That the appellant emphasises that even though Agenzija Appogg was monitoring the relationship between the foster parents and the minor and during such monitoring ensuring that everything was done properly, Agenzija Appogg never noticed anything irregular and the appellant submits that they recorded that they were quite pleased with the way things were being handled. Donatella Cassar Bruno in cross-examination on the eighteenth (18th) of February of the year two thousand and thirteen (2013) asked '*Was it taken into consideration the fact that over here perhaps the father had a particular agenda and as a consequence of this agenda this child was how shall I say in a situation where he revealed, he said a lot of things*', replied '*All possibilities were explored. The fact that obviously the child was not being taken care by the grandmother longer do the person in charge of the child being responsible of the child at the time was the father. So it was he father who was going to call the Social Workers. It's very natural in all cases. It's the parents or the guardians who called Social Workers. Now the fact, the father had mentioned the fact of the Visa. We are aware of that later when the Visa was going to be expired and he was not going to receive, he was not entitled for any benefit in Malta. But when you see Omissis credibility and Omissis disclosure the intensity, he was aware of time, space. He was so precise the child that it was sure, I can vouch on that, I have seen so many children saying and alleging sexual abuse cases that the child was saying the truth and even in his behavior Omissis has also acted with other children. Has acted at the*

residential set up so this was evidence that this boy from somewhere has learned and was exposed and has experience this verbal abuse'.

She explained that 'We did assess whether this child was being consistent due to the fact that when I see other cases it was a very intense case like I said before. The child was giving a lot of details and it is impossible that someone and in this case you're pointing out to the father has given all this information and detail. There are many things which involved sexual acts, adult sexual acts which a child of 8, 9, 10 years would not know if he was not exposed to these things. It was impossible that in a day the father would have showed all this and in 5 days he would have reencountered all this and then kept on being consistent in this version. Because it's not only the five days we need to take in account here. We need to take in account that the child has been saying all these things all along with Vice Squad, with us, with other Social Workers, with the Pyschologist and with the doctors.'

Regarding the monitoring of the child with the foster parents, she explained further that 'But Rianne Vella as I told you couldn't just in a home visit or when you go and talk to the child, the child did not speak. But the child took his time to speak. The child could have said million other things which were happening at the grandma's house. The child has chosen to speak, issa he could have chosen to speak when his father was here or when his father was not here. You are point out that because his father was here the father has put something in mind of this child but it impossible because again the details given from a 10 year old child about the sexual acts it's impossible that someone has putted them in his mind when he has not acted on them. I have seen a lot and a lot of sexual, I done 3 years at Child protection services, I've been 8 years now Social Worker, I have never seen such case where a child gives so much detail. Omissis is a very very intelligent child, he is very alert. The psychologist has also pointed this out in the report so when you compare Omissis intelligence and what Omissis has disclosed I used to spend over an hour with Omissis in our counseling room getting answers from him and he used to explain, he used to do also facial expressions when I remember in and out. He used the word nerdahulek, and he put with his face how he's done that. It's impossible that this child could have inflict, someone has inflicted these things on him'.

That the social workers that testified in the case made it clear that during the monitoring of the child and foster parents, their concerns related to clutter and cleanliness at home. Another concern was that the child thought that the grandparents were his parents. Rianne Galea in cross-examination on the twelfth (12th) of December of the year two thousand and thirteen (2013) when asked '*Did the child ever give you to understand that he has, he is not treated properly by the grandmother*' replied '*No he never spoke negatively of her*'.

In the Court's opinion, the fact that the child did not make any disclosures to social workers who were monitoring the relationship between him and the fosterparents does not in any way impinge on the minor's credibility. In fact, as has been considered the child did not on his own initiative decide to tell his father about what was going on, it was only when the father told him that he will know what was going on by putting the pen drive in the computer, that the child decided to speak up, first about the maternal uncle. It was then when the father told him about the secret the child had told *Omissis* he had about the maternal uncle and grandmother and that he would insert the pendrive to know, that the minor went on to make disclosures about the grandmother.

Considered;

The appellant also provided that the evidence given by the child gives away the idea that he had a good relationship with the accused. The appellant in her appeal provided that the '*child has been put in an awkward position, stressing the fact that in three (3) years the grandmother: "She did not use to shout at me."*³⁵ Donatella Cassar Bruno in her testimony in cross-examination dated 18th February 2013 explained that '*he was also very concerned of what was going to happen to his Uncle and to his Grandmother. Because the child was really, really afraid that something would happen to*

³⁵ Vide a fol. 120.

them and he used to say it, I missed them because these were his family and I love them'. The Court points out that when the minor testified that the grandmother does not shout at him, he explained that she would shout at him if he told someone. Furthermore, the fact that a child has a good relationship with the accused, in no manner means that what is being alleged did not take place.

The Court makes reference to the case in the names **'Il-Pulizija (Spettur Bernard Charles Spiteri) vs. Francine Cini'**³⁶, where apart from a number of considerations, it considered:

*'L-imputata pprezentat rapport xjentifiku ta' Dottoressa Veronica Ellul Federici, esperta tal-Qorti nominata fil-kors ta' proceduri civili bejn l-istess imputata u Domenic Zammit. Dan ir-rapport pero` bl-ebda mod ma jiggustifika l-verzjoni tal-imputata jew inkella jitfa' xi dawl fuq dak li sehh fit-tmienja (8) ta' Mejju 2017. Jghin biss biex jikkonferma li tfal ta' eta` tenera (bhal ma huma t-tfal tal-imputata) "are more vulnerable to suggestion than are older ones. Suggestions tend to be accepted when children feel intimidated by the interviewer, when the interviewer's suggestions are strongly stated and frequently repeated, and when more than one interviewer makes the same suggestion (Wenar & Kerig, 2000). When children are struggling because of divided loyalties towards their parents especially in situations of high conflict separation they are very more often more prone to suggestive questions and thus risk accusing a non-abusing parent to please the other parent."*³⁷ *L-imputata ghalhekk aktar kienet obbligata li hija tivverifika sew l-affarijiet qabel ma taqbad u tintavola rapport mal-Pulizija fuq il-kaz tal-allegat swat;'*

However, in this particular case, both from the report presented by Dr Veronica Ellul and found at folio 74 et sequitur which provides apart from a number of observations, conclusions and recommendations, that the child is a credible witness and consistent in his allegations and most especially from the minor's testimonies

³⁶ Decided by the Court of Magistrates (Gozo) as a Court of Criminal Judicature on 23rd October, 2018 (Number: 393/2017)

³⁷ *Ara pagna 39 tar-rapport prezentat fis-seduta tal-20 ta' Gunju 2018 u markat bhala Dokument FC 1.* (Found in footnote 7 of the cited judgment)

given via video conferencing in two proceedings, it is clear that the minor is credible. The Court agrees with the First Court in considering that there is no reason why the father should have made the boy invent such a story after he obtained custody. Even though from the acts, it appears that there might have been some conflict between the maternal grandparents and the father of the minor such that Rianne Galea in her testimony dated the twelfth (12th) of December of the year two thousand and thirteen (2013) stated that there were a number of arguments between the maternal grandparents and Mr *Omissis* due to contact. It is clear that the allegations in question surfaced after and not before the father obtained custody, meaning that as the First Court rightly considered *'there appears to be no reason why the father should have made the boy invent such a story after he had already obtained custody.'*

That the appellant's submission in her appeal that the father wanted to pay her family back is only a speculation with no evidence confirming this submission. Even though the defence tries to give the impression that the father wanted to pay back the family for not allowing him to marry the daughter, an allegation which is contested by the father himself, there appears to be no reason why the father would have wanted to pay the family back after he had obtained custody.

Considered;

That the appellant also submitted that *'A further point which merits consideration and exposes the lack of sincerity on the part of Omissis is the fact that when he took possession of the child and successfully managed to create this tsunami, his true colours were exposed in that after all his 'supposed care' for the child, the child is not and has not been living with the biological father and who hardly visits him. This has served to add more harm to the child, adopting once again, a similar attitude when he had originally left Malta for about nine years not bothering in the least, let alone pursue his rights as a father, but finding it convenient that the accused and her family look after the child for him'.* As the First Court noted *'it is to be noted that the boy had become so obsessional about sex that after a while his father was*

unable to cope with the situation and the boy had to be institutionalised.' In fact when Omissis testified in cross-examination again on the 8th of January 2015 that he was called from the Zurrieq Police station and that when he arrived he found two (2) women who told him about an order for the Ministry and that he could not see his son. The prosecution commented that this is a care order. No evidence confirming that a care order was issued and the rationale behind it was brought before the First Court. Nevertheless, Dr Veronica Ellul had recommended that the child would benefit from a residential therapeutic program such as the 'kids program'. She had also recommended that an intensive program will also reduce the risk for him to learn not to act out his sexual thoughts.

Considered;

That the minor's testimony given both in the proceedings against the maternal uncle where he explained what went on with his grandmother as well as his testimony in cross-examination in the case under examination confirms on a basis of beyond reasonable doubt that the incidents described by him in fact occurred. This is also confirmed through the fact that the minor admits that he used to enjoy it, stating in his testimony dated 13th November 2009 when asked '*Pero, in-nannu qatt ma, per ezempju, rak ftit konfuz u jghidlek, 'Isma int ghandek xi haga?' Qatt ma qalhomlok dawn il-kliem?*' replied '*Hu qatt ma rani mdejjaq ghax jien dejjem kont niehu gost.*' When asked '*Meta kienu qed jigrulek dawn l-affarijiet, ma' Omissis, kont qed tiehu gost?*' replied '*Le*' but then stated '*Kont nagħmel naqra man-nanna, kont nitehu gost.*' This Court asks why would a child who has been according to the defence made to say such things, say that he enjoyed himself with the grandmother? The Court on the fifth (5th) of March of the year two thousand and ten (2010) at the end of the minor's testimony directly asked the minor '*Omissis, għal li jista' jkun, mhux il-papa qallek biex tghidhom dawn l-affarijiex hux?*', the minor replied categorically '*Le, lili hadd ma qalli biex nghidhom. Jiena għidt il-verita u daqshekk hux. Għidt il-verita.*'

That the Court concludes that the First Court could legally and reasonably find that the minor is saying the truth and that the allegations made by him vis-a-vis his grandmother actually took place. The Court will now consider whether the First Court was correct in finding the appellant guilty of the first and third charge.

Considered;

That the First Court found the appellant guilty of the first charge that reads '*By lewd acts defiled minor Omissis aged 9 years;*'

That the Court agrees with the First Court where it considered that '*there is absolutely no doubt whatsoever that both the formal and material elements of the offence of defilement of minors subsist. The acts performed by the accused on the minor and the acts which she made him perform on her are all lewd acts which certainly had the effect of corrupting the minor further even though his actual corruption had been initiated by the uncle. The accused had all the opportunity to stop the minor when he attempted to initiate some sexual activity with her but instead of doing so she chose to let him continue and subsequently initiated the sexual activity herself. As a result the child thought that it was perfectly normal to go up to a woman and touch her breast and kiss her on the lips (what he did with Omissis). There is therefore no doubt that the actual defilement subsists.*'

Furthermore, what is also relevant is that the minor stated that he enjoyed himself, in his testimony dated thirteenth (13th) November of the year two thousand and nine (2009) when asked '*Pero*', *in-nannu qatt ma, per ezempju, rak ftit konfuz u jghidlek, 'Isma int ghandek xi haga?' Qatt ma qalhomlok dawn il-kliem?*' replied '*Hu qatt ma rani mdejjaq ghax jien dejjem kont niehu gost.*' When asked '*Meta kienu qed jigrulek dawn l-affarijiet, ma' Omissis, kont qed tiehu gost?*' replied '*Le*' but then stated '*Kont naghmel naqra man-nanna, kont niehu gost.*' This confirms that the defilement was such as to arouse the sexual interest of the minor.

That as considered in the judgment in the names **'Il-Pulizija versus Andrew Bonnici'**³⁸:

'It-tieni aggravju ta' l-appellant hu, bażikament, fis-sens li ma jirriżultawx l-estremi kollha tar-reat ta' korruzzjoni ta' minorrenni, u b'mod partikolari li ma jirriżultax li b'hala fatt kien hemm il-korruzzjoni. Dana l-aggravju hu infondat u jirrażenta l-fieragħ. Tifel ta' appena tlettax-il sena li jiġi espost għall-għemil li għamel l-appellant kemm fuqu nnifsu kif ukoll fuq il-persuna ta' l-istess tifel, ma jistax ma jiġix korrott, anke jekk forsi dak it-tifel ikun diġa jaf ċertu fatti tal-ħajja jew ikollu xi esperjenza sesswali. Altru esperjenza sesswali fil-kors normali ta' l-iżvilupp fisjoloġiku ta' dak li jkun, u altru l-imposizzjoni ta' sitwazzjonijiet, determinati minn għemil żieni, li manifestament jipproduċu leżjoni fl-intergrita' morali tal-minorrenni. (...)'

The First Court made also referece to the case in the names **'Police vs Thomas Wiffen'**³⁹, where it was also considered that:

'Lewd acts are therefore all those acts "diretti ad eccitare la propria concupiscenza verso piaceri carnali turpi per se stessi o per le circostanze in cui si cerca di provarli, ovvero diretti a soddisfare siffatta concupiscenza" (Manzini, V., op. cit., p. 359).

The duration of these acts is immaterial for the notion of a lewd act. There is no doubt in the mind of this Court that the touching of the breasts or of the private parts of a young girl -- in the case under examination appellant's daughter was not yet twelve years old when the first acts were performed -- with the intention either of gratifying one's libidinous tendencies or of arousing the sexual interest of the said girl, are lewd acts. '

The cited judgment also considered that:

'As to the requirement of the actual defilement, this is obviously not something that can be measured with any known specific instrument, but it is something which has to be assessed by the appointed Judge – the lay Judge in the case of a trial by jury, the professional

³⁸ Decided by the Court of Criminal Appeal on the 23rd January, 1998

³⁹ Decided on the 8th of January, 1996

Magistrate or Judge in all other cases – taking into account all the circumstances of the case, including in particular, the age of the victim and the nature of the act or acts.'

In the judgment in the names 'Il-Pulizija vs Mario Bugeja'⁴⁰ the Court considered that:

'l-Corte di Cassazione ta' Ruma, f'sentenza tal-11 ta' Ottubru 1906⁴¹, qalet: "Il concetto corrupta non corrumpitur puo` solo trovare applicazione di fronte ad un soggetto passivo giunto a tal grado di corruzione e di depravazione, da non esserne possibile un ulteriore stadio." U f'sentenza tal- Corte di Cassazione Penale tad-29 ta' April 1925⁴², intqal li "sussiste il reato di corruzione di minorenne gia` corrotto se i nuovi ed ulteriori incitamenti alla corruzione contribuiscono effettivamente ad accrescerla". Fil-fatt wiehed jista' jittellem dwar gradi ta' korruzzjoni.⁴³ Il-Manzini⁴⁴ josserva: "La legge nulla dice circa il grado della corruzione; ma non per cio` puo` ammettersi che qualsiasi grado, anche minimo, di corruzione, porti all'impunita` dell'agente. Questo effetto e` proprio soltanto di quel grado di corruzione che non puo` piu` essere accresciuto in conseguenza del fatto altrui."⁴⁵

10. Issa, għalkemm huwa diffiċli li jiġi determinat jekk minuri wasalx jew le fi stat ta' korruzzjoni jew depravazzjoni assoluta, dan huwa eżerċizzju li l- ġudikant jrid jagħmel. Bħalma jgħid il-Majno⁴⁶: "E` una indagine (ripetiamo) da istituirsi caso per caso dal giudice; e, non ostante le difficoltà e incertezze inseparabili da tale apprezzamento,

⁴⁰ Decided by the Court of Criminal Appeal on the 7th, October, 2015 (Appeal number: 76/13 DS)

⁴¹ Citat minn Ugo Conti f'Prima Raccolta Completa della Giurisprudenza sul Codice Penale, Vol. III, p. 35, paera. 113. (Found in footnote 1 in the quoted judgment)

⁴² Repertorio Generale Annuale della Giurisprudenza Italiana, Anno XXVII, p. 118, para. 4. (Found in footnote 2 of the quoted judgment)

⁴³ Ara, per eżempju, Appell Kriminali Il-Pulizija v. Emmanuele Sciberras, 25 ta' Gunju 1955. (Found in footnote 3 of the quoted judgment)

⁴⁴ Trattato di Diritto Penale Italiano, 1951, para. 2612, p. 449. (Found in footnote 4 of the quoted judgment)

⁴⁵ Skond Manzini, fejn l-atti libidinużi ma jżidux mal-għarfien li diġa` kellu l-minuri, il-possibilita` ta' korruzzjoni ulterjuri tista' tiġi eskluża. "Non così, invece, se il minorenne sia stato indotto ad atti di libidine diversi da quelli cui era dedito (per esempio: masturbatore di se` stesso indotto a compiere atti di libidine su altri; minore dedito al coito naturale, indotto a subire il congiungimento carnale anormale)". (Found in footnote 5 of the quoted judgment)

⁴⁶ Commento al Codice Penale Italiano, para. 1476. (Found in footnote 6 of the quoted judgment)

riteniamo che questa sia la soluzione piu` corretta, di fronte al testo e allo spirito dell'articolo 335, evitando quindi le due estreme opinioni, secondo l'una delle quali sussiste sempre il reato qualunque sia la precedente corruzione del minore; e secondo l'altra si esclude la sussistenza del reato ogni qualvolta la vittima non sia nuova alle pratiche veneree e senza curarsi di stabilire se la corruzione sia stata suscettiva di aggravamento per effetto di nuovi atti."

11. Tajjeb li jiġi osservat ukoll f'dan l-istadju illi għal dak li huwa l-element formali tar-reat ta' korruzzjoni ta' minorenni taht l-artikolu 203(1) tal-Kodiċi Kriminali, hija biżżejjed il-konsapevolezza fis-sugġett attiv li huwa qed jagħmel l-att – l-att ta' libidini – fuq jew fil-presenza tal-minorenni. Ma hix meħtieġa fis- sugġett attiv xi intenzjoni speċifika li jikkorrompi⁴⁷ (References cited in this quoted judgment are found in the footnotes)

That from the minor's testimony before the First Court and in the proceedings against *Omissis*, where he also disclosed what was committed by the grandmother, it is clear that even though the minor was already corrupted allegedly by the uncle, the acts committed with the accused had the effect of corrupting the minor further even though his actual corruption had been allegedly initiated by the uncle. The Court also agrees with the First Court's consideration that *'It is also relevant to note that the accused was not just the minor's grandmother, she was also a mother figure to him because she was the one who brought him up from birth. This renders her actions even more serious and the consequences on the victim even more harmful.'* The First Court correctly found the appellant guilty of the defilement of the minor in question in terms of article 203(1)(a) and article 203(1)(c)⁴⁸ of Chapter 9 of the Laws of Malta.

Considered;

That the appellant was also found guilty of the third charge which reads *'Took part in*

⁴⁷ *ara Il-Pulizija v. Fortunato Tagliaferro, Appell Kriminali, 23 ta' Dicembru 1991*

⁴⁸ The Court lists this as article 203(1)(a)(c).

sexual activities with minor Omissis.'. The Court makes reference to the judgment in the names **'Il-Pulizija (Spettur Trevor Micallef) vs. Raisa Mangion'**⁴⁹ which was also made reference to by the First Court in the appealed decision, where it was considered that:

'Il-ligi ma taghtix definizzjoni ta' x'jikkostitwixxi attivitajiet sesswali pero' huwa maghruf li dawn l-atti jrid ikollhom bhala minimu certu element ta' sess sabiex l-atti jissejhu attivitajiet sesswali u ghalhekk m'hemmx dubju li ghandu jkun hemm l-uzu ta' l-organi sesswali tal-persuni nvoluti fir-relazzjoni. Ghalhekk mhux kwalsiasi att bejn zewg minn nies f'relazzjoni tista tissejjah attivita sesswali bhal per ezempju tghanniqja jew koppja lambranzetta, jew addirittura 'flirting' ma jistax jissejjah attivita sesswali.'

That it is evident that the activity that took place between the minor and his grandmother is tantamount to the offence of participating in sexual activity with a person under sixteen (16) years of age and this in terms of article 204C(1) of Chapter 9 of the Laws of Malta.

In view of the evidence produced, this Court concludes that the First Court could legally and reasonably arrive at a decision of guilt. The First Court was in the best position to make an appreciation of the evidence brought before it since it heard some of the witnesses testify before it and could easily see the demeanour of each witness including the demeanour of *Omissis* in cross-examination, the accused and the witnesses of the defence.

Considered;

That the appellant in her appeal also submitted that the punishment meted out was unacceptably harsh and goes on to say that *'which harsh attitude the first court did not*

⁴⁹ Decided by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 23rd July, 2014 (1081/2013)

hide in its decision, giving more importance and let itself be swayed by the attitude of Omissis, who was on a vengeance streak.'

The First Court considered that *'For the purpose of determining the applicable punishment the Court took into consideration the seriousness of the offences for which the accused is being found guilty, the close relationship between the accused and the minor concerned whereby the said accused was the mother figure and person who was meant to be caring for him and instead she acted in the manner described above and the extent of the psychological damage incurred by the minor as a consequence of the accused's actions. The Court therefore deems that an effective term closer to the maximum allowed by law is the most adequate form of punishment.'*

The Court condemned the appellant to seven (7) years imprisonment, issued a Protection Order for a period of three (3) years in favour of *Omissis* and *Omissis* in terms of article 412C of the Criminal Code and due to certain health issues the accused has, recommended to the Director of Correctional Services that the accused is detained at the Forensic Unit.

The Court also agrees with the First Court in relation to the punishment ordered and this considering the activities carried out between the minor and the maternal grandmother who as the Court rightly considered was a maternal figure to the minor and the effect this had on the minor. The Court finds no reason to reduce the punishment ordered by the First Court.

The Court is rejecting the appeal and confirming the judgment delivered by the Courts of Magistrates as a Court of Criminal Judicature in the above names on the tenth (10th) of November of the year two thousand and seventeen (2017).

In view of the fact that the accused has certain health issues, the Court is also confirming the First Court's decision where it recommended to the Director of Correctional Services that the accused is detained at the Forensic Unit.

The Court also orders that the Protection Order issued by the first Court in terms of article 412C of the Criminal Code where the persons protection are *Omissis* and *Omissis* for the period of three (3) years start from today.

The Court also confirms that the names and personal details of the minor and his family as well as the name and personal details of the accused are not published on any means of communication.

The Court also confirms where the First Court in terms of Chapter 518 of the Laws of Malta ordered the Registrar of the Civil Courts and Tribunals to add the name of the accused on the Register established in the said Act and to this effect it is ordering that the Registrar of the Civil Courts and Tribunals is notified with a copy of this judgment.

(ft) Consuelo Scerri Herrera
Judge
VERA KOPJA

Franklin Calleja
Deputat Registratur