



**QORTI TAL-MAGISTRATI (GHAWDEX)  
BHALA QORTI TA' GUDIKATURA KRIMINALI**

**Magistrat Dr. Joseph Mifsud B.A. (Legal & Int. Rel.),  
B.A. (Hons), M.A. (European), LL.D.**

**Il-Pulizija  
(Spettur Bernard Charles Spiteri)**

**vs.**

**Matthew Buttigieg**

Numru: 422/2018

Illum 12 ta' Dicembru 2018

Il-Qorti;

Rat l-imputazzjonijiet migjuba kontra l-imputat **Matthew Buttigieg**, iben Anthony u Vincenza xebba Portelli, imwieled nhar id-29 ta' Lulju 1991 fir-Rabat, Ghawdex, u joqghod gewwa l-fond: 56, Eden, Triq Bingemma, Nadur, Ghawdex u detentur tal-karta tal-identita' Maltija bin-numru 31191(G), akkuzat talli nhar it-23 ta' Marzu 2017, ghall-habta ta' 04:45PM gewwa l-ghalqa fl-inhawi tat-Triq l-Irdum ta' Venuta, Nadur; jew fil-vicinanze maghruf bhala ta' San Blas;

1. Waqt stagun maghluq ghat-tehid tal-ghasafar ha jew prova jiehu xi ghasfur bi ksur ta' Regolament 18(1)(c) ta' L.S. 549.42
2. U aktar talli fl-istess data, hin, lok u cirkostanzi ha jew ipprova jiehu xi ghasfur li huwa protett taht ir-Regolament dwar il-konservazzjoni tal-ghasafar selvaggi (L.S. 549.42) mhux skont dawn ir-regolamenti u mhux skont il-kondizzjonijiet ta' kull licenzja moghtija bi ksur tar-Regolamenti 4 (1)(a) ta' L.S. 549.42
3. U aktar talli fl-istess data, hin, lok u cirkostanzi ha jew ipprova jiehu xi ghasfur billi uza xbieki bi ksur ta' Regolament (7)(1)(e) tal-L.S. 549.42.

Il-Qorti giet mitluba li bis-sahha ta' Regolament 27 tal-L.S. 549.42 barra li taghti l-piena skont il-ligi, tordna l-konfiska tal-corpus delicti u s-suspensjoni jew ir-revoka ta' kull licenzja jew permess mahrug taht ir-Regolament dwar il-Konservazzjoni tal-Ghasafar Selvaggi u taht it-Taqsima XV tal-Kodici tal-Ligijiet tal-Pulizija ghal perjodu applikabbli.

Rat id-dokumenti esebiti u l-atti processwali kollha.

Semghet il-provi;

Saru sottomissjonijiet mill-Ispettur Bernard Charles Spiteri u l-avukat difensur Dr. Kevin Mompalao.

## KUNSIDERAZZJONIJIET LEGALI GENERALI

### Preliminari<sup>1</sup>

Din hija Qorti ta' Gudikatura Kriminali. Quddiemha persuna jew persuni jigu mixlija li wettqu reati kriminali. Il-Qorti hija adita bl-imputazzjonijiet li jingiebu quddiemha u li jkunu maghmula mill-Prosekuzzjoni. Hemm limitu kemm il-Qorti tista' tkun flessibbli fir-rigward tal-interpretazzjoni tal-imputazzjonijiet li jingiebu quddiemha.

Ghalkemm verament li l-komparixxi li fuqha hemm l-imputazzjonijiet hija ritenuta bhala *un avviso a comparire*, l-imputazzjonijiet huma dejjem ta' indoli penali. Ir-regoli tal-procedura ma jistghux jigu interpretati b'mod wiesa' tali li l-parametri tal-azzjoni penali jigu spustati jew mibdula. Altrimenti d-difiza ma tkunx tista' tiddefendi ruhha kif jixraq.

Quddiem din il-Qorti jekk persuna tinstab hatja tehel piena. Jekk ma tinstabx hatja tigi mehlusa mill-imputazzjonijiet dedotti. Il-valutazzjoni dwar jekk persuna tkunx hatja jew le tiddependi dejjem fuq il-provi li jingiebu quddiemha (u quddiem ebda post jew *medium* ieħor) u l-istess valutazzjoni hija marbuta mal-imputazzjonijiet kriminali li jkunu gew miktuba u prezentati quddiemha mill-Pulizija Ezekuttiva jew skont kif ikunu gew mizjuda jew mibdula fl-istadju opportun - u dejjem mhux aktar tard minn meta l-Prosekuzzjoni tkun iddikjarat il-provi tagħha

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<sup>1</sup> Il-Qorti qeghda tibbaza dan fuq l-ispjega li ta l-kollega l-Magistrat Aaron Bugeja fil-kawza il-**Pulizija vs Joseph Calleja et.** deciza fil-5 ta' Frar 2016

magħluqa. Altrimenti jekk ma jkunx hekk l-akkuzatur ikun jista' jbidel il-parametri tal-azzjoni penali skont meta jidhirlu u skont l-andament ta' dak li jkun qed iseħħ jew li jkun irrizulta matul il-kors tal-process penali.

Għalkemm hemm element ta' flessibilita' provdut minn certu giurisprudenza fir-rigward tal-procedimenti quddiem dawn il-Qorti ta' gurdizzjoni limitata, din il-flessibilita' trid tkun tali li ma tkunx ta' pregudizzju għall-proceduri penali u għad-drittijiet tad-difiza.

F'kull kaz pero', stante li din hija Qorti ta' Gudikatura Kriminali hija marbuta bit-termini tal-imputazzjoni skont kif spjegat aktar 'il fuq. Aktar minn hekk quddiemha huwa dmir tal-Prosekuzzjoni li tipprova l-kaz tagħha skont kif proferit fl-imputazzjoni kontestata sal-grad ta' konvinciment morali u sufficjenza probatorja lil hinn minn kull dubju dettat mir-raguni. Mill-banda l-oħra jekk id-difiza tagħzel li tressaq xi provi jew sottomissjonijiet kif sar f'dan il-kaz, huwa bizzejjed għad-difiza li tikkonvinci lill-Qorti bit-tezi tagħha fuq bazi ta' konvinciment morali li jistrieħ fuq bilanc ta' probabbilita' u f'kaz li dan iseħħ, u l-Qorti ma tħossix moralment konvinta li l-Prosekuzzjoni laħqet il-grad ta' prova rikjesta minnha, allura l-Qorti trid tillibera lill-imputat.

Dawn huwa principji kardinali li jsawru l-procediment penali Malti. Jogħgbuna jew ma jogħgbuniex, dawn huma wħud mir-regoli bazilari li jistrieħ fuqhom il-procediment penali Malti.

Biss din il-Qorti ma tistax tieqaf hawnhekk. Hija marbuta li tiggudika dan il-kaz skont l-akkuza li giet magħmula mill-Prosekuzzjoni kontra l-

imputat u ma tistax tbiddel hi bis-setgħa tagħha stess il-parametri tal-kawza intrapriża mill-Prosekuzzjoni u tiddeciedi kif jiftlilha jew tmur lil hinn mill-imputazzjoni prezentata lilha mill-Prosekuzzjoni.

## **IL-FATTI SPECIE TAL-KAZ**

F'dan il-kaz xehed l-**Ispettur Bernard Charles Spiteri**<sup>2</sup> permezz tal-procedura tal-affidavit fejn spjega li dan il-kaz kien investigat mill-kollega tiegħu s-Supretendent Edel Camilleri u f'nota li sab fil-file kien indikat l-imputat bhala l-persuna li tidher titlaq minn fuq il-post. Irrizulta li l-vettura li tidher fil-filmata hija registrata fuq Anthony Buttigieg li huwa missier l-imputat.

Fir-rapport **Current Incident Report** imhejji mis-Surgent PS715 Lucian Gatt<sup>3</sup> li jinsab esebit f'dawn il-proceduri jinghad li r-rapport sar minn Patricia Molina Garcia u Fiona Jane Burrows u jinghad *"information was received from CABS regarding illegal trapping. After watching footage and still it resulted that person driving the vehicle seen on the screen was person related. Person related was spoken to after being given his rights. Same denied that he was trapping on the day indicated by CABS."*

Ix-xhud **Fiona Burrows**<sup>4</sup> rapprezentanta tal-Committee Against Bird Slaughter (CABS) xehdet li:

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<sup>2</sup> A fol 6

<sup>3</sup> A fol 7

<sup>4</sup> Seduta tal-20 ta' Novembru 2018

*On the twenty-third (23<sup>rd</sup>) of March last year (2017) myself and a volunteer went to San Blas region of Gozo. At around four forty-five (~ 4.45) we noticed a man who was removing nets from a trapping site. At that time of the year no trapping was allowed at all. The man I can identify as this man here. I started filming and the man –*

*The Court:*

*So, do you remember all the men you report?*

*The witness:*

*I have video footage.*

*The Court:*

*Or because he is the accused?*

*The witness:*

*No. I have video footage. I recognize him.*

*The Court:*

*So in each case you remember every person.*

*The witness:*

*Yes. So I began filming this person and he bundled the nets into a bag as well as other items there seemed to be a radio. I was walking on a foot path and he started leaving, I walked past the trapping site and could see where the nets had been removed from. I walked back towards the main road and saw that there was a vehicle parked there by the houses which I took the details of in the report here. The number plate EBC 131. Myself and the volunteer continued walking along the main road and after a few minutes we saw this same colour type photographed leaving and I could identify it was the same person I had filmed removing the nets, he was leaving in this vehicle.*

[...]

The witness:

*This person was removing the net from the trapping site.*

Inspector Bernard Charles Spiteri:

*And were there any birds?*

The witness:

*There were no birds at that point, no.*

The Court:

*No birds.*

The witness:

*I have the DVD of the footing as well.*

*Often in these cases there are not caged birds; there are electronic bird callers, but I cannot confirm that.*

[...]

Cross Examination:

Advocate Dr Kevin Mompalao:

*I want to make this clear – you did not see any birds.*

The witness:

*No birds were seen on site.*

Advocate Dr Kevin Mompalao:

*And you did not hear any bird callers or see any bird callers.*

The witness:

*No, by that point he was already removing the nets. By that time he was already removing the nets so I did not hear the birds.*

Advocate Dr Kevin Mompalao:

*Only removing the nets. And you saw the car but nobody was in the car at the moment you saw it.*

The witness:

*After I left the area, I went back to the main road and saw a car parked, walking up the road several minutes later this same car left with this person I recognize.*

Advocate Dr Kevin Mompalao:

*Several minutes later. So, am I correct to state that at no point did you see the man collecting the net entering into the car.*

The witness:

*No, I did not see him entering the car but he was the same person, I can identify him.*

Advocate Dr Kevin Mompalao:

*Did you take the film yourself or your colleague?*

The witness:

*I took the film.*

Advocate Dr Kevin Mompalao:

*And where was the place where actually you were standing taking the place?*

The witness:

*There is a plateau above San Blas, I do not know the name of the road or anything, but there is a footpath coming off the road.*

Advocate Dr Kevin Mompalao:

*What is the road? You do not know the name.*

The witness:

*No.*



Advocate Dr Kevin Mompalao:

*It is in the area of San Blas you are saying?*

The witness:

*Yes, it is a plateau above San Blas.*

Advocate Dr Kevin Mompalao:

*You are sure.*

The witness:

*Yes.*

## **KUNSIDERAZZJONIJIET LEGALI DWAR L-AKKUZI**

Il-Qorti meta kienet qeghda tanalizza dan il-kaz zammet quddiem ghajnejha dak li qalet il-Qorti tal-Appell fejn tidhol identifikazzjoni ta' persuni mixlija dwar insib illegali fil-kawza **l-Pulizija vs Emanuel Muscat**<sup>5</sup> deciza mill-Imhalled David Scicluna fejn intqal li *“ma jistax jigi eskluż li kien hemm persuna injota li kienet qed tagħmel użu mill-mansab”* u dak li ntqal fil-kawza fl-ismijiet **il-Pulizija vs Joseph Axiak**<sup>6</sup> deciza mill-Prim Imhalled Silvio Camilleri:

*“L-ewwel Qorti fis-sentenza appellata rrimarkat li “mill-filmat preżentat deher ċar li l-fattizzi tal-persuna fil-filmat, l-aktar l-imnieher ma jhallix dubbju li l-imputat kien il-persuna fid-dura fil-gurnata li ttiehed il-filmat”. Bir-rispett kollu, meta hadd mix-xhieda prodotti ma identifikaw kategorikament lill-appellant mir-ritratti u filmati prodotti, la l-persuna stess li hadet l-istess ritratti u filmati u anqas persuna bhall-PS 1040 John Grima li kien ġia jaf lill-appellant,*

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<sup>5</sup> App. Nru. 400/13 deciza fid-19 ta' Ottubru 2016

<sup>6</sup> App. Nru 458/15 deciza fid-29 ta' Lulju 2016

*din il-Qorti ma hix tal-fehma li dak rilevat mill-ewwel Qorti kien raġonevolment suffiċjenti 'l hinn mid-dubju dettat mir-raġuni kif trid il-liġi sabiex iwassal għall-identifikazzjoni tal-appellant bħala l-persuna li kienet fid-dura fid-data rilevanti.*

*“Ċertament, anqas iċ-ċirkostanza li l-mansab in kwistjoni huwa registrat fisem l-appellant, la waħedha u anqas bħala xi ċirkostanza korroboranti, ma hi suffiċjenti fid-dawl tal-provi prodotti sabiex twassal għall-identifikazzjoni tal-appellant bħala l-persuna li kienet fid-dura.”*

### ***Active trapping***

Il-Qorti tagħmel referenza wkoll għas-sentenza tal-Qorti tal-Appell fl-ismijiet **Il-Pulizija vs Karol Spiteri**<sup>7</sup> deciza nhar l-Erbgħa 13 ta' Jannar 2016 fejn intqal :

*“Din il-Qorti m'għandhiex għalfejn ma temminx lil Fiona Burrows li l-appellat kien wiehed mit-tlett irġiel li kienu fuq is-sit nhar is-27 ta' Lulju 2012. Izda m'hemm l-ebda prova li kien qiegħed isir *active trapping*.”*

Il-Qorti tal-Appell fil-kawza fl-ismijiet **Il-Pulizija vs Josef Micallef**<sup>8</sup> fuq appell li għamel l-Avukat Generali irrepjetiet li avolja kien hemm mansab u fil-mansab kien hemm xbieki u oggetti ohra assocjati mal-insib

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<sup>7</sup> App. Nru. 432/13 DS

<sup>8</sup> App. Nru. 431/13 DS deciz fit-13 ta' Jannar 2016

“Izda m’hemm l-ebda prova li kien qiegħed isir *active trapping*.”

U fil-kaz **Il-Pulizija vs Matthew Degabriele**<sup>9</sup>, il-Qorti tal-Appell qalet li l-imputat “*kull ma kien għamel kien li kien qiegħed isewwi n-nassi mit-toqob. Il-Pulizija fil-fatt ma elevaw xejn.*” U dan għalhekk mhux *active trapping* kif irid ikun ippruvat biex l-imputat jinstab hati li kien qiegħed jonsob.

Fuq mistoqsija li għamlet il-Qorti lix-xhud Fiona Burrows dwar l-osservazzjoni tagħha u l-film tal-pulizija jekk kienx hemm *active trapping*, hija wiegħbet li le.

### ***Dock identification***

Il-Qorti tagħmel referenza wkoll għal dak li ntqal fis-sentenza fl-ismijiet **Il-Pulizija vs Stephen Azzopardi**<sup>10</sup> dwar *dock identification* u dan in vista tal-insistenza tax-xhud Fiona Burrows li sostniet li tagħraf lill-imputat:

*The man I can identify as this man here.*

The Court:

*So, do you remember all the men you report?*

The witness:

*I have video footage.*

The Court:

*Or because he is the accused?*

The witness:

*No. I have video footage. I recognize him.*

The Court:

*So in each case you remember every person.*

The witness:

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<sup>9</sup> App. Nru. 430/13 DS deciza mill-Imhalled David Scicluna

<sup>10</sup> Deciza fit-13 ta’ Lulju 2017 mill-Qorti tal-Magistrati bhala Qorti ta’ Gudikatura Kriminali ppreseduta mill-Magistrat Doreen Clarke

Yes.

fejn intqal:

*“Illi l-perikolu ta’ in dock identification huwa evidenti. Fil-fatt il-Privy Council<sup>11</sup> jirreferi ghal the obvious danger that a defendant occupying the dock might automatically be assumed by even a well intentioned eye-witness to be the person who had committed the crime with which he or she was charged”.*

Dwar dock identification l-Archbold jghid:

*Dock identifications are not inadmissible but when considering whether to exercise its discretion to admit such evidence the court should consider whether there is a good reason why an identification procedure did not take place – there being procedures which can take place where the suspect is not willing to participate in a formal identification parade.*

*Where such evidence is admitted the court should remember the dangers of relying on such evidence, that (if the defendant was denied the advantage of participating in an identification procedure) the defendant has been disadvantaged by not participating in an identification procedure and that an identification witness may assume that the person in the dock is the person who committed the offence.<sup>12</sup>*

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<sup>11</sup> Ref **Tido vs The Queen** (2011) UKPC 16 per Lord Kerr

<sup>12</sup> Archbold Magistrates’ Courts Criminal Practice 2018 Pg 654

Il-Qorti ghandha d-dubju taghha dwar kemm tassew ix-xhud gharfet l-imputat li kien il-persuna fil-post fejn kien allegat li kien qieghed isir insib fi stagun maghluq. Meta l-Qorti staqsitha jekk taghrafx lil kull persuna li taghmel rapport dwarha hija minghajr tlaqliq ta' xejn qalet li iva, u dan huwa dak li qal Archbold li "*witness may assume that the person in the dock is the person who committed the offence*".

## KONKLUZZJONI

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

Ix-xhieda li nghatat mir-rapprezentanta tal-CABS u dak li qal l-imputat fl-istqarrija li ta lill-pulizija fit-3 ta' Mejju 2018 hija certament konfliggenti. Ir-rapprezentanta tal-CABS filwaqt li tghid li gharfet lill-imputat "*at the time of the year no trapping was allowed at all. The man I can identify as this man here*"<sup>13</sup> fuq il-post huwa jichad li dak li jidher fil-film huwa hu. Huwa jghid li m'ghandux mansab fl-inhawi ta' San Blas u

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<sup>13</sup> A fol 20

jghid li huwa juza l-vettura bil-pjanca tar-registrazzjoni EBC131 li tidher fil-filmat u jghid *“le jien ma kontx nonsob, jien nahseb li dakinnhar mort b’delivery ghax hemmhekk hemm 3 persuni anzjani residenti hemm u immure darba kull jumejn nedodilhom l-affarijiet li jordnaw minn ghandna.”*<sup>14</sup>

Certament ix-xhieda ta’ xhud wiehed biss, jekk emmnut, hija bizzejjed biex tikkostitwixxi prova shiha u kompluta minn kollox, daqs kemm kieku l-fatt ikun gie pruvat minn zewg xhieda jew aktar<sup>15</sup>. U kif gie ritenut fis-sentenza fl-ismijiet **Il-Pulizija vs Joseph Thorne** tad-9 ta’ Lulju 2003, *“mhux kull konflitt fil-provi ghandu awtomatikament iwassal ghal-liberazzjoni tal-persuna akkuzata. Imma l-Qorti, f’kaz ta’ konflitt fil-provi, trid tevalwa l-provi skond il-kriterji enuncjati fl-artikolu 637 tal-Kodici Kriminali u tasal ghall-konkluzjoni dwar lil min trid temmen u f’hiex ser temmnu jew ma temmnux”*<sup>16</sup>.

Il-Qorti tinnota li a bazi tal-provi prodotti dak li xehdet Fiona Burrows, ir-rapport taghha u l-filmat, ic-cahda tal-imputat *a tempo vergine* meta gie mitkellem mill-Pulizija dwar ir-rapport, il-Prosekuzzjoni ma gabitx il-provi tal-elementi rikjesti mil-ligi ghar-reati addebitati lill-imputat u l-provi migjuba mill-prosekuzzjoni jieqfu ferm il-boghod mill-piz tal-prova rikjest mil-ligi u cioe’ dak fi grad ta’ certezza morali minghajr dubju dettat mir-raguni. Kwindi l-prosekuzzjoni ma ppruvatx il-kaz taghha fil-grad li huwa rikjest fil-kamp penali.

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<sup>14</sup> A fol 12 stqarrija tal-imputat

<sup>15</sup> Ara artikolu 638(2) tal-Kap. 9

<sup>16</sup> Ara wkoll Appell Kriminali **The Police vs Graham Charles Ducker**, 19 ta' Mejju 1957.

Ir-rwol tal-prosekuzzjoni hu li tipprowa l-kaz tagħha mingħajr dubju raġjonevoli. F'dan il-kaz ma hemmx prova li l-imputat kien qiegħed jonsob, l-aktar l-aktar li waslet biex tipprowa kien li l-imputat qiegħed isuq il-vettura li tidher fil-filmat fejn l-imputat ma jeskludix li dakinhar kien qiegħed fl-inhawi ghaliex ta' sikwit jiehu *delivery* tal-ikel lil tliet anzjani.

Ma jistax jingħad illi f'dan il-kaz ma jeżistix dan id-dubju.

**DECIDE:**

Għal dawn il-mottivi l-Qorti ma ssibx lill-imputat Matthew Buttigieg hati tal-imputazzjonijiet migjuba kontrih u tilliberah.

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**Dr. Joseph Mifsud**  
**Magistrat**