



**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.

John Vella

Numru: 401/2018

Illum 16 ta' Jannar 2019

Il-Qorti;

Rat l-imputazzjonijiet migjuba kontra l-imputat **John Vella**, ta' tmienja u erbghin (48) sena, iben Joseph u Pauline xebba Vella, imwieled nhar it-28 ta' Marzu 1961 fir-Rabat, Ghawdex, residenti gewwa l-fond Dar il-Kwiet, Triq l-Gharus, Xewkija, Ghawdex u detentur tal-karta tal-identita' bin-numru 0076670(M), akkuzat talli nhar il-25 ta' Ottubru 2017 ghall-habta ta' 12:30hrs fi Triq iz-Zewwieqa, Ghajnsielem, Ghawdex u/jew fil-vicinanze tar-ristorant Country Terrace, f'Ghajnsielem, Ghawdex waqt stagun miftuh:

1. Ha jew prova jiehu xi ghasfur li huwa protett taht dawn ir-regolamenti, jekk mhux skont dawn ir-regolamenti u skont il-kondizzjonijiet ta' kull licenzja li tinghata tahtha bi ksur tar-Reg. 4(1)(a) ta' L.S. 549.42;
2. Akkuzat talli nasab fuq sit li ma giex registrat u approvat mill-Wild Birds Regulation Unit u li ma giex ipprezentat mal-applikazzjoni ghal din il-Licenzja Specjali bi ksur ta' Kundizzjoni 4 tal-Licenzja Specjali ghall-Insib tal-ghasafar tal-ghana tal-2017 hekk kif mitlub minn Regolament 7(d) ta' LS 549.93 u bi ksur tat-tieni proviso ta' Regolament 8(2) ta' LS 549.42;

Il-Qorti giet mitluba li bis-sahha ta' regolament 27(2) tal-L.S 549.42, barra li taghti l-piena skont il-ligi, tordna l-konfiska tal-*corpus delicti* u s-suspensjoni ta' kull licenzja jew permess mahruha taht ir-Regolamenti dwar il-Konsevazzjoni tal-Ghasafar Selvaggi u taht it-Taqsima XV tal-Kodici tal-Ligijiet tal-Pulizija, ghall-perjodu applikabli;

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

Rat l-affidavit ta' PC1185 W. Saliba dok A, affidavit ta' PC1153 Mark Cardona dok B u kopja ta' licenzja dok BCS1.

Rat ix-xhieda ta' Fiona Burrows bil-lingwa Ngliza li esebiet Investigations Report tal-Cabs u CD li gew markati bhala dok FB1.

Rat ix-xhieda tal-imputat John Vella, li esebixxa pjanta dok JV1.

Il-Prosekuzzjoni rrimettiet ruhha ghall-atti processwali.

Il-Qorti semghet sottomissjonijiet da parte ta' Dr. Deborah Mercieca.

KUNSIDERAZZJONIJIET LEGALI GENERALI

Preliminari¹

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.

Għalkemm 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 jistgħux 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 iehor*) 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 taghha

¹ 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 guriprudenza fir-rigward tal-procedimenti quddiem dawn il-Qorti ta' guriidizzjoni 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.

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**² deciza mill-Imhalled David Scicluna fejn intqal li *“ma jistax jiġi 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**³ deciza mill-Prim Imhalled Silvio Camilleri:

“L-ewwel Qorti fis-sentenza appellata rrimarkat li “mill-filmat prezentat 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-ġurnata 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, 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-ligi sabiex iwassal għall-identifikazzjoni tal-appellant bhala l-persuna li kienet fid-dura fid-data rilevanti.

² App. Nru. 400/13 deciza fid-19 ta' Ottubru 2016

³ App. Nru 458/15 deciza fid-29 ta' Lulju 2016

“Ċertament, anqas iċ-ċirkostanza li l-mansab in kwistjoni huwa registrat f’isem 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**⁴ 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 wieħed 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**⁵ 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

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

⁴ App. Nru. 432/13 DS

⁵ App. Nru. 431/13 DS deciz fit-13 ta’ Jannar 2016

U fil-kaz **Il-Pulizija vs Matthew Degabriele**⁶, 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-filmat li tat lill-pulizija jekk kienx hemm *active trapping*, hija wiegbet li le spjegat li s-site kienet *active* għax kien hemm l-oggetti marbuta mal-insib imma ma rat l-ebda insib għaddej “*not actually catching.*”

Dock identification

Il-Qorti tagħmel referenza wkoll għal dak li ntqal fis-sentenza fl-ismijiet **Il-Pulizija vs Stephen Azzopardi**⁷ dwar *dock identification* u dan in vista tal-insistenza tax-xhud Fiona Burrows li sostniet li tagħraf lill-imputat:

The Court:

Are you sure that you met this guy? Or another guy?

The witness:

No, it is this man, the one that I saw.

The Court:

Are you sure?

The witness:

Yes. So, I met the police at Għajnsielem and showed them on a map on Google Earth where the trapping site was. Then I showed them by car

⁶ App. Nru. 430/13 DS deciza mill-Imhallef David Scicluna

⁷ Deciza fit-13 ta' Lulju 2017 mill-Qorti tal-Magistrati bhala Qorti ta' Gudikatura Kriminali ppreseduta mill-Magistrat Doreen Clarke

where the probable entrance was because there was a restaurant and there was a path that seemed to be leading directly to the trapping site. In the meantime the volunteers whilst the police ran away I filmed this same man leaving the trapping hide and collecting a tray and starting to collect cage decoys from the trapping site. He was assisted by three (3) other men. After a few minutes I showed the police and they went inside the area and found the unregistered trapping site. They came back to me after some minutes and they told me that they had found the unregistered trapping site and removed everything and they took the details of everyone that was in that area.

Cross Examination:

Advocate Dr Deborah Camilleri:

Ms Barrows, in your investigations report you mention at least four (4) persons.

The witness:

Yes.

Advocate Dr Deborah Camilleri:

There are four suspects. So, the persons, the other persons, because you only mentioning one, but in your same report there are four. How can you identify which was the one who according to you spoke to the other one who was in the hide?

The witness:

It was very easy to identify him because we were at a very close distance initially when we saw him talking to the person in the hide and then later on the volunteers filmed him and he was obviously wearing the same cloths and they identified it was the same person who entered the hide later when I went to meet the police.

Advocate Dr Deborah Camilleri:

And the person whom you are referring to as the person you indicated, how is he indicated in your report?

The witness:

Should be suspect one, yes, suspect one, the first row.

The Court:

So he is suspect one.

The witness:

Yes. I am showing the photos as well.

Advocate Dr Deborah Camilleri:

And the photos that you have exhibited with your report, do we agree that they do not all refer to the same person? If you see them closely, even the age, is different?

The witness:

Which ones are you talking about?

Advocate Dr Deborah Camilleri:

For example, I am referring to photo, so it is the first photo is one person and then the second photo are you saying it is the same person?

The witness:

You are speaking about these two?

Advocate Dr Deborah Camilleri:

Yes, and compare to the first page.

The witness:

Can you please show me on yours which ones are you indicating?

The Court:

Copy of your report.

Advocate Dr Deborah Camilleri:

Copy of your report. Are you saying – I am just posing this question – are you saying that in each photo the people are the same persons?

The witness:

Yes, yes, these are obviously the same person, the same cloths, the same hair.

Advocate Dr Deborah Camilleri:

So, why did you mention then four suspects?

The witness:

Because as I have mentioned already, there were three (3) other people assisting him to collect cage decoys from the trapping site.

Advocate Dr Deborah Camilleri:

Ok.

The Court:

Was there any active trapping?

The witness:

Yes.

The Court:

Have you seen any **active** trapping?

The witness:

Yes. Initially, as I said, when I arrived the trapping site was seen with nets, cage decoys and person was inside.

The Court:

But have you seen anyone of these four suspects trapping any birds at the time you were there?

Ix-xhud:

Not actually catching but as far as I know active means –

The Court:

So you have not seen anyone catching.

The witness:

No, but the site was active.

The Court:

So you have not seen the nets going down and trapping.

The witness:

Not the actual act of catching.

The Court:

So there was no active trapping as the Court of Appeal declared, Judge

David Scicluna.

fejn intqal:

“Illi l-perikolu ta’ in dock identification huwa evidenti. Fil-fatt il-Privy Council⁸ 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

⁸ Ref **Tido vs The Queen** (2011) UKPC 16 per Lord Kerr

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.⁹

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 jonsob f' mansab mhux registrat u dan ghall-fatt li l-imputat huwa l-persuna li kellem lill-pulizija meta marru fuq il-post, ghandu mansab registrat ffit 'il boghod u anke ghandu licenzja valida u dan huwa dak li qal Archbold li *"witness may assume that the person in the dock is the person who committed the offence"*.

Ir-rapport tax-xhud Fiona Burrows ikompli jsahhah il-fehma tal-Qorti li ma kienx l-imputat wiehed mill-persuni suspettati ghaliex huwa li Persuna deskritt fir-rapport: *"When the police reached the volunteer, one man approached the police and declared his sites were registered and climbed onto the road and walked down to his car to show the police his papers. The police and trapper entered via the restaurant driveway to the site"*. Fir-rapport

⁹ Archbold Magistrates' Courts Criminal Practice 2018 Pg 654

taghha Burrows tindika lil imputat bhala “one man” u mhux “suspect” kif indikat lill-ohrajn.

PC1185 W. Saliba jixhed dwar dak li sabu wara li kienu diga’ kellmu lill-imputat John Vella li kellu kollox regolari “*Ftit lil hinn kien hem il-mansab irregolari li d-dura taghti ghal fuqu kienet vojta. Gie innutat li dan il-mansab kien armat u kien hemm gabjett bi sponsun fiha li kienet magenb dan il-mansab imsemmi hawn fuq. Fil-madwar kien hemm zewg persuni ohra imma kienu ‘il boghod minn dan il-mansab li Burrows kienet indikatilna li huwa rregolari. John Vella meta mistoqsi qalilna li dawn iz-zewg persuni ta’ l-ahhar kienu hbieb tieghu u kienu jigu spiss hdejh. Is-sid ta’ l-imnasab regolari huwa John Vella kif kien stqarr fil-bidu, pero cahad li l-mansab l-iehor li rrizulta li kien bla permess ma kienx tieghu u jaf ta’ min hu. Hu stqarr li ghalkemm kien jaf ta’ min hu, gieli ra diversi nies jonsbu fih imma ma kienx jaf min huma.*”

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 daww 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 u dak li xehed quddiem din il-Qorti hija certament konfliggenti. Ir-rapprezentanta tal-CABS filwaqt li tghid li gharfet lill-imputat fuq il-post izda fir-rapport taghha esebit tindikah bhala “one man” ghalkemm tghid fix-xhieda li l-persuna fir-ritratti huwa l-istess persuna, huwa jichad li dak li jidher fil-filmat huwa hu anzi jsostni li huwa kien fuq il-mansab tieghu li huwa wiehed bil-permess u kien hu li indika lill-pulizija l-mansab l-iehor li minnu telqu xi persuni li kienu hemm aktar qabel.

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 aktar¹⁰. 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*"¹¹.

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 u anke ix-xhieda li ta quddiem din il-Qorti, il-Prosekuzzjoni ma gabitx il-provi tal-elementi rikjesti mill-ligi ghar-reati addebitati lill-imputat u l-provi migjuba mill-

¹⁰ Ara artikolu 638(2) tal-Kap. 9

¹¹ Ara wkoll Appell Kriminali **The Police vs Graham Charles Ducker**, 19 ta' Mejju 1957.

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 tagħha fil-grad li huwa rikjest fil-kamp penali.

Ir-rwol tal-prosekuzzjoni hu li tipprowa l-kaz tagħha minghajr dubju ragjonevoli. F'dan il-kaz ma hemmx prova li l-imputat kien qieghed jonsob fil-mansab mhux registrat u l-imputat kuntrarju għal dak li ntqal fl-akkuza kellu licenza, liema licenzja kienet prezentata f'dawn l-atti u li s-sit fejn kien qieghed jonsob kien kollox regolari.

DECIDE:

Għal dawn il-motivi l-Qorti ma ssibx lill-imputat John Vella hati tal-imputazzjonijiet migjuba kontrih u tilliberah.

Dr. Joseph Mifsud
Magistrat