



Qorti tal-Magistrati (Malta)

Bhala Qorti ta' Gudikatura Kriminali

Magistrat Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)

Illum, 2 ta' April, 2019,

**Il- Pulizija
(Spettur James Grech)
(Spettur Fabian Fleri)**

-vs-

**Dragana Mijalkovic, detentrici tal-Passaport Serb bin-numru
008678559**

Kumpilazzjoni Nru. 22/2017

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputata **Dragana Mijalkovic**, u
cioe' talli:

1. Nhar is-06 ta' Frar, 2016, u/jew fix-xhur ta' qabel gewwa San Pawl il-Bahar jew f'postijiet ohra f'dawn il-Gzejjer, dolożament, bil-hsieb li toqtol lil David Grant jew li tqiegħed il-ħajja tiegħu f'periklu ċar, ikkaġunatlu l-mewt;

2. Talli nhar it-12 ta' Ottubru, 2016, u/jew fil-gimghat ta' qabel gewwa San Pawl il-Baħar jew f'postijiet ohra f'dawn il-Gzejjer, dolożament, bil-hsieb li toqtol lil Neville Ayers jew li tqieghed il-ħajja tiegħu f'periklu ċar, ikkaġunatlu l-mewt;

3. Talli nhar is-06 ta' Frar, 2016, u fix-xhur ta' qabel gewwa San Pawl il-Baħar jew f'postijiet ohra f'dawn il-Gzejjer, bhala persuna li kienet taf jew missha kienet taf lil David Grant, persuna ta' 67 sena, kien persuna anzjana jew adult dipendenti u li, taht ċirkostanzi jew kondizzjonijiet li x'aktarx jikkawżaw offiża gravi fuq il-persuna jew mewt, xjentement ġieghlet jew ippermettiet li David Grant isofri, jew ġabet fuq il-persuna ta' David Grant uġiġh fiziku jew tbatija mentali mhux ġustifikabbli jew waqt li kellha l-kura u l-kustodja ta' David Grant, persuna anzjana jew adult dipendenti, xjentement ġieghlet jew ippermettiet li David Grant jew is-saħħa tiegħu issirilhom ħsara, jew xjentement ġieghlet jew ippermettiet li David Grant jittqieghed f'sitwazzjoni li hu jew is-saħħa tiegħu tkun fil-periklu;

4. Talli nhar it-12 ta' Ottubru, 2016, u fix-xhur ta' qabel gewwa San Pawl il-Baħar jew f'postijiet ohra f'dawn il-Gzejjer, bhala persuna li kienet taf jew missha kienet taf lil Neville Ayers ta' 78 sena, kien persuna anzjana jew adult dipendenti u li, taht ċirkostanzi jew kondizzjonijiet li x'aktarx jikkawżaw offiża gravi fuq il-persuna jew mewt, xjentement ġieghlet jew ippermettiet li Neville Ayers isofri, jew ġabet fuq il-persuna ta' Neville Ayers uġiġh fiziku jew tbatija mentali mhux ġustifikabbli jew waqt li kellha l-kura u l-kustodja ta' Neville Ayers, persuna anzjana jew adult dipendenti, xjentement ġieghlet jew ippermettiet li Neville Ayers jew is-saħħa tiegħu issirilhom ħsara, jew xjentement ġieghlet jew ippermettiet li Neville Ayers jittqieghed f'sitwazzjoni li hu jew is-saħħa tiegħu tkun fil-periklu;

5. Talli nhar is-06 ta' Frar, 2016, u fix-xhur ta' qabel gewwa San Pawl il-Baħar jew f'postijiet ohra f'dawn il-Gzejjer, bhala persuna li kienet taf jew missha kienet taf lil David Grant, persuna ta' 67 sena, kien persuna anzjana jew adult dipendenti u li, taht ċirkostanzi jew kondizzjonijiet, hlief dawk li x'aktarx jikkawżaw offiża gravi fuq il-persuna jew mewt, xjentement ġieghlet jew ippermettiet li David Grant isofri, jew ġabet fuq il-persuna ta' David Grant uġiġh fiziku jew tbatija mentali mhux ġustifikabbli jew waqt li kellha l-kura u l-kustodja ta' David Grant, persuna anzjana jew adult dipendenti, xjentement ġieghlet jew ippermettiet li David Grant jew is-saħħa tiegħu issirilhom ħsara, jew xjentement ġieghlet jew ippermettiet li David Grant jittqieghed f'sitwazzjoni li hu jew is-saħħa tiegħu tkun fil-periklu;

6. Talli nhar it-12 ta' Ottubru, 2016, u fix-xhur ta' qabel gewwa San Pawl il-Baħar jew f'postijiet ohra f'dawn il-Gzejjer, bhala persuna li kienet taf jew missha kienet taf lil Neville Ayers ta' 78 sena, kien persuna anzjana jew adult dipendenti u li, taht ċirkostanzi jew kondizzjonijiet, hlief dawk li x'aktarx jikkawżaw offiża gravi fuq il-persuna jew mewt, xjentement ġieghlet jew ippermettiet li Neville Ayers isofri, jew ġabet fuq il-persuna ta' Neville Ayers uġiġh fiziku jew tbatija mentali mhux ġustifikabbli jew waqt li kellha l-kura u l-kustodja ta' David Grant, persuna anzjana jew adult dipendenti, xjentement ġieghlet jew ippermettiet li Neville Ayers jew is-

sahha tieghu issirilhom hsara, jew xjentement gieghlet jew ippermettiet li Neville Ayers jitqiegħed f' sitwazzjoni li hu jew is-sahha tieghu tkun fil-periklu;

Il-Qorti giet gentilment mitluba sabiex f'kaz ta' htija tikkundanna lill-akkużata għall-hlas ta' spejjeż li jkollhom x'jaqsmu mal-ġatra ta' esperti jew periti fil-proċeduri hekk kif ikkontemplat fl-Artikolu 533 tal-Kapitlu 9 tal-Liġijiet ta' Malta.

Rat in-nota tal-Avukat Generali permezz ta' liema bagħat lill-imputata biex tigi gudikata minn din il-Qorti bhala Qorti ta' Gudikatura Kriminali kif mahsub fis-segħenti artikoli:¹

- Fl-Artikoli 225; 257A; 257C; 17; 31 u 533 tal-Kodiċi Kriminali, Kapitulu 9 tal-Liġijiet ta' Malta.

Rat li l-imputata m'għandha l-ebda oggezzjoni biex il-kaz jigi hekk trattat.

Rat l-atti u d-dokumenti kollha.

Semgħet it-trattazzjoni finali.

Ikkunsidrat-

Punti Preliminari

Illi fl-ewwel lok fuq skorta tad-decizjonijiet mogħtija mill-Qorti Kostituzzjonali fl-ismijiet **Il-Pulizija vs Aldo Pistella**² u **Brian Vella vs l-Avukat Generali**³ kif ukoll dik tal-Qorti tal-Appell Kriminali **Il-Pulizija vs Claire Farrugia**,⁴ l-ewwel zewg stqarrijiet tal-imputata, galadarba ngħataw mingħajr id-dritt li tkun assistita mill-legali tal-ghazla tagħha, ma għandhomx aktar valur probatorju.

¹ Fol.1518

² Per S.T.O. Prim Imħallef Joseph Azzopardi, Onor. Imħallef Noel Cuschieri u Onor Imħallef Giannino Caruana Demajo; Rikors numru: 104/2016/1 JZM; Deciza 14.12.2018

³ 14.12.2018; Appell Kostituzzjonali Numru 90/2016/1 MCH

⁴ Per Onor. Imħallef Consuelo Scerri Herrera, Deciza 20.11.2018; Appell Nru: 259/2018

Ghal kuntrarju, l-istqarrijiet mehuda nhar il-11 ta' Jannar, 2017, u 12 ta' Jannar, 2017, gew rilaxxati wara li l-imputata, kif tikkonferma l-istess interpretu Serba **Svetlana Kabanec** li assistitha tul l-interrogazzjonijiet msemija, nghatat id-dritt li tikkonsulta ma avukat tal-ghazla taghha u li tkun assistita minnu tul l-interrogazzjoni taghha: *"I was present in the interrogation there. And I was translating from English to Serbian, so she can understand better, what is causing this case..... she didn't request anyone who is a lawyer or anyone who will be present during the interrogation"*.⁵ Jirrizulta li l-imputata ghazlet li tirrifjuta li tezercita dawn id-drittijiet.⁶ Dan jigi wkoll konfermat minn **WPS9 Abigail Fenech Pomroy**.⁷ Tali stqarrijiet ghalhekk huma in pjena konformita` mad-dettami tal-ligi u qed jinghataw valur probatorju.

Illi fit-tieni lok, l-abbli difiza ssottomettiet li din il-Qorti ghandha tiskarta l-filmati in kwantu dawn issemnew mill-imputata fil-kors tal-interrogazzjoni taghha meta ma kienitx assistita minn rapprezentant legali. Din il-Qorti tissottolineja li filwaqt li d-dritt penali procedurali taghna ma jabbraccjax ir-regola tal-*fruit of the forbidden tree*,⁸ u ghalhekk fi kwalunkwe mod tali filmati jibqghu ammissibbli bhala prova, l-imputata regghet ghamlet riferenza ghal dawn il-filmati fil-kors tal-istqarrijiet taghha tal-11 u tat-12 ta' Jannar, 2017, li kif inghad huma ammissibbli bhala prova in kwantu huma konformi mad-dettami ta' dak li jipprovdi l-artikolu 355AUA tal-Kodici Kriminali.⁹ Ghaldaqstant mhemmx dubbju li l-filmati huma ammissibbli u ghandhom valur probatorju.

⁵ Fol.114-115

⁶ **Dok. FF2** a fol. 14

⁷ Fol.209.

⁸ Il-Kodici Kriminali jipprovdi:

349. (1) Ufficjal tal-pulizija ghandu jkollu biss dawk i-ssetghat vestiti fih skont il-ligi u fil-limitu awtorizzat mil-ligi, u f'din id-dispozizzjoni l-kelma ligi ghandha l-istess tifsira moghtija lilha fl-artikolu 124 tal-Kostituzzjoni.

(2) L-ommissjoni ta' xi kawzjoni, formalita` jew htiega preskritti taht dan it-Titolu m'ghandhom ikunu ta' ebda ostaklu biex tingieb prova, waqt il-kawza, b'mod permess bil-ligi, dwar il-fatti li ghalihom tkun tirrelata dik il-prekawzjoni, formalita` jew htiega.

It-Titolu li is-subartikolu (2) citat jirreferi ghalih hu dak '*Fuq is-Setghat u d-Dmirijiet tal-Pulizija Eżekuttiva fil-Procedimenti Kriminali*' li jinkludi *inter alia* is-Sub-titolu IX li jittratta '*Drittijiet tal-Persuna Mizmuma*'

⁹ Vide **Dok.FF2** a fol.14 u stqarrija taghha a fol. 666. Vide wkoll konferma mill-interpretu Svetlana Kabanec a fol.114-115

Illi fit-tielet lok jigi rilevat li meta l-imputata giet mitkellma mill-espert Dr. Mario Scerri meta dan acceda fuq il-*locus* fejn kien instab mejjet David Grant fi Frar, 2016, ma kien hemm l-ebda suspett dwar l-imputata. Sa dakinhar kienet biss xhud. Kienet hi li ddeskriviet lilha nfisha bhala l-*partner* ta' Grant u li fi kliemha kienet fil-fond mieghu xhin waqa' u miet. Wara kollox kienet hi stess li involviet l-awtoritajiet meta sejjhet għall-ambulanza. *Multo magis* f'Ottubru, 2016, meta kienet hi li rrikorriet gewwa l-Għassa tal-Pulizija, dak kollu li setgħet qalet sakemm saret persuna suspettata jibqa' jkollu valur probatorju. Kienu korrettissimi t-tabib Scerri u s-Surgent 419 Buttigieg meta fid-daqqa u l-hin, fil-kors tal- inkjesta dwar il-mewt ta' Ayers, hekk kif nibet l-ewwel suspett dwar l-għemil tal-imputata, waqfu milli jkomplu jsaqsu domandi lil dik li sa dak il-hin kienet għada biss xhud.

Illi din l-azzjoni ferm astuta u f'waqtha hi in pjena konformita` ma dak li jipprovdi l-artikolu 355AU li hu wiehed mill-artikoli introdotti bl-*Att LI tal-2016* li bih giet trasposta fid-dritt penali Malti d-*Direttiva 2013/48/UE tal-Parlament Ewropew u tal-Kunsill tat-22 ta' Ottubru 2013 dwar id-dritt tal-aċċess għal avukat fi proċeduri kriminali*, u senjatament l-artikolu 2 tagħha.¹⁰ Dak l-artikolu jipprovdi:

355AU. (1) Dan is-Sub-titolu japplika għal persuni jew għal persuni akkużati fi proċeduri kriminali mill-hin li jkunu mgħarrfa mill-Pulizija Eżekuttiva jew minn awtorità oħra għall-infurzar tal-liġi jew awtorità ġudizzjarja, permezz ta' notifika uffiċjali jew xort'oħra, li huma suspettati jew akkużati li kkommettew reat kriminali, u irrispettivament jekk għew imċaħħda mil-libertà jew le.

Wiehed minn dawn id-drittijiet hu d-dritt ta' aċċess għal avukat. Fil-hin li kienet qed tigi mitkellma mill-pulizija, fil-presenza ta' Dr. Mario Scerri, ma jirrizultax li l-imputata kienet persuna suspettata imma tenut kont li kienet hi li minn jeddha fittxet l-ghajnuna tal-pulizija, il-posizzjoni tagħha kienet biss dik ta' persuna li għamlet rapport.

¹⁰ **2.1.** Din id-Direttiva tapplika għal persuni suspettati jew akkużati fi proċedimenti kriminali mill-mument meta dawn jiġu infurmati mill-awtoritajiet kompetenti ta' Stat Membru, b'notifika uffiċjali jew b'mod ieħor, li huma suspettati jew akkużati li jkunu wettqu reat kriminali, u **irrispettivament minn jekk ikunux miċhuda mil-libertà.....**

Fil-Preambolu tad-Direttiva nsibu li

(21) Fejn persuna li ma tkunx persuna suspettata jew akkużata, b'hal xhud, issir persuna suspettata jew akkużata, dik il-persuna għandha tiġi protetta mill-awtoinkriminazzjoni u jkollha d-dritt li tibqa' siekta, kif ikkonfermat mill-ġurisprudenza tal-Qorti Ewropea tad-Drittijiet tal-Bniedem. Għalhekk din id-Direttiva tagħmel referenza esplicita għas-sitwazzjoni prattika fejn tali persuna ssir persuna suspettata jew akkużata, matul l-interrogazzjoni mill-pulizija jew awtorità oħra tal-infurzar tal-liġi jew ġudizzjarja fil-kuntest tal-proċedimenti kriminali. Fejn, matul tali interrogazzjoni, persuna li ma tkunx persuna suspettata jew akkużata ssir persuna suspettata jew akkużata, l-interrogazzjoni għandha tiġi sospiża minnufih. Madankollu, għandu jkun possibbli li l-interrogazzjoni titkompla jekk il-persuna kkonċernata tkun għet infurmata li hija persuna suspettata jew akkużata u tkun tista' teżercita b'mod sħiħ id-drittijiet stipulati f'din id-Direttiva.....

Għalhekk dak li l-imputata stqarret *a tempo vergine* ma PS419 Anton Buttigieg u mal-espert mediku Dr. Scerri huwa ammissibbli bhala prova, l-istess bhal ma hu dak li stqarret mas-Surgent Quattromani dakinhar li miet David Grant.

Provi

Illi l-Ispettur Maurice Curmi xehed kif f'Ottubru, 2016, wara li l-imputata dahhlet l-Għassa tal-Qawra *"in a rather frantic mood"* hu mar fl-appartament tagħha u sab lil Ayers, anzjan ta' 78 sena mejjet. *"Further investigations carried out on site, at first there appeared to be, he had some several bruises on his body that looked suspicious rather and as a result I had informed the duty Magistrate Dr. Aaron Bugeja, who also eventually called on site."*¹¹

Illi PS419 Anton Buttigieg ikkonferma l-Current Incident Report li fih tiġi deskritta il-posizzjoni li fiha nstab Ayers *"on the floor, between the wardrobe and the second single bed"*.¹² Sinifikanti hu d-dettal li kkonstata meta wassal fuq il-post immedjatament wara li l-imputata marret titlob l-ghajnuna; il-kadavru kien mal-art u kien **gja kesah** *"his body had gone cold"*. *A tempo vergine* - meta kienet biss xhud u bl-ebda mod ma setgħet titqies persuna suspettata kif inghad- l-imputata qalet lill-pulizija li l-ahhar li rat lil Ayers kien ezatt qabel marret l-għassa, 5 minuti qabel, fejn **hu kien fuq is-sodda u li ratu jaqa'**. Lil PS419 qaltlu li *"victim was on his bed and all of a sudden he fell on the floor without moving and on seeing this she shouted for help, called an ambulance and after half an hour she ran to the*

¹¹ Fol.206

¹² Fol.91

police station.....she stated the victim had given her the money because he promised her that if she takes good care of him, he will marry her. At this time, both PS419 and Dr. Mario Scerri MD suspected that she is hiding the truth and stopped from asking her other questions".¹³ Dwar dan il-Qorti gja` esprimiet ruhha; sa dak il-mument Dragana kienet semplicement persuna li marret l-ghassa tirraporta s-sinistru bhala, kif qalet lis-surgent, ir-room mate ta' Ayers.

Illi jirrizulta mill-**Current Incident Report** li Dragana dahhlet l-Ghassa tal-Qawra f' 20:30hrs.¹⁴

Illi **PS586 Mario Azzopardi** u **PS385 Emanuel Dalli** pprezentaw faxxikolu ritratti tax-xena inkluz tal-medicini li nstabu fuq il-post fejn miet Ayers.¹⁵ Ix-**Xjenzat Godwin Sammut** xehed kif il-pilloli li gew mgghoddija lilu fi *blister packs* ssgillati huma kollha medicinali.¹⁶

Illi mill-atti jirrizulta li David Grant miet fl-eta` ta' 67 sena u twieled fit-23 ta' Frar, 1948.¹⁷ Neville Ayers miet ta' 78 sena u twieled fit-3 t'Ottubru, 1938.¹⁸

Illi **Edwina Farrugia Bajada**, spizjara, xehdet kif f'Ottubru, 2016, l-imputata dahhlet il-Chemimart fil-Hamrun u talbet sabiex ragel anzjan li kien maghha jigi mdewwi ghall-griehi li kellu f'idejh peress li waqa' minn fuq tal-linja.¹⁹ Kienet l-imputata li tkellmet ghall-anzjan "*Seta` jitkellem imma ma' tkellimx.Nahseb seta' jitkellem imma ma' tkellimx hu, tkellmet hi.*"²⁰ Il-griehi kienu tip ta' slieh fuq iz-zewg idejn mill-minkeb l-isfel fuq il-parti ta' fuq tal-id.²¹ "*Xtaqet xi haga ghalihom, jigifieri biex nipruvaw indewwuhomlu. F' dak il-punt jien offrejtilha l-ilma bil-melh u xi garez biex tghattihom biha. U ngwent antisettiku. U staqsietni jekk nistax indewwih jiena biex kemm jista jkun ovojament tissolva l-problema malajr. ... dewwejtu....Le, ma' tkellimx....Fl-ebda hin.*"²² Tiddekrivi lil Ayers bhala

¹³ Fol.92

¹⁴ **Dok. FF9** a fol. 90

¹⁵ **Dok.AD** a fol.781 et seq.

¹⁶ **Dok. GS** a fol. 762 (inserir fil-bidu tal-volum IV); Xhieda a fol. 760

¹⁷ Fol.1068; Vide **Dok.FFX** a fol. 1492

¹⁸ Fol.1238; **Dok.FFX1** a fol.1494

¹⁹ Fol.307-08

²⁰ Fol.309

²¹ Fol.310

²² Fol.311

ragel anzjan, pjuttost kwiet. Ma kien jidher li gralu xejn straordinarju.²³ L-imputata talbitha wkoll ghall-pakkett hrieqi tal-adulti. Xtrat gazez, fjali zghar ta' ilma bil-melh u antisettiku.²⁴

Illi **Margaret Baldacchino Cefai**, *officer-in-charge* fi hdan Mater Dei, qalet li mill-2013 il-quddiem David Grant qatt ma gie *admitted* l-Isptar jew f'xi Policlinic, ghalkemm kien registrat fis-sistema. Fir-rigward ta' Neville Ayers ma nstabu l-ebda *records*.²⁵ **Doris Vella Cassia**, *customer care officer* fi hdan l-Isptar Mater Dei xehdet li t-telefonata ghall-ambulanza fir-rigward ta' David Grant saret fis-6 ta' Frar, 2016, fil-18:36.²⁶ It-tefonata li saret fit-12 t'Ottubru, 2016 – dik rigward Ayers – saret fil-20:02 bil-persuna li cemptet tkun certu Josette Zahra²⁷ u f'dik rigward Grant icempel certu Patrick²⁸ Ix-xhud kkonfermat li Ayers qatt ma kien pazjent f'Mater Dei jew f'xi Health Centre.²⁹

Illi **Dr. Ivan Micallef** mill-Mosta Health Centre kkonferma certifikat³⁰ mahrug minnu fejn qed jigi ccertifikat li persuna li ezamina “*ma kinetx qed tiehu n-nifs, mhux qed tirrispondi ghall-ugiegh, ghajnejha ma kienux qed jirrejagixxu, tahbit tal-qalb ma kellhiex u giet iccertifikata mejta fid-9.20 ta' filghaxija*”.³¹ Wara li ghamel verifiki ulterjuri rrizulta li d-data fuq ic-certifikat kellha taqra 12 ta' Ottubru, 2016, u mhux 12 ta' Novembru, 2016. Qal li t-telefonata dahhlet fit-8:45pm.³² Il-mejjet f'dan il-kaz kien Neville Ayers. **Dr. Joseph Saliba** mill-Mosta Health Centre ddeskriva kif kien ezamina persuna li kien mal-art u ma kienx qed jirrispondi ghall-stimoli u ma kellux sinjali vitali. Ghalhekk iccertifikah bhala mejjet.³³

²³ Fol.312

²⁴ Fol.313

²⁵ Fol.1446

²⁶ Dok.DVC1 a fol. 278

²⁷ Dok. DVC2 a fol.281

²⁸ Fol.273

²⁹ Fol.273; Vide Dok.DVC 3 a fol.283

³⁰ Fol.282

³¹ Fol.1437

³² Fol.1477

³³ Fol.1449. Vide Dok. JS a fol. 1450

Illi **Dr. Marisa Cassar**³⁴ ikkonfermat li l-profilu genetici li hargu minn fuq diversi kampjuni elevati mill-appartament in kwistjoni kienu jappartjenu lill-imputata u lil Ayers.³⁵

Illi l-**Ispettur Fabian Fleri** spjega r-retroxxena li wasslet għall-arrest u l-akkuzi fil-konfront tal-imputata. Fit-12 t'Ottubru, 2016, għall-habta ta' 8.30pm l-imputata rrikorriet l-Għassa tal-Qawra fejn infurmat lill-pulizija li kienet cempet għall-ambulanza biex tassisti persuna li kien mitluf minn sensieh fl-appartament tagħha, u wara li għaddew xi 20-30 minuta l-ambulanza kienet għada ma wasslietx. Il-pulizija marru fuq il-post fejn kienet lahqet wasslet l-ambulanza u sabu lil certu Neville Ayers, ta' 78 sena, bla hajja mal-art bejn il-gwardarobba u s-sodda. Fuq idejh bejn il-minkeb u l-polz kellu xi slieh. Infethet inkjesta magisterjali fejn *inter alia* gie mahtur Dr. Mario Scerri bhala espert mediku. Nibet is-suspett [ta' *foul play*] meta rrizulta li Dr. Scerri kien gja` acceda fl-istess appartament xi xhur qabel - jirrizulta li kien 8 xhur qabel fis-6 ta' Frar, 2016, meta fl-istess fond instab mejjet David Grant. Fl-awtopsja rrizulta li Ayers miet kawza t'*asphyxia*.³⁶ Ittiehdu 4 stqarrijiet: fit-13 t'Ottubru, 2016; fl-14 t'Ottubru, 2016; fil-11 ta' Jannar, 2017 u fit-12 ta' Jannar, 2017.³⁷ Kif inghad, l-ewwel u t-tieni stqarrija qed jigu skartati, izda mhux it-tielet u r-raba wahda. Fil-kors tat-tielet u r-raba stqarrijiet l-imputata kkonfermat li kienet hi li ffilmjat lil Ayers u lil Grant.³⁸ L-appartament fejn kienet tirisjedi l-imputata kellu kcina u *bathroom* komuni u 3 kmamar tas-sodda fejn minbarra Dragana kienu joqghodu certu Harlan Drumev Matev f'kamra minnhom, u f'kamra ohra koppja Fabrizio Faniello u Marilyn Mizzi.³⁹

Illi fiz-zmien li matulu l-imputata kienet fuq *police bail*, fl-Oracle Casino instab il-wallet tagħha li fih kien hemm zewg *credit cards* ta' Grant kif ukoll *health insurance card* tiegħu.⁴⁰ Materjal li gie *extracted* mill-Iphone u Ipad tal-imputata mill-espert Dr. Stephen Farrugia Sacco wera liz-zewg vittmi u għadd ta' medicina li kienu jieħdu. Kien hemm b'kollox 7 **filmati ta' David Grant u 21 ta' Neville Ayers.** "*Dawn is-seba' (7) filmati,*

³⁴ Xhieda a fol.1374

³⁵ Fol.194-202

³⁶ Fol.60

³⁷ Fol.61

³⁸ Fol.679

³⁹ Fol.62

⁴⁰ Fol.65

s-Sur David Grant, f' filmati minnhom, jidher mal-art, u l-imputata taghmillu speci ta' nterrogatorju u tistaqsih ghalfejn waqa' u kif waqa', ghaliex mhux qed juza l-bastun, u hafna mistoqsijiet minn dawn. Kien hemm filmati ohra fejn dan is-Sur David Grant jidher bilqeghda fuq is-sodda u jirrispondi b' mod li ma' tantx jiftiehem, ghall-mistoqsijiet tal-imputata. U jidher qisu bhal meta l-bniedem iccassat. L-ahhar filmat li nstab tas-Sur David Grant kien gurnata qabel ma'miet, u fih l-imputata bdiet tistaqsih hafna mistoqsijiet bhal ihobbhiex, x' jixtieq jaghmel maghha, jridx imur l-Ingilterra, lura l-Ingilterra maghha. U diversi mistoqsijiet ohra. Kif spjegajt l-ewwel ukoll, fir-rigward ta' Neville Ayers, instabu wiehed u ghoxrin (21) filmat b' kollox. Il-maggoranza ta' dawn il-filmati jidher is-Sur Neville Ayers, gharwien fil-banju. Hemm filmati minnhom fejn jidher ukoll imhammeg bil-hmieg tieghu stess. U l-istess, is-Sinjura tistaqsih hafna mistoqsijiet, ghalfejn ma' jridx johrog mill-banju, u dawn it-tip ta' mistoqsijiet. Hu, r-risposti tieghu bil-kemm jinftehemu x'inhuma. L-ahhar filmat, kien l-istess, gurnata qabel, fejn ghal ftit sekondi, ghax il-filmat beda jidher biss lizar. Imma ghal ftit sekondi l-camera toghla u jidher li s-Sur Ayers kien qieghed fis-sodda u hi tistaqsih kontinwament iridx imur l-Isptar u fl-ahhar jinstema jghid: "No."⁴¹

Ikompili jispjega l-kors li hadet l-investigazzjoni hekk kif irrizultaw dawn il-filmati. "Minn dawn il-filmati, fl-opinjoni tal-investigaturi, bdejna naraw illi dawn kienu fi stat vera negligent, z-zewg (2) vittmi. Meta ergajna kellimniha fil-hdax ta' Jannar tal-elfejn u sbatax (11/01/2017), konna tajniha d-drittijiet kollha u rrifjutat li tiehu parir tal-Avukat jew inkella li jkollha l-Avukat prezenti waqt kull forma ta' interrogatorju. Fit-tielet interogazzjoni, regghat ikkonfermat il-medicina kollha li kienet qed tiehu, li kienu qed jiehdu z-zewg (2) vittmi. **regghat ikkonfermat li rrekordjathom** izda din id-darba qalet li Neville Ayers kienu tlieta jew erba' darbiet u qalet li s-Sur David Grant, iktar minn darba. Meta bdejna nistaqsuha ghal liema raguni bdiet tiffilmjahom, bdiet taghti verzjonijiet differenti, imma l-aktar li bdiet tinsisti maghha, kienet biex hi turihom, jekk aktar il-quddiem jistaqsuha x'kien gara, hi tkun tista turihom x' kienu qed jaghmlu, u li kienu qed jirrifjutaw illi jmorru l-Isptar. Ikkonfrontajniha fuq il-fatt illi f' wiehed biss mill-filmati, tistaqsihom jekk iridux imorru l-Isptar. Dak kif spjegajt jiena tal-ahhar, ta' Neville Ayers. **Staqsejtha jiena specifikatament jekk dak il-persuna kieku kien missierha, li qed jirrifjuta li jmur l-Isptar imma qed tarah f' dak l-istat, x'kienet taghmel u hi qalet li kienet, xorta kienet titlob ghal assistenza medika. Ghidtilha: "Ghala lil missierek iwa u lil dawn, le?" U hi qalet: "Ghax jiena t-tifla tieghu."** Staqsejtha wkoll

⁴¹ Fol.66

jekk kienetx taħdem haħwn Malta u hi qalet li kienet taħdem on and off imma kienet ilha xi sena maħwar taħdem u meta staqsejniha kif kienet qed tghix il-hajja tagħha, hi qalet illi kienet tircievi xi flus minn barra. Ergajna kkonfrontajniha fil-fatt li l-Bulgaru ma' kienx għena izda hi baqghet tghid li għena. Qalet li l-medicina, kemm is-Sur David Grant u kemm is-Sur Neville Ayers gabuha magħhom mill-Ingilterra. Ma' nextratx minn haħwn Malta. U mbghad bidlet il-verzjoni, fil-fatt illi s-Sur Neville Ayers, ma' telaqx minn Malta mhux għax kellu problema fil-flights, imma għax ried jibqa magħha. **Fir-raba' (4) interogazzjoni, dawk il-filmati kollha li spjegat lill-Qorti u li pprezentajt kopja tagħhom, gew murija kollha lilha. Fiha kkonfermat kemm l-identita' tagħha bhala l-persuna li qed tiehu l-filmati. Ikkonfermat li l-persuni li qed jidhru fl-ewwel seba' (7) filmati kien David Grant u l-persuna l-iehor li jidher fil-filmati l-ohra huwa s-Sur Neville Ayers. Meta ergajna staqsejniha, jekk hi fl-opinjoni tagħha, dawk il-persuni li jidhru fil-filmati kienux f' saħhithom jew inkella kienux ma' jifilhux, hi baqghet tghid illi dawk il-filmati, dawk il-persuni li jidhru fil-filmati huma nies b' saħhithom, ala volja kienu fic-cirkostanzi kif spjegajt lill-Qorti u l-Qorti għandha l-fakulta' wkoll li tista tara l-filmati ezattament kif kienu.⁴²....[fil-jum qabel ma miet] Fil-filmati jidher fis-sodda mogħtti kemm jidher wiccu u jidher fi stat mitluq hafna, fl-aħhar speci ta.⁴³ fil-filmati kollha s-Sur Neville Ayers qieghed għarwien fil-banju, mitluq, hemm filmati minnhom fejn qieghed b' dahru jserrah mal-hajt u saqajh hergin il-barra minn gol-banju. Mahmug, hemm filmati minnhom li hu mahmug, litteralment mill-warrani tieghu sal-ghaksa miksi bil-hmiegh tieghu stess.[l-imputata] tistaqsihom hafna mistoqsijiet, dawn litteralment qishom jiccassaw fil-vojt. Neville Ayers, ir-risposti tieghu, tant kien qed iharhar biex jghidha li bilkemm tiftiehem. Jien nissuggerilek li tara l-filmati, għax mhux biex nagħti opinjoni fuqu imma l-filmati jekk tarah tifhem dak kollu li qed ngħid jien mal-ewwel."⁴⁴**

L-investigazzjonijiet tal-Pulizija wrew li qabel dakinhar meta sehħew l-imwiet, ma kienitx intalbet assistenza medika għalihom.⁴⁵ L-awtopsja ta' Ayers baqghet wahda inkonklusiva "asphyxia due to blockage of the airway."⁴⁶ Dwar David Grant l-ispettur isostni li ghalkemm dan rrizulta li miet mewta naturali "ahna qed ngħidu illi jekk hu ma' hax il-kura jew ma'

⁴² Fol.67-68

⁴³ Fol.70

⁴⁴ Fol.79-80

⁴⁵ Fol.70

⁴⁶ Fol.74

giex ittrattat tajjeb, seta' wassal ghal mewt li ma' kellhiex tasal dak iz-zmien."⁴⁷ L-imputata spjegat li l-vittmi kienu jiehdu l-istess pilloli u Ayers kien jiehu "Ramperil tat-10mgs li hija ghall-pressjoni, li kien jiehu wahda filghodu. Amlodipine tat-10mgs, li kien jiehu wahda filghodu. Asperina tas-75mgs, li kien jiehu wahda filghodu u Simvastatin tat-10mgs, li hija kontra l-cholesterol, li kien jiehu wahda filghaxija wara l-ikla ta' filghaxija."⁴⁸ Qalet li gabu hom maghom mill-Ingilterra pero` kienet taf bl-ament x'tip ta' pilloli, u doza li, kienu jiehdu,⁴⁹ "Hi kienet qalet li jiehdu l-istess pilloli"⁵⁰. Mal-pulizija stqarret li l-vittmi kienu jhallsulha biex tghix u tmantni lilha nfisha:⁵¹ "fl-interogazzjoni kienet tghid li kien hemm okkazzjonijiet li tghid li kienet tmur maghom jigbdu l-flus bil-credit card u jtuhomlha. Kien hemm okkazzjonijiet fejn kienu jghidulha biex tmur tigbed hi, bil-credit card taghom. Fil-fatt issemmi wkoll illi kemm il-pin numbers ta' David Grant kienet taf u anke l-pin number tas-Sur Neville Ayers. Tatni diversi verzonijiet, rigward il-flus kif kienu jaslu ghandha minghand is-Sinjuri."⁵² Dan jirrizulta mit-tielet stqarrija mehuda fil-11 ta' Jannar, 2017, kif ser jinghad aktar il-quddiem. Itemm ix-xhieda tieghu hekk l-Ispettur Fleri "Jigifieri mill-investigazzjoni li ghamilna, ddeterjora f'dawk it-tmient ijiem (8) illi huwa ghamel gol-appartament taghha, s-Sur Neville Ayers."⁵³

Illi l-Ispettur **James Gech** spjega l-involviment tieghu fl-investigazzjoni in dezamina. Kien ircieva telefonata sbieh it-13 t'Ottubru, 2016, minn PS419 tal-Qawra meta gie nfurmat dwar il-mewt ta' Ayers. Kienu tqajjmu suspetti peress li fi Frar tal-istess sena kien hemm mewta simili fl-istess appartament. Fis-1:30am attenda ghall-awtopsja minn fejn irrizulta li l-mewt kienet suspettuza peress li l-mejjet kellu diversi *external injuries* u rrizulta li miet kawza *t'asphyxia due to blockage of the airways*. Tkellmu ma persuni li kienu jghixu fl-istess appartament.⁵⁴ L-Ispettur Grech semma kif Matev infurmah li Ayers kien ikun imsakkar fil-kamra tal-banju u kien jithalla fil-banju minghajr ilma.⁵⁵

⁴⁷ Fol.75

⁴⁸ Fol.76

⁴⁹ Fol.76

⁵⁰ Fol.77

⁵¹ Fol.78

⁵² Fol.79

⁵³ Fol.80

⁵⁴ Fol.560-561

⁵⁵ Fol.562-563

Jinghad izda li meta xehed quddiem il-Qorti, Matev ma kienx daqshekk kategoriku u jghid biss li assuma li hekk kien il-kaz. Lanqas ma semma dak li qal l-ispettur dwar il-fatt li kien kellem lill-imputata u wissieha biex ghall-habta tal-5.30-6pm il-kamra tal-banju tithalla *available* sabiex ikun jista' jinhasel.

Illi **Fabrizio Faniello** xehed quddiem l-espert forensiku li l-imputata kienet ilha tghix fl-appartement ghal madwar sena "*u tigi ma rgiel differenti.*".⁵⁶ Qatlu li kienet tiehu hsiebu w issajarlu u li gieli kien jaghmel tahtu mal-art, "...qaltli xi jumejn ilu li dan waqa' fix-shower." Rah jiekol fil-kcina xi gurnata jew tnejn qabel "***Bil-kemm kien jiccaqqlaq***".⁵⁷ Qatt ma sema ghajjat jew storbju w lanqas rah b'xi daqqiet fuqu jew fuq wiccu. Fil-jum tas-sinistru kien halla l-appartement fl-10:00am. Kien rritorna xi 7.10pm u rega' halla l-appartement xi 7:15-7:20pm "*Ma smajtx storbju*".⁵⁸ Quddiem il-Qorti xehed li kien qed jghix fl-appartement ma Marilyn Mizzi u kienu juzawh biss biex jorqdu. Jaf lill-imputata peress li kienet tghix fl-istess appartement u kienet tkun il-Watson's Pub fejn kien jahdem.⁵⁹ Dakinhar tas-sinistru kien fl-appartement ghal bejn kwarta u nofsiegha u ma ra xejn. Jaf li Ayers kellu problema fejn kien jaghmel tahtu u l-imputata kienet tghinu "*Never seen something bad.*"⁶⁰ Dwar il-kundizzjoni ta' Ayers jghid "*He was ok. ... I recall him just for maybe a week and a half. But after a few days I saw him already having some problems, because I recall that he had to go abroad, but then he had problems and obviously she was taking care of him.*"⁶¹

Illi **Marilyn Mizzi** xehdet li kienet rat lil Ayers darbtejn. Dakinhar ta' mewtu dahhlet fl-appartement xi 7:45pm hadet *shower* u harget mill-ewwel.⁶² Tiddekrivi kif l-imputata kienet tkun rrabjata ghal Ayers ghax kien idum hafna fil-bathroom⁶³. Kienet ratu fil-banju minghajr ilma. "*I saw him and I saw him without water. And I told her: "What happened, because he is without water. And he is going to get cold." And she told me: "Now I removed the water because he wants to stay there and for any chance he is going to get cold and he came out from that bath. she had her room open and I saw*

⁵⁶ Fol.45 tar-rapport esebit a fol.204

⁵⁷ Fol.46 tar-rapport esebit a fol. 204

⁵⁸ Fol.45-46

⁵⁹ Fol.218

⁶⁰ Fol.219-220

⁶¹ Fol.220

⁶² Fol.224

⁶³ Fol.225

her cleaning up her room. Because he did mess and I told her: "What happened?" And she told me: "I am cleaning up the room." And I told her that he was without water. And she told me: "**Yes I know, I just now removed the water, to get up from the bath.**". Madwar tlett gimghat qabel kienet tarahom il-bar jixorbu "He looked ok But he is an old man".⁶⁴

Illi **Haralan Drumev Matev** kien ta l-ewwel xhieda tieghu quddiem l-espert forensiku. Hemm kien spjega kif mar joqghod fl-appartament xahrejn qabel izda kien jaf lil Dragana ghal madwar 3 snin "She used to come to bars with different men.". Dwar Ayers jghid "When I saw him last week he was well but then he used to spend a lot of time in the toilet...I never heard any noises or shouting...Today I saw him in the kitchen at 6.30pm. Dragana was with him in the kitchen. She told me to come help her... ..but I did not go because everyday she used to ask me to help him out of the toilet and take him in the room but I never did." Rah l-ahhar jumejn qabel u ma kellux tbengil, jew faxxex. Halla l-apartament bejn is-6:30-7pm u ra lil Faniello fit-triq xi 7.30pm.⁶⁵ Quddiem il-Qorti Matev, xehed li f'Ottubru Dragana marret tghix fl-appartament ma ragel li qabel kien f'Hotel.⁶⁶ Jaf b'dan peress li kienet hi stess li talbitu jmur igiblu l-baggalji mill-lukanda peress li kien ser jibda jghix maghha. Huwa rrifjuta imma sab li Ayers kien ittrasferixxa ruhu dak il-lejl stess jew il-lejl ta'wara ghax kellmu wara li ntroducietu mieghu l-imputata⁶⁷ "*she said that he was person who had moved to live with her form another hotel.... when I was first introduced to the gentleman in question, he was, well, normal and active, in the sense that, that evening they were at the bar having a drink. They were talking to each other. So he was absolutely ok, but in a few days time, maybe in 2 or 3 days time, I noticed that his condition had changed and on 1 or 2 occassions, I saw him in the bathroom and his condition has changed to the extent that sometimes he was naked in the bath, lying, and his condition was visibly getting bad. Worse, from what it was in the beginning. I can say that the condition of the gentleman was changing because on the first day when I saw him, he was walking on his own, he was talking on his own, he was pretty active, but in 3, 4, days, the situation had changed with him, in the sense that in the bathroom he was visibly unable to move freely on his own. He was either lying in the bath naked and sometimes he had done a pipi or koko in the bathroom*

⁶⁴ Fol.226-228

⁶⁵ Fol. 47-48

⁶⁶ Fol.232

⁶⁷ Fol.233

*or he was outside leaning out and even on 1 occasion, Dragana had asked [me tenut kont li qed jigi interpretat ix-xhud] if [I] can give him some clothes, because apparently this person had no clean clothes to wear. And [I] had given a pair of his jeans to her so that the person can wear a pair of jeans.”⁶⁸. Mistoqsi jekk staqsix lil Ayers kellux bzonn ghajnuna Matev jghid li kien impossibli ghalih “because the state of this person was getting so bad that **he was not really able to speak or to say anything. So, he was in such a state that he was not even to speak**. Besides that, he said: “I didn’t want to get involved in what was happening. And I was trying to stay in the apartment as little time as possible. I was just coming in to change and I was going down to work.....I mean that I have my own work, I have my own problems, then when I see this, it is something which I do not do, which I don’t like, so therefore for me this is something which I really want to stay away from and keep away. And don’t get involved at all.”⁶⁹*

Jghid li kull ma rah kienu xi tlett darbiet b’kollox matul gimgha jew ftit aktar minhabba li l-bieb tal-kamra tal-banju kien ikun msakkar.⁷⁰ Jispejga dan id-dettal skoncernanti “on a number of occasions, when I was in the apartment and I tried to enter the bathroom, I found the door locked. I don’t have a key myself, I never had a key for the bathroom, and before this person moved to the apartment, the door of the bathroom was rarely locked. Only if someone was inside. So, since I was finding the door locked, of the bathroom, **I presumed that this person was still in the apartment, he is probably inside the bathroom and the bathroom is locked**. I can say that I never locked the room of the bathroom myself. I am pretty sure in my conversation with Fabrizio, because they have noticed this as well, that they have not locked neither he nor his girlfriend, locked the bathroom themselves. The only person who had the key for the bathroom was Dragana, so, excluding them and myself, I tend to believe that probably she was locking the door.I can confirm that on a number of occasions, when I was going up to the apartment, Dragana was not in the apartment but the door of the bathroom was locked. And I can assume that when she was going out, to either do shopping or do something else, she was locking the door of the bathroom and the person in question was in the bathroom.”⁷¹

⁶⁸ Fol.234-235

⁶⁹ Fol.235

⁷⁰ Ibid.

⁷¹ Fol.236-237

Ghalkemm din id-dikjarazzjoni dwar min kien qed isakkar il-bieb tal-bathroom tammonta għall-spekulazzjoni da parti tax-xhud, jibqa' l-fatt li qabel ma wasal Ayers fl-appartament il-bieb tal-kamra tal-banju ma kienx jissakkar dment li ma kien ikun hemm hadd gewwa. Dan nbiddel wara l-wassla tieghu meta kien ikun ta' spiss għall-hinijiet twal fil-kamra tal-banju.

Ix-xhud jispjega l-gurnata tieghu dakinhar li miet Ayers. Kien tela' f'kamartu xil-11am izda ma rahx u assuma li kien fil-kamra tal-banju peress li kien iqatta' hafna hin fiha. *"The second time that I went up to my apartment to change it was between 3 or 5 in the afternoon and on that occasion when I went up, I saw the gentleman in question in the kitchen, he was not in the bathroom but he was in the kitchen, and Dragana was in the kitchen as well. She asked me to help her to put him on the bed but I told her that I don't want to help her. I changed and I went down to continue with my work..... He was not dressed at all, he was naked completely. In the same condition of absolutely un controlling himself, he was not sitting on a chair but he was like bending on his knees near the chair, trying to hold to the chair with one of his hands..... I can confirm that he was partly, his knees were on the floor, definitely on the floor, he was not sitting. He was kind of leaning over the chair, trying to hold to the chair with his hands. he did not speak. He was in the state which he was not able to speak,.... I can confirm that I did not touch the gentleman, I did not help Dragana to do anything with the gentleman, I just changed and went downstairs. When I went downstairs I was near the bar. I am usually around the bar at this time because an hour later, at around 8, I usually go for my dinner in the restaurant."*⁷². Izid li wara xi 30-60 minuta ra lil Dragana twerzaq u tghajjat u talbitu jitla' magħha biex jghinha. Staqsiet lill-persuni ohra izda hu rrifjuta li jagħti l-ghajnuna.

Ix-xhud b'sincerita` jispjega għaliex irrifjuta gest uman bhal ma hu dak li tippresta l-ghajnuna lil haddiehor fil-bzonn: *"she has been frequenting with other men. sometimes she had told me about it and sometimes I have seen her myself.usually these gentlemen which are older men, elder than me - (62) - ..she had told me once or twice that she had spent a weekend at Santana on all inclusive basis with one of them. With someone else she has spent the weekend*

⁷² Fol.238

at Bugibba Hotel on all inclusive. Going out to certain bars and casinos with them.”.⁷³

In kontro-ezami jixhed li Dragana u Ayers kienu ilhom fl-appartament bejn 12-15 il-jum. Jikkonferma li Ayers kien fi stat fejn dan kellu bzonn ghajnuna *“visibly this man needed help. Yes, he needed help.”*, izda rrifjuta li jaghti l-ghajnuna lilha peress li kien ilu jafha u ma riedx involviment f’dak li kienet qed taghmel *“besides she had made it clear to him that she is taking care of this person and she doesn’t want anyone to get involved..... I did not refuse help to this man, I refused what she was asking me. Because she always asked for something. And in principal, whatever she asks me, I always tell her no.... On that particular day, she asked me to help her not to help the gentleman. And I can repeat again that I had a past experience with her in another apartment and I refused to help her.”*⁷⁴

Dwar l-istat fiziku ta’ Ayers jghid li hu ma ghamel l-ebda rapport dwar il-fatt li dan kellu bzonn l-ghajnuna *“this occasion was not the first occasion in which the person was in this state, I have seen him in that state for the past probably 10 days, on a number of occasions, therefore I did not report it. I have seen him a few days before in more or less the same situation, on his knees in the bathroom with his hand on the bath. Therefore I did not report it. He was not able to speak not only on that occasion but since his condition had changed, he was not speaking.”*. Jerga’ jikkonferma li kien bejn nofsiegħa jew siegħa wara li halla l-appartament li l-imputata nizlet tghajjat għall-ghajjut.⁷⁵ Jichad li ma kellux simpatija għall-imputata izda jikkjarifika *“I do not agree with her lifestyle and what she does. It doesn’t mean that I don’t like her, but I don’t agree with her lifestyle.... I wasn’t comfortable living with her in one apartment.”*. Fil-fatt halla l-appartament xahar wara.⁷⁶

Illi **Stephen Micallef** rapprezentant ta’ Oracle Casino xehed li l-imputata kienet irregistrat biex tilgħab fil-casino fil-31 ta’ Mejju, 2013.⁷⁷ Esebixxa gaming transactions li saru mill-imputata. Spjega wkoll kif instab wallet li minbarra dokumenti tagħha kien hemm ukoll bank cards registrati fuq David Grant.⁷⁸ Ix-xhud spjega kif f’Lulju, 2015, l-imputata giet infurmata biex ma thallix hand luggage bil-personal belongings tagħha

⁷³ Fol.239

⁷⁴ Fol.241-242

⁷⁵ Fol.243

⁷⁶ Fol.244

⁷⁷ Fol.317

⁷⁸ Fol.318

fir-reception desk tal-casino; din kienet taghmilha ripettutament u titlaq mill-*premises*.⁷⁹ Ix-xhud spjega li player seta' jilghab bir-*registration card* li johrog il-casino jew billi jittfa' flus fis-*slot machines*. Transazzjonijiet minn fuq ir-*registration card* wrew li din qeghda b' madwar €15,000 minn taht.⁸⁰ **Sergio Capitta** rapprezentant tal-Izibet xehed kif l-imputata kienet klijenta taghhom u fil-11 t'Ottubru, 2016, ghamlet rebha ta' €948.60.⁸¹

Illi **PS914 Ivan Mifsud** xehed li wara li gie nfurmat minn Oracle Casino fuq il-wallet kellem lill-imputata wara li sar jaf li Grant kien mejjet. Din infurmatu li "*Dawk kienu ta' habib tieghi li kien miet u kien tahomli hu.*".⁸² Iddeskriva incident iehor fit-18 ta' Novembru, 2016, f'xi 10:30pm gewwa s-Soreda Hotel fejn ghalkemm l-imputata giet mitluba thalli l-*premsies* din irrifjutat. Kienet fil-kumpanija ta' certu Edward Stabley ta' 81 sena li qal li-surgent li kienet il-*lover* u l-habiba tieghu ma ridiex titlaq. Hi insistiet li filghodu kienet hadet breakfast wara li qaghdet fil-kamra mieghu.⁸³

L-interrogatorju tal-imputata

Illi ser jigu kkunsidrati iz-zewg stqarrijiet rrilaxxati mill-imputata fil-11 u fit-12 ta' Jannar, 2017,⁸⁴ wara li din inghatat id-dritt li tkun rapprezentata minn difensur tal-ghazla taghha waqt l-interrogazzjoni ai termini tal-artikolu 355AUA tal-Kodici Kriminali. Dawk tat-13 t'Ottubru, 2016,⁸⁵ u tal-14 t'Ottubru, 2016⁸⁶ qed jigu skartati tenut kont li, kif gja` kien rilevat, dawn ma baqax ghandhom valur probatorju.

Fl-istqarrija taghha tal-11 ta' Jannar, 2017,⁸⁷ wara li tikkonferma li nghatat u fehmet id-drittijiet taghha sahhqet li ma rieditx parir legali.⁸⁸

⁷⁹ Fol.321

⁸⁰ Fol.323

⁸¹ Fol.537

⁸² Fol.540

⁸³ Fol.542-543; Vide **Dok IM** - Current Incident Report dwar il-wallet a fol. 546 et seq; **Dok. IM1** - - Current Incident Report dwar il-kaz fis-Soreda Hotel a fol. 549 et seq.

⁸⁴ Dok. 664 et seq. 11.10.17 a fol. 637-725; 12.10.2017 a fol. 726-759

⁸⁵ **Dok.YC** a fol.583-636

⁸⁶ **Dok.YC** a fol.637-663

⁸⁷ **Dok.YC** a fol.664-725

⁸⁸ Fol.666

Spjegat kif Ayers u Grant kienu jiehdu pilloli ghac-cirkolazzjoni.⁸⁹ L-imputata stqarret li kienet rrekordjat lil Ayers bejn 2-4 darbiet peress li ma kienitx zgurha li t-tablet kienet qed tirrekordja.⁹⁰ Tammetti li kienet gibdet filmati tieghu kemm fil-kamra tas-sodda kif ukoll fil-kamra tal-banju u dan ghamlitu biex turih li kien qed jaghmel tahtu minghajr kontroll ghaliex hu kien jghid li mhux minnu.⁹¹ Izzid li anke ridet ikollha prova li ma riedx imur sptar. Ghalkemm qatt ma mar sptar Malta tghid li ma kienx jafda l-isptarijiet Maltin u ried imur sptar l-Ingilterra.⁹² Tistqarr li ma cemplitx ghall-ambulanza anke meta ratu fl-istat li kien ghax hu kien qalilha-

Ms Svetlana Kabanec: She didn't I mean take action because when she was asking him how he's feeling he always said that it's very good

*Dragana Mijalkovic: One hundred percent time sure he said he don't want to go to hospital...*⁹³

Inspector Fabian Fleri: The question is simple is really very simple when she was recording him... .. Was she not seeing that he was not well?....

Ms Svetlana Kabanec: She saw that he wasn't well when she was recording him that's the answer..... She was recording him and she is telling me that he didn't want to go to the hospital

L-imputata tikkonferma li filwaqt li riedet prova li Ayers ma riedx imur Sptar kienet rrekordjat lil Grant peress li kien qed jaqa' ta' spiss ghax li ma kienx juza bastun, u ghalhekk f'kaz li jigrilu xi haga hi ma rieditx tinzamm risponsabbli.⁹⁴

[Dragana Mijalkovic]: Why because even there people where we were living when I told them he's falling all the time and they said to me you will have the responsibility if something happen to him because he is old and some people told me also..... the David Grant he didn't feel pain he just say he lost balance and falling and he was well ... He didn't need help....He didn't want to go to hospital Inspector.... David Grant did not was in pain.....Neville Ayers didn't had pain Inspector please....He was happy....

Inspector Fabian Fleri: Dragana you recorded Neville Ayers and recorded David Grant

Dragana Mijalkovic: Ehe

⁸⁹ Fol.667

⁹⁰ Fol.675

⁹¹ Fol.676

⁹² Fol.676-677

⁹³ Fol.677

⁹⁴ Fol.679

Inspector Fabian Fleri: *On the floor and David Grant three times on the floor*
Dragana Mijalkovic: *Because he don't want the stick*

...

Inspector Fabian Fleri: *You recorded Neville Ayers in the bathroom full of....*

Dragana Mijalkovic: *Because Neville told me he didn't make poo poo I wanted to*

Inspector Fabian Fleri: *Why I want to, you are not answering my question why you did not call the ambulance?..... He was not well person staying in the bath for long time with shit on him is not a person feeling well*

Dragana Mijalkovic: *Inspector I am sorry you were wrong this time he was make bath he wasn't sit with kaka and poo poo*

Inspector Fabian Fleri: *Why did you not call the ambulance?*

Dragana Mijalkovic: *Because he didn't want, he feeling well he said he want red wine, cigarette super king..... when I record him I ask him "Neville are you sure you don't want me to call you ambulance" when.....he understand, he said to me "I am sure one hundred percent positive I don't want ambulance" what I have to do then when I ask him a lot of time he said I'm sure one hundred percent you can see Inspector on tablet please check⁹⁵*

Terga' tirrepeti li r-raguni ghat-tehid ta' dawn il-filmati kienet li minbarra biex turi li ma kienitx responsabbli f'kaz li jigrilhom xi haga, riedet turi lilhom stess - ghax skond hi kienu jmeruwha - li veru kien jaqa' u kellu bzonn juza l-bastun (Grant) u li kien qed jaghmel tahtu (Ayers). Mistoqsija x'kienet taghmel f'kaz li kien missierha li kien f'dak l-istat twiegeb:

Inspector Fabian Fleri: *Ok so if he was your fatherYou would have done the same.... You leave him like that*

Dragana Mijalkovic: *Not leave like that*

Inspector Fabian Fleri: *What would you do?*

Dragana Mijalkovic: *But I'm his daughter*

Inspector Fabian Fleri: *What do you do?*

Dragana Mijalkovic: *Imma he's didn't want to go to hospital inspector*

Inspector Fabian Fleri: *You are not answering my question. If your father is in that state and you tell him he tells you I don't want to go to hospital you leave him like that or you call an ambulance even if he does not want to?*

Dragana Mijalkovic: *My if my father was in that situation I call ambulance but he didn't want*

Inspector Fabian Fleri: *Even if he say "no I don't want"?*

Dragana Mijalkovic: *Because I'm his daughter⁹⁶*

⁹⁵ Fol.680-683

⁹⁶ Fol.684-685

L-imputata kkonfermat li kienet thalli lil Ayers fl-appartament wahdu sakemm tohrog taghmel il-qadi u meta tmur tilghab *f'gaming outlets*.⁹⁷ Spjegat kif ried jaghmillha snienha godda u kien halsilha xi €800 ghal kera.⁹⁸ Haddmet l-ahhar erba snin qabel⁹⁹ u kienet tghix minn fuq flus li familtha gos-Serbja kienet tibghatilha. Minbarra hekk David Grant kien ihallsilha ghal kollox *"he pay rent, he buy food, he pay everything"*.¹⁰⁰ Cahdet li wzat il-cards ta' Grant ghalkemm zammithom.¹⁰¹ Tispjega li Ayers ma rritornax lura l-Ingilterra ghax kien ihobbha u ried jibqa maghha.¹⁰² Dragana cahhdet li kienet giet investigata ghall-frodi fis-Serbja.¹⁰³ Cahhdet li kienet issakkar lil Ayers fil-kamra tal-banju jew fl-appartament.¹⁰⁴ Dwar Ayers tghid li ltaqghet mieghu fuq il-*promenade* tal-Qawra fit-28 ta' Settembru; ma kienitx tafu qabel. Kellu problem bl-istonku ghax ma setghax jipporga u ghalhekk marru go spizerija l-Kappara fejn wara li rrifjuta li jiehu suppozitorji inghata pilloli.¹⁰⁵ Ikkonfrontata bil-fatt li halliet persuna li kienet responsabbli ghalih fi stat ta' *neglect* twiegeb li hi ma kienitx responsabbli ghalih minkejja li kien qed jghix maghha u kienet qed tiehu hsiebu: *"I am not the person responsible for him because he didn't want to call ambulance"*. Tkompli billi taghmel dikjarazzjoni li tassumi rilevanza meta jigi kkunsidrat dak li qalet lis-Surgent 419 u quddiem il-Qorti meta xehdet *viva voce*:

Inspector Fabian Fleri: *You listen listen listen listen you called the ambulance.....When he was on the bed not responding ... He was already unresponsive*

Dragana Mijalkovic: *No*

Inspector Fabian Fleri: *That was when you called ambulance*

Dragana Mijalkovic: *No no Inspector is not true ... In the bathroom, he go he is walking in the bathroomHe was stay there*

Inspector Fabian Fleri: *I know and he fell in the bathroom*

Dragana Mijalkovic: *Yes*¹⁰⁶

⁹⁷ Fol.688

⁹⁸ Fol.689

⁹⁹ Fol.691

¹⁰⁰ Fol.692

¹⁰¹ Fol.696

¹⁰² Fol.699

¹⁰³ Fol.702

¹⁰⁴ Fol.703

¹⁰⁵ Fol.709

¹⁰⁶ Fol.714

Fil-fatt meta tixhed viva voce taghti verzjoni ohra: “He was, by walk, by himself. And in the *kitchen* he is fell,...” u in kontro-ezami ghad-domanda jekk waqax fil-kcina:

Prosecution: Did he fall in the kitchen?

The witness: Yes.

Prosecution: How did he fall in the kitchen?

The witness: He was walk on the door and one he lost his balance

Pero` lis-Surgent Buttigeg *a tempo vergine* qaltlu li Ayers kien waqa’ **minn fuq is-sodda**, :“*victim was on his bed and all of a sudden he fell on the floor without moving and on seeing this she shouted for help*,”¹⁰⁷ Tant hu hekk li mal-pulizija lanqas semmiet li xi hadd kien ghenha igorru ghal fuq is-sodda! U jekk l-ewwel waqa’ fil-kamra tal-banju w rexxielha tiehdu fuq siggu fil-kcina, kif ghamlet dan minghajr ghajnuna? Jekk kienet gja` garritu mill-banju ghall-kcina xi htiega kellha titlob l-ghajnuna biex jittiehed fil-kamra tas-sodda? **Dikjarazzjonijiet konfliggenti li jimminaw il-kredibbilita` taghha!**

L-imputata tkompli billi ssemmi dettal li jigi kategorikament michud kemm il-darba mix-xhud Matev, il-Bulgaru li ssemmi Dragana. Hi tinsisti li ghenha igorr lil Ayers filwaqt li hu jichad kemm il-darba: “She told me to come help her.....but I did not go because everyday she used to ask me to help him out of the toilet and take him in the room but I never did”¹⁰⁸ u “She asked me to help her to put him on the bed but I told her that I don’t want to help her. I changed and I went down to continue with my work..... I can confirm that I did not touch the gentleman, I did not help Dragana to do anything with the gentleman, I just changed and went downstairs.”¹⁰⁹

L-imputata tghid li l-ahhar darba li hadet filmat ta’ Ayers kien fil-kamra tal-banju jum qabel ma miet. L-ispettur jibqa’ jinsisti fid-domandi tieghu dwar kif setghet thalli bniedem f’dak l-istat prekarju minghajr ma ssejjah ambulanza izda l-imputata tinsisti li riedet tirrispetta xewqitu:

Inspector Fabian Fleri: *Every time every time you recorded him he told you every time he didn’t want to go to hospital?*

¹⁰⁷ Fol.92

¹⁰⁸ Fol.47-48

¹⁰⁹ Fol.238

Dragana Mijalkovic: Every time every time Inspector and he said I say to him “Neville are you sure darling?” one hundred percent he was angry he was fed up every time I asking him

Inspector Fabian Fleri: So in the recordings he is angry with you for asking him to go to the hospital

Dragana Mijalkovic: Yes Inspector because every time I was asking him from the morning and just that time i record him¹¹⁰, I’m not responsible because you know why? He said to me the last that he was ok every time when I ask I’m ok he was walking with me....

....

Inspector Fabian Fleri: Why why would you have called the ambulance?

Dragana Mijalkovic: Because that mean he is not well but when he is telling me Inspector one hundred percent sure

Inspector Fabian Fleri: So so if listen so if you look at him the way he was and he did not answer you would have called the ambulance because he is not well?

Dragana Mijalkovic: Of course¹¹¹

L-uniku emozzjoni li setghet tikkonstata l-qorti meta rat il-filmati ferm disturbanti, mhux wahda ta’ rabja kif tishaq l-imputata izda wahda ta’ frustrazzjoni ta’ Ayers ghall-fatt li baqa’ jigi mistoqsi domandi meta kien mixhut f’sodda bla sahha. Ma hemm l-ebda hjiel ta’ rabbja fit-ton miksor tieghu!

Dwar David Grant tammetti li dan kien qed ihallsilha ghal kollox “He said to me; “you don’t need to go to work, please make me company”. He was happy, the David Grant was crying and he said to me; “please don’t leave me never” because he has no one back; brother, hospital call him five years.... He always begging me. He said “please don’t leave me”, I said to him all the time “I’m going to Serbia, I am going to call ambulance they will take you to England because always you fell (...)”....because David just fell he used to falling like this. He didn’t want, he didn’t pay, he didn’t want ambulance he say “I don’t want to stay hospital withput you”. Why you don’t understand Inspector”.¹¹²

Fl-ahhar stqarrija taghha, ir-raba wahda, li komplet l-ghada, 12 ta’ Jannar, 2017,¹¹³ tispjega li hadet il-filmati ghaliex Neville Ayers ma riedx imur l-isptar. Gew murija lilha 7 filmati li hadet ta’ David Grant fejn tiddikjara li hadithom “because David was a person when he fell he said he

¹¹⁰ Fol.716-718

¹¹¹ Fol.719-720

¹¹² Fol.723

¹¹³ Fol.726 et seq.

don't want hospital, he said I don't want call doctor, he don't have he don't have pain and all the time he didn't want to carry the stick. he didn't want to use the stick because he didn't like it and he tried to walk without it..¹¹⁴ because I wanted to show (...) David Grant what he falling and he hurt and he don't want every time he don't want to wear the stick to carry the stick".¹¹⁵ Tghid ukoll li riedet prova ghax kien jinsa li jaqa' ghalkemm ma kienx ibghati minn dementia: "I record him to show to him because up until three days he forget... And he say no he didn't fell... No no dementia no he's was very intelligent the crosswords first every morning he make it all"¹¹⁶Tul l-ghaxar xhur li dam jghix maghha kkonfermat li kienet hi li kienet qed tiehu hsiebu.¹¹⁷

Murija il-filmati ta' Neville Ayers tikkonferma li hadithom hi.¹¹⁸ Tikkonferma li hadet filmati tieghu gharwien gol-banju kollu feci u tispjega li ghamlet dan peress li kien imerijha li ma kienx minnu li qed jaghmel tahtu¹¹⁹ ghalkemm ftit qabel **ikkontradixxiet** lilha nfisha meta semmiet li kien jghaddi hin twil fil-kamra tal-banju propju biex ma jurihix li qed jaghmel tahtu biex hi ma xxomx irwejjah¹²⁰.

Fil-kors tad-diskors taghha issemmi kif Neville **waqa fil-kcina**; kien f'dan il-mument li sejjhet ghall-ambulanza. Pero` waqt li qed tispjega dak li skond hi qalet lill-oht is-sid tal-appartement, tizloqilha li waqa' fil-banju,¹²¹ kif : "*because he fell in the kitchen, he fell in the bath, he is not well*".¹²²

Id-domandi jigu wehidhom: Fejn waqa' fil-kcina, kif qalet quddiem il-Qorti? Fil-kamra tal-banju, kif qalet fl-istqarrija mal-Ispettur? Fil-kamra tas-sodda kif qalet lis-Surgent? Liema hi l-verzjoni korretta?

¹¹⁴ Fol.729-730

¹¹⁵ Fol.732

¹¹⁶ Fol.733

¹¹⁷ Fol.733-734

¹¹⁸ Fol.747

¹¹⁹ Fol.748

¹²⁰ Fol.721 "He was no, he was very, he can walking and go to the bathroom to make shower because he was feeling that he making poo poo and I smell it" .

¹²¹ Fol.714: **Inspector Fabian Fleri:** I know and he fell in the **bathroom**; **Dragana Mijalkovic:** Yes

¹²² Fol.750

Skond l-imputata, fil-filmati Ayers jidher bhala ragel b'sahhtu. Tant kien b'sahhtu li l-jum ta' qabel ried imissilha sidirha. Tghid li meta kienu l-lukanda kellhom relazzjonijiet intimi izda mhux meta marru fl-appartament taghha.¹²³ Anke ma David kellha relazzjonijiet intimi sa gimghatejn qabel ma miet.¹²⁴ **Il-Qorti kkonstat li jekk deher kollox fil-filmati, sahhet Ayers u Grant certament ma tidher minn imkien!!**

Illi l-imputata **Dragana Mijalkovic** ghazlet li tixhed u spjegat li ltaqghet ma David Grant 4 snin qabel meta kellu 63 sena "*Sixty-three (63)*."¹²⁵ Kien juza bastun wara li kienet taghtu *stroke* u kien jiehu bosta medicini minhabba li kien ibghati minn pressjoni gholja pero baqa' jimxi "*Till last day of his life.... Till last moment he was walking sometimes with stick, sometimes not.*".¹²⁶ Mitluba tispjega kif miet "*Dr Fenech, we were sitting in the kitchen and once he just fell from the chair .. he sat on the chair and once I hear it just Bumm! [The Court: He flipped on his side.*"¹²⁷ Tghid li hadet filmat ta' Grant biex turieh lit-tabib tieghu meta tmur mieghu l-Ingilterra bhala prova li ma kienx qed juza l-bastun. Tikkonferma filmat fejn tinstema' tistaqsieh ghaliex riedha go hajtu - ghalkemm **ma tghidx ghaliex hadet il-filmat meta hu kien mixhut minn tulu fl-art taht mejda li kien ghadu kemm waqa' minnha** kif rrizulta mill-filmati - "*David, soon you will get sixty-eight year, for what you need me in your life I must take you.*".¹²⁸

Illi mill-ewwel jigi sottolinejat li anke **rigward il-mewt ta' Grant taghti verzjonijiet konfliggenti.**

Fil-fatt mitkellma *a tempo vergine* mis-Surgent Quattromani din mkien ma semmiet li kienet hdejn David x'hin waqa', anzi qaltilha li hi **kienet fil-kamra tas-sodda** meta semghat hoss u sabet lil David mal-art fil-kcina: "*Same added that she then went inside the bedroom and played on her tablet, when all of a sudden she heard a big noise, and upon going back to the kitchen she fund David on the floor.*"¹²⁹

¹²³ Fol.751

¹²⁴ Fol.752

¹²⁵ Fol.1530

¹²⁶ Fol.1534

¹²⁷ Fol.1533

¹²⁸ Ibid.

¹²⁹ Fol.96

Il-Qorti tistaqsi: Fejn kienet l-imputata fil-hin li David Grant waqa' u miet zopptu: fil-kcina hdejh jew tilghab bit-tablet fil-kamra tas-sodda?

Dwar Neville Ayers tghid li meta ltaqghet mieghu *"He told me seventy-eight (78), he will be seventy-nine (79),¹³⁰..... He never told me that he is sick. We had in the evening, we went to karaoke, he had drink, smoking super king black.¹³¹"*. Kien mar joqghod maghha wara li biddel it-biljett tal-ajru tieghu biex ihalli Malta fit-12 t'Ottubru wara li kien hemm tahwida fil-lukanda tieghu meta gie biex jitlaq lejn l-ajruport u sab li ma setghax jibqa' fil-lukanda ghax kienet *fully booked*. Issemmi kif ma setghax jipporga u haditu ghand spizjar li tah porga. Miet wara li waqa' fil-**kcina** *"He was in the kitchen,.....He was, by walk, by himself. And in the kitchen he is fell,In the aluminium door of the **kitchen** and when he was walk and he felt like losing the balance and he on the aluminium door of the **kitchen** he banged and he fell. This was very material of aluminium."¹³²*. Talbet ghall-ghajjut lil wiehed Bulgaru li jghix fl-istess appartement izda dan kull ma ghamel kien li ghenha tpoqgieh fuq is-sodda *"He left. He just helped me to put him there and I asked him, "Please call somebody to help me! Please call an ambulance." He never called nobody."¹³³*. ghalhekk nizzlet fir-restaurant ta' tahtha u talbet biex iccemplu ambulanza. Peress li l-ambulanza damet ma wasslet marret l-ghassa. Tinsisti li l-Bulgaru, Matev, ghenha u gideb meta qal li dan ma kienx minnu ghaliex telfitlu l-impjieg.

Il-Qorti tistaqsi: Ghaliex ma qabditx u cemptet hi ghall-ambulanza? Xi htiega kellha titlob lil haddiehor jaghmel dan? Ghaliex ma tressqet l-ebda prova, l-ebda xhud biex jissostanzja sal-grad tal-probbabli dak li tixhed dwaru? Il-provi juru li mhux hi cemptet ghall-ambulanza izda certu Josette Zahra.¹³⁴

Illi mitluba tispjega ghaliex hadet il-filmati ta' Ayers tghid: *"Yes. Dr Fenech, when I am go and put down the pampers and I say to all people there my neighbours, Maltese people, I told them this old man he does not want to go to hospital and he is wetting himself and I... .. sometimes I carry the bags and they can see pampers, and they told me, Your Honour, "miskina, if something happen to him, they will blame you." Then, Your Honour Magistrata, I go*

¹³⁰ Fol.1541

¹³¹ Fol.1542

¹³² Fol.1548

¹³³ Fol.1550

¹³⁴ **Dok. DVC2** a fol.281

upstairs on my apartment and record him "I am asking you want to go hospital? Call ambulance?" He say, "No, I do not want to lose my flight back home, I do not need, I will sort it out when I go back in England." I am asking him, "How much you are sure? Are you sure?" He said, "one hundred percent."¹³⁵

In kontro-ezami tghid li zammet il-credit cards ta' Grant bhala "souvenir".¹³⁶ Tghid li ghamlet aktar minn filmat wiehed tal-mejta minhabba li t-tablet kellha l-iscreen mkisser u ma kienitx taf jekk kienx qed jingibed il-filmata.¹³⁷ Fuq dan il-Qorti tinnota li din setghet facilment tikkonstata dan il-fatt billi ticcekja jekk giex recorded dak il-hin stess. Jinghad izda li l-filmata ta' Grant juru li ngibdu f'okkazzjonijiet differenti ghaliex tinstema' l-imputata tikkumenta li hu filmat iehor biex jiddokumenta waqa' ohra!¹³⁸ **Bizzejjed li jinghad li bejn mewt u ohra ghadew tmien xhur- altru` zmien sufficjenti biex tiddetermina jekk kienx hadem sew it-tablet!!**

Tkompli li Ayers kien ilu gimgha joqghod ghandha u l-unika problema li kellu kienet li ma setghax jipporga, "Correct"¹³⁹; tikkonferma li Ayers kien waqa' u kien ittiehed fi spizerija l-Hamrun ghax beda hierieg demm minn idejh "Because he had sensitive hands"¹⁴⁰. Dwar il-kundizzjoni ta' Ayers gurnata qabel ma miet "He always was the same, he always was the same. He was always talking like he is drunk.... like this he was talking, he always was like that. Till last moment he was smoking cigarettes. He was ok"¹⁴¹..... I saw him the same. Just he poo poo, he make that, and he said that he make that often. That is nothing to worry about. I remember his words."¹⁴². – verzjoni li hija l-boghod mill-verita` kif jixhed il-filmata b'Ayers bilkemm jiflah jitkellem moghti b'lizar fuq is-sodda!

¹³⁵ Fol.1555

¹³⁶ Fol.1563

¹³⁷ Fol.1564

¹³⁸ Filmat minnhom jidher Ayers bil-harqa mnizzla apposta sabiex jidher il-hmiegh li ghamel fiha u f'filmat iehor jidher minghajra gharwien bilqeghda gozz fil-banju. Il-filmata ta' Grant jidher bic-cjar li ttiehdu f'mumentu u granet differenti ghax hu l-istess diskors tal-imputata li jikkonferma dan kif ukoll il-hwejjeg tieghu kif ukoll il-fatt li f'certu filmata jidher dawli naturali u f'filmata ohra ttiehdu bil-lejl.

¹³⁹ Fol.1577

¹⁴⁰ Ibid.

¹⁴¹ Fol.1574

¹⁴² Fol.1579

Lejn l-ahhar tax-xhieda taghha terga' tirrepeti li Ayers waqa' fil-kcina meta lis-Surgent Buttigieg qaltlu li kien fuq is-sodda xhin waqa': "victim was on his bed and all of a sudden he fell on the floor without moving and on seeing this - indikazzjoni li kienet qed tarah - she shouted for help,".¹⁴³ Kif inghad fl-istqarrija semmiet il-kamra tal-banju!

Il-Qorti hi tal-fehma li hu precizament biex tindirizza l-inkonsistenza bejn dak li qalet lis-Surgent u sussegwentement lill-Ispettur Fleri, meta qaltlu li Ayers waqa' fil-kamra tal-banju, li l-imputata ddeffes lil Bulgaru fl-istorja. Tipprova tirratifika din l-inkonsistenza. Pero` quddiem il-Qorti terga' tbiddel il-verzjoni ghal darba ohra u tghid li Ayers waqa' fil-**kcina:**

Dr Peter Fenech: Ok. So if he was physically walking on his own in the last day of his life, what happened? Can you explain to the Court what happened? Where were you and what happened?

The witness: Yes. He was in the **kitchen**,

Dr Peter Fenech: how did he arrive to the kitchen?

The witness: He was, by walk, by himself. And in the kitchen he is fell,...In the aluminium door of the kitchenHe was coming from the bedroom,.... And he was coming in the kitchen. So, as soon as he was passing the aluminium door which she has in the kitchen actually he was losing the balance.....¹⁴⁴

Prosecution: Did he fall in the **kitchen**?

The witness: Yes.

Prosecution: How did he fall in the kitchen?

The witness: He was walk on the door and one he lost his balance. And he fell down and when I saw that he fell and he hurting there his hands was very sensitive skin, on his both hands and when I saw there the blood and these I am calling that Bulgarian to come to help me to put him on the bed.¹⁴⁵

Dwar Matev, ma ngabet ebda raguni ghaliex kellha tigi mittiefsa l-kredibbilita` tieghu. Anzi jirrizulta qbil bejnu u bejn Faniello dwar il-hin li hu halla l-appartament. Jghid li kienu xi 6.30pm u jsemmi li ra lil Faniello fit-triq xi 7.30pm¹⁴⁶ filwaqt li Faniello jghid li rega' halla l-

¹⁴³ Fol.92

¹⁴⁴ Fol.1548-1549

¹⁴⁵ Fol.1580

¹⁴⁶ Fol. 47-48

appartament xi 7:15-7:20pm meta “*Ma smajtx storbju*”.¹⁴⁷ Mizzi wkoll tghid li rritornat fl-appartament ghal xi 7:45pm u la ssemmi li rat lil Ayers u lanqas lil Matev, indikazzjoni li kienu hallew l-appartament kif fil-fatt xehdu.¹⁴⁸ Anke il-posizzjoni li Matev isemmi li ra lil Ayers fiha, b’saqqajh imdendlin mill-banju, issib korroborazzjoni fil-filmata mehud mill-imputata. Altru` li x-xhieda ta’ Matev hi *safe and satisfactory* kuntrarjament ghall-dik tal-imputata msewwsa b’verzonijiet konfliggenti u spjegazzjonijiet inkreduli.

Illi jirrizulta li x-xhieda tal-imputata m’ghandhiex mis-sewwa, hija nieqsa minn kull ombra ta’ kredibilita`; il-gideb manifest taghha jkompli johrog fil-berah meta wiehed jikkunsidra x-xeni ta’ qsim il-qalb li fihom jidhru Grant u Ayers sa sighat qabel mewthom. Certament u indubbjament **ma kienux normali kif tishaq Dragana; kienu bla sahha, il-maskulinita` taghom tifikira tal-passat!**

Mhux ta’ b’xejn li minkejja li ssemmi diversi persuni li tghid lesti jikkorroboraw il-verzjoni taghha, ma ngieb hadd u ma tressqet lanqas l-icken prova li mqarr tibda tissostanzja dak li trid tigi emnuta fih. U kif setghet tenut kont li tirrakonta dak li mhuwiex minnu? Il-provi ma jinholqux mix-xejn, mill-hrejef li persuna tista’ tivvinta, tohloq u tirrakonta dwarhom!

Il-Filmati¹⁴⁹

Illi **Dr. Stephen Farrugia Sacco** kkonferma r-relazzjoni tieghu fejn *inter alia* ghamel *download* tal-filmata li jirrizulta ttiehdu mill-imputata.¹⁵⁰ “*Fir-rigward tac-cellulari, jien ezaminajt l-informazzjoni tal-kopja li kelli li kien hemm cellular wiehed u tablet. Kien hemm tablet, nispecifica li ma kienx abbinat ma’ sim card, filwaqt li l-mobile kien abbinat ma’ sim card kien hemm event logs, ossia il-call profile mehud mic-cellulari per se. jien elenkajt u ghamilt lista, annetejtha mar-rapport*”.¹⁵¹

¹⁴⁷ Fol.45-46

¹⁴⁸ Fol.224

¹⁴⁹ Fol.82 u 158

¹⁵⁰ Fol. 1377-Relazzjoni a fol.152 et seq.

¹⁵¹ Fol. 1400; **Dok.SFSZ** a fol. 1402

Illi PC643 Jesmond Delicata analizza l-kontenut li gie downloaded mill-espert Farrugia Sacco:¹⁵² *“Fil-kontenut kien hemm diversi ritratti u videos. Prattikament qsamthom f’ erba` folders. Kien hemm folder minnhom b’ mija u wiehed u ghoxrin (121) ritratt, ritratti sesswali ha nghidu hekk. ghamilt folder iehor bi tmintax-il ritratt (18), ta’ medicini u mbghad kellna zewg (2) folders ohra, wiehed minnhom semmejnih Neville Ayers u l-iehor ta’ David Grant. U fihom kien hemm ritratti u videos. F’ ta’ Neville Ayers kien hemm wiehed u hamsin (51) ritratt u wiehed u ghoxrin (21) video. U ta’ David Grant kien hemm tmienja u tmenin (88) ritratt u seba’ (7) videos¹⁵³..... Meta qed nghidu ‘sesswali,’ huma ta’ partijiet intimi. Hafna minnhom ta’ nisa. Biss ma’ nafx jekk humiex mehudin bhala ritratt jew inkella downloaded minn fuq l-internet.Tal-medicini li jidhru cari li huma mehudin minn xi hadd jigifieri, mill-imputata 99% ghax anke l-post.¹⁵⁴ [iz-zewg pakketti l-ohra Neville Ayers u David Grant]..Fil-filmati jidhru rgjel gharwenin, mahmugin bil-hmieg tagghom stess, kemm fir-ritratti u kemm fil-videos. U meta jittkellmu bil-kemm tifimhom, ha nghid hekk....l-imputata.... Tistaqsihom hafna affarijiet. Bhal: “Ghalfejn baqghu hawn,””¹⁵⁵*

A. David Grant

B’kollox kien hemm 7 filmati ta’ Grant fil-folder mmarkat **M1** u fis-CD fil-folder **David Grant**.

Fil-film 20151015_172322 jidher Grant mitluq bilqeghda fuq sodda bla nifs izda madanakollu dan ma zammx lill-imputata milli minkejja li David kien vizibilment skomdu u qed ibghati biex jittkellem tistaqsieh kif waqa’ u sahasitra “Why are you losing your balance all the time?” Issaqsieh “How many time you fell down...I tell you when you were pissed that day....and this morning this means five times”! Tfakkru hi stess li wega’ idejh u ringlejh meta fost ohrajn waqa’ fil-banju u fil-kurridur. Iwegibha cjar u tond li l-problema tieghu kien li kien qed jitlef il-bilanc “lost my balance”! Dan ifisser li minkejja li ratu f’dak l-istat u minflok ghenitu u sejjhet ghall-ghajnuna baqghet tinterrogah u gghielu jittkellem minghajr kaz ghall-fatt li kien b’nifsu maqtugh. Il-film

¹⁵² Fol.1379 et seq.

¹⁵³ Fol.1380

¹⁵⁴ Fol.1382

¹⁵⁵ Fol.1383

jidher li ttiehed fil-15 t'Ottubru, 2015. L-ghada, filmat iehor,¹⁵⁶ jurieh iggruncjat, jipprova jqum minn mal-art, *disoriented*; ma jirnexxilux iqum u b'dahru mal-art u minflok tghinu issaqsieh ghaliex waqa' u ghaliex mhux juza bastun. Mal-minkeb tal-lemin jidher slieh. *"Why everyday you're felling down?"* tistaqsieh minflok tghinu minn posizzjoni fejn kjament beda jsib diffikulta` jqum minnha. Iwiegeb *"I don't know please"* - *indikazzjoni biex tieqaf* - izda hi tippersisti minghajr hniena. Instab filmat mehud il-jum ta wara fejn Grant jidher b'nifsu maqtugh aktar minn qabel u fejn anke hi jkollha diffikulta` tifhem x'kien qed iwegibha. Qalilha li mar jahsel xaghru izda *"he didn't get as far as the bed"*.

Minflok turi mqarr farka ta' thassib ghalih jew ghall-sahhtu w l-benessere tieghu tkompli tippersegwitah b'domandi "Why you fell?...everytime you losing the balance what?". Ghaliha ghadu mhux bizzejjed dak li wegibha u minflok tfittex li ttieh ghajnuna tkompli ghaddejja tistaqsi domanda fuq l-ohra u tpoggi kliem f'halqu - taghtih ir-risposti li qed tistenna minnu.

Ma jridx jintnesa f'dan kollu li hija hi stess li taf bil-griehi li garrab, meta tfakkru li wega' dahru, idejh u ringlejh! Jerga' jwiegeb ghall diversi drabi u b'nifsu dejjem sejjer mill-hazin ghall-aghar li kien qed jitlef il-bilanc.¹⁵⁷ Hija l-istess storja aktar tard meta jerga' jaqa' skond hu ghas-seba darba fejn terga' tinda ssaqsieh kif waqa mhux dakinhar biss izda anke dwar il-waqghat ta tlett ijiem qabel. Grant bil-kemm jiflah jittellem izda minghandha mhemmx lanqas l-icken accenn ta' hniena, tinsisti li tingahta twegibiet irrISPettivament mill-fatt li maghdur u ma jiflahx jittellem. Tghidlu li ma juzax bastun u *"he is jumping like a tarzan"* meta lanqas biss ghandu forza jartikola l-kliem tant li jitbissem u jghidilha *"oh Yeah"* b' mod sarkastiku; evidenza li ghalkemm maghkus u kkrepat intebah li qed tipprowa tpitter xena tieghu differenti mir-rejalta`!!¹⁵⁸ Filmata iehor jurieh minn tulu mal-art bejn is-sodda u minflok tghinu tkompli tiffilmjah sahsitra minn wara rasu fejn qed ikun kostrett jgholli rasu lura b'diffikulta` minn mal-art biex iwegib ghad-domandi taghha. Tassew xeni ta' qsim il-qalb¹⁵⁹ meta tidher tistaqsi *"For last month how many time you fell?"* Kif iwegibha *"nine times"*

¹⁵⁶ 004628

¹⁵⁷ 172005

¹⁵⁸ 172434

¹⁵⁹ 054216

tirrimarka waqt li ma taghmel l-ebda sforz biex tghinu jqum mill-art "Jesus...My...!"

Filmata iehor mehud fil-5 ta' Frar, 2016, tistaqsieh dwar ir-relazzjoni taghhom u jekk haditx hsiebu sew meta dan qieghed **mixhut gozz mal-art ghadu kemm waqa'**. Mhux bizzzejjed li jghidilha "I love you"; tibqa' ghaddejja bil-mistoqsijiet minghajr ma l-ewwel tiehu l-izbriga li tqajjmu minn mal-art. Jidher cjar **mixhut minn tulu fuq genbu taht il-mejda**. Minflok tghinu tfakkru li l-gurnata ta' qabel wegga' rasu li fuqha tidher li ghandha daqqa sew. Meta b'diffikulta` kbira iwegibha "I lost my balance", **vilment tghaddi biex tistaqsieh kemm kien ilu jhobbha u jekk ghandux complaints dwar kif hadet hsiebu**. Tistaqsieh numru ta' mistoqsijiet personali dwar jekk hux kuntent maghha, fejn ser jehodha tghix mieghu u jekk gabitx ruhha mieghu ahjar milli ghamlet familtu. Huwa f'dan il-filmata li Grant jghidilha li jhobbha u li jekk titilqu "I cry". Dan meta **ghadu mitluq bhal bicca tal-art mal-art f'diffikulta` u fi tbghatija bla bzonn, maghdur ghall-ahhar u fejn kien hemm bzonn ghajnuna immedjata sabiex dan ma jibqax mghawweg fi tnejn kif kien**.

F'dan il-filmata stranament taghzel li **tirrikapitola d-diversi waqghet tieghu filwaqt li taghmillu mistoqsijiet dwarha, dwar ir-relazzjoni taghhom u dwar il-mod li kienet imxiet mieghu**. Kellu jkun l-ahhar filmata tieghu ghax fi zmien 24 siegha Grant instab mejjet.¹⁶⁰

Fis-CD esebita mill-Ispettur Fleri u li jixhed dwarha PC Delicata, hemm ritratti ta' David Grant mghannaq mal-imputata. Jidher ragel b'sahhtu u fuq tieghu. Hemm differenza enormi bejn kif kien qabel u kif jidher fil-filmata, gozz ghadam bla sahha. Ritratti ohra jidhru mehudin meta ttiehdu il-filmata, Ottubru, 2015, jidher mixhut mal-art bil-qalziet ta' taht.

Ghalhekk jirrizulta li **apparti ghall-filmata anke ritratti hadet sabiex tiddokumenta in-nuqqas ta' sahha tieghu li kienet diga apparenti 4 xhur qabel mewtu**!¹⁶¹

¹⁶⁰ 130202

¹⁶¹ CD mmarkata *Files found in Ipad and Iphone* a fol. 82; Folder Dragana/Folder David Grant

B. Neville Ayers

Il-Qorti rat il-filmati ta' Neville Ayers li jinsabu fil-folder mmarkat Dok.T1.¹⁶² Jidher li dawn ittiehdu bejn id-9 u l-11 t'Ottubru, 2016. Fis-CD fil-folder Neville Ayers jidhru ukoll diversi ritratti tal-istess xeni li ngibdu fil-filmati.¹⁶³

Il-filmati ta' Ayers juru ragel mitluq mimli feci gharwien f'banju b'saqajh imdendlin barra. Il-hazen tal-imputata jirrizulta meta tipprova tpoggi kliem f'halqu u tghidlu "You told me you will take care of it yourself correct" frazi li fl-istqarrija tghid li nqaltilha minn Ayers. Jidher bniedem **mitluf minn sensieh ghall-ewwel, dizorjentat, inkapaci li jitkellem u bil-kemm jiehu nifs.** Jidher cjar mitluq go banju f'posizzjoni mghakksa. Filmati ohra¹⁶⁴ ittiehdu bl-iskop li tidher il-harqa tieghu mnizzla b'feci iswed fiha, niezel ma saqajh. F'ohrajn jidher bil-hmieg tieghu stess mdellek sa daru.¹⁶⁵ Bniedem inkapaci li jinfthiem u mhux bniedem li ddeskrivietu bhala wiehed b'sahhtu. **Ghandu minn kollox minbarra sahha!**¹⁶⁶ **Fatt rikonoxxut minnha meta tghidlu "You can't do nothing yourself", izda xorta ma sejhietx ghall-ghajjnuna imma halliet sahhtu tigi perikolata.** Tghidlu biex johrog mill-banju w l-filmati jinqata' hekk kif jghidilha "I can't...".¹⁶⁷, dettal li ma giex skartat mill-qorti! Fil-fatt jibda filmati iehor fejn spicca l-iehor b'Ayers fl-istess posizzjoni u terga' tghidlu jcum u to sort it out himself meta kjarament kien inkapaci li jaghmel dan minghajr ghajjnuna.

Fil-filmati mehud lejliet mewtu tibqa tistaqsieh "*are you positive sure you don't want to go to hospital, I call you ambulance?*". Dan hu l-**uniku** filmati fejn Ayers jigi mistoqsi riedtx sptar meta fil-kors tal-istqarrijiet sahhqet li kienu diversi id-drabi meta kienet tistaqsieh dwar dan u hu jinsisti li ma riedx sptarijiet!

Vizibilment Ayers hu mitluq f'sodda, ghajjen, jitkellem b'diffikulta` u dan biss wara insistenza taghha biex iwiegeb.¹⁶⁸ Ghalkemm hi tinstema'

¹⁶² Folder 2

¹⁶³ CD mmarkata *Files found in Ipad and Iphone* a fol. 82; Folder Dragana/Folder Neville Ayers

¹⁶⁴ 112158, 112203

¹⁶⁵ CD a fol.82 - *Files found in Ipad and Iphone.*

¹⁶⁶ 124241; 124307

¹⁶⁷ 143549

¹⁶⁸ 113130

tghid li l-ghada kien ser issiefer il-Qorti tqis li d-dehra ta' sahhtu ma kienitx tippermetti li jqum mis-sodda ahseb u ara kemm kien ser jirnexxielu jiehu battika bhal ma tirrikjedi safra. Minn imkien ma tirrizulta r-rabja li fl-istqarrija tghid li wera meta staqsietu jekk riedx ambulanza.¹⁶⁹

Minflok tghinu jqum mill-banju tibqa' tiffilmja l-mizerja tieghu, l-imbarazz ovvju li sab ruhu fih, gharwien huta waqt li qed jigi ffilmjat. F'filmata iehor din id-darba tuza frazi ohra li fil-kors tal-istqarrija taghha tghid li qalilha Ayers "*you said you sort it out yourself*".¹⁷⁰ Ayers ma jghid xejn minn dan hlief "*Fine*". Mhemmx dubbju li dak li fl-istqarrijiet taghha qalet li ntqal mill-vittma Ayers ma kien xejn ghajr kliemha - xena ohra mid-dokumentarju li holqot, kitbet u dderegiet b'atturi li 'hadmu' fih involontrajament u kontra r-rieda taghhom.

Ir-ritratti huma ferm iktar inkwetanti tenut kont li dan jidher bil-feci tieghu mdellek sa daru. Minflok tiffotografah kellha obbligu tghinu jitnaddaf u tghinu johrog mill-banju li fl-istess ritratti jidher jaghmel sforz biex johrog minnu mill-posizzjoni tieghu mixhut minn tulu fih. Sahhtu thalliet tigi pperikolata. **Li thalli ragel f'kundizzjoni simili f'banju minghajr ilma fix-xahar t'Ottubru hi azzjoni azzardata ghall-ahhar.**

Kif tista titwemmen li hadet filmata ta' Ayers ghax kien imerriha li jaghmel tahtu meta fl-istqarrija tasal tghid li kien hu stess li kien jirrikonoxxi dan il-fatt ghax fi kliemha ried jinhasel wahdu sabiex hi ma xxomx ir-riha "*Dragana I don't want your help I will sort it out myself in the bathroom*"¹⁷¹.....*He was no, he was very, he can walking and go to the bathroom to make shower because he was feeling that he making poo poo and I smell it*"¹⁷²

Tul dawn il-filmata it-ton tal-imputata hu nieqes ghal kollox minn xi tip ta' skoncertezza; mhemmx thassib da parti taghha dwar sahhiet bniedem vulnerabbli. L-atteggjament taghha hu wiehed biered u gellidu bl-imputata minkejja ix-xeni quddiem ghajnejha tibqa' **distanti, minghajr farka ta' hniena, anzi dismissive ghall-ahhar.**

¹⁶⁹ Fol.716-718

¹⁷⁰ "*Dragana I don't want your help I will sort it out myself in the bathroom; Stqarrija a dol.* 748; 754; 755

¹⁷¹ Fol.748

¹⁷² Fol.721

Illi dawn il-filmati nfushom juru kif l-imputata ppermetiet li sahhiet Grant u Ayers issirihom hsara. Ma ddejjet xejn thallihom f'sitwazzjoni fejn sahhithom u persunithom jigu perikolati. Il-filmati li gibdet servew sabiex jinkolpawha u mhux jezonerauha!!

Provi Saljenti Dwar ic-cirkostanti u l-kundizzjoni li kienu fiha Ayers u Grant

- Mizzi tghid li l-imputata qaltilha li kienet thalli lil Ayres fil-banju bla ilma biex johrog minn go fih ghax kien jiksah;
- Faniello jghid li Ayers "Bil-kemm kien jiccaqqlaq"; Jikkonferma li Dragana kienet qaltlu li kien jaghmel tahtu mal-art u li kien waqa' *fix-shower*;¹⁷³
- L-ahhar li rah lil Ayers Matev kien ftit hin biss qabel mewtu ghall-habta ta' bejn is-6:30-7pm.¹⁷⁴ li l-espert forensiku jikkonkludi li l-mewt ta' Ayers grat ghall-habta tas-7pm:¹⁷⁵ Skond l-istess xhud, Dragana nizlet issejjah l-ghajjut meta kienu saru xi 8pm u fil-fatt it-telefonata ghall-ambulanza dahhlet fil-20:02hrs.¹⁷⁶ Dragana marret l-ghassa xi 20:30hrs.¹⁷⁷ Sinifikanti hu d-dettal li jirrizulta mill-Current Incident Report meta waslu fuq il-post il-pulizija, li kien ftit wara li l-imputata marret titlob l-ghajnuna, il-kadavru kien gja kesah "*his body had gone cold*".¹⁷⁸ X'gara f'dak it-trapass ta' hin minn meta rah Matev f'kundizzjoni tant fragili salhin li l-imputata nizlet tfittex ghajjut u titlob lin-nies biex icemplu ambulanza? U ghaliex ma cemplitx hi izda minflok iddelegat lil haddiehor? Meta gie ppruvat li kellha mobile u setghet facilment iccempel ghall-ghajnuna? Ghaliex l-ambulanza ma ssejhietx meta kien jidher bic-cjar li sahhiet Ayers kienet tant iddeterjorat li kien jinhtieg attenzjoni medika u mhux jithalla fi stat daqtant pjetuz u mizeru?:

¹⁷³ Fol.45 tar-rapport esebit a fol.204

¹⁷⁴ Fol. 47-48

¹⁷⁵ Fol. 53 tar-Relazzjoni a fol.204

¹⁷⁶ **Dok.DVC2** a fol.281

¹⁷⁷ **Dok. FF9** a fol. 90

¹⁷⁸ Fol.91

“...he was naked completely. In the same condition of absolutely un controlling himself, he was not sitting on a chair but he was like bending on his knees near the chair, trying to hold to the chair with one of his hands..... I can confirm that he was partly, his knees were on the floor, definitely on the floor, he was not sitting. He was kind of leaning over the chair, trying to hold to the chair with his hands. he did not speak. He was in the state which he was not able to speak¹⁷⁹ ...visibly this man needed help. Yes, he needed help.”¹⁸⁰;

- Huwa propju dak ix-xhud li d-difiza fit-trattazzjoni taghha taghmel hilitha biex tiddiskredita li joffri stampa cjara w dettaljata tal-mod kif ddeterjora Ayers fiz-zmien li ghamel jghix mal-imputata: *“when I was first introduced to the gentleman in question, he was, well, normal and active, but in a few days time, maybe in 2 or 3 days time, I noticed that his condition had changed and on 1 or 2 occasions, I saw him in the bathroom and his condition has changed to the extent that sometimes he was naked in the bath, lying, and his condition was visibly getting bad. Worse, from what it was in the beginning. I can say that the condition of the gentleman was changing because on the first day when I saw him, he was walking on his own, he was talking on his own, he was pretty active, but in 3, 4, days, the situation had changed with him, in the sense that in the bathroom he was visibly unable to move freely on his own. He was either lying in the bath naked and sometimes he had done a pipi or koko in the bathroom or he was outside leaning out and even on 1 occasion, Dragana had asked [me tenut kont li qed jigi interpretat ix-xhud] if [I] can give him some clothes, because apparently this person had no clean clothes to wear¹⁸¹..... the state of this person was getting so bad that he was not really able to speak or to say anything. So, he was in such a state that he was not even to speak.”¹⁸²*

- Interresanti wkoll hu il-**Current Incident Report** li jittratta l-mewt ta’ David Grant.¹⁸³ Jirrizulta li t-telefonata ghall-ambulanza saret fid-19:00. Il-vittma f’dan il-kaz instab mal-art fil-kcina. A tempo vergine stqarret li *“about 3 years ago David had suffered a stroke*

¹⁷⁹ Fol.238

¹⁸⁰ Fol.241

¹⁸¹ Fol.234-235

¹⁸² Fol.235

¹⁸³ Dok.FF10 a fol.94

*while in England. Since then David suffered from high blood pressure and **about three days ago he started suffering from imbalances, and fell everytime** he tried to walk or get up from bed. Same added that he also **started suffering from sores** at the back of his thighs underneath his bottom....all of a sudden she heard a big noise, and upon going back to the kitchen she found David on the floor. Dragan further stated that she tried to wet david's face and tried to move him so as to wake him up (**as she used to do everytime he fell on the floor**)"¹⁸⁴ – indikazzjoni li kien jaqa' ta' spiss, u minkejja dan, meta kienet taf li kien gja` sofra stroke, ma ghamlet xejn sabiex tinghata l-ghajnuna adatta u mehtiega lil Grant, persuna li kien fil-kura taghha. Dan ir-rapport gie kkonfermat minn **WPS274 Francesca Quattromani**.¹⁸⁵ Dr. Scerri ukoll jikkonferma li Dragana kienet konsapevoli li Grant kien ilu jaqa' u dan meta kien gja` soffra stroke "...He used to suffer from high cholesterol, high blood pressure.....**Today and yesterday he was falling from the chair and had been falling off for the past 6 to 7 days**".¹⁸⁶*

Ghalhekk maghrufa dawn il-fatti mhemmx dubbju li l-imputata konsapevolment kienet taf l-istorja medika ta' kemm Ayers u Grant kif ukoll il-kundizzjoni ta' sahha dghajjfa li kienu spiccaw fiha; kienet taf il-medicini li kienu jiehdw w ghalxhiex; kienet konxxja li kellhom problemi fic-cirkolazzjoni u pressjoni gholja – fatturi li jipperikolaw il-hajja jekk ma jigux kontrollati. **Kienet hi li hallithom f'dik il-kundizzjoni meta fuqha waqa' id-duty of care** li kif jintwera fl-istqarrija, taghmel minn kollox - inkluz permezz tal-istess filmati – biex tezenonera ruhha minnu.

Illi dawn ix-xhieda kif ukoll mill-filmati juru li Grant u Ayers sabu rwiehom **f'sitwazzjoni fejn sahhithom u persunithom sarithom hsara u giet perikolata.**

Huma t-tobba li jissiggilaw il-kaz tal-prosekuzzjoni meta jiddeskrivu l-istat hazin immens ta' sahha li kienu jinsabu u thallew fih dawn l-anzjani.

¹⁸⁴ Fol.96

¹⁸⁵ Fol. 927 et seq.

¹⁸⁶ Fol.49

Rizultanzi Medici u Patologici

Illi **Dr. Mario Scerri** filwaqt li kkonferma r-rapporti li esebixxa fiz-zewg inkjesti dwar l-imwiet ta' Grant u Ayers qal: *"ghal-ewwel wiehed deher li kien natural, it tieni wiehed, li kien deher li kien natural, fil-fatt instabu xi hemorrhages u petechiae fil-pulmun u dawna qajjmu certu certu dubju, suspetti.Jista jkun ukoll li jindika traumatic asphyxia. Jista, imma xi kultant katavri illi nsibuhom rashom l-isfel gieli jkollhom petechiae ukoll fil-pulmun."*¹⁸⁷ Meta l-imputata xehdet quddiem l-espert mediku rigward il-mewt ta' David Grant, meta kienet biss xhud li rrapurtat il-mewt ta' dak li ddeskrivietu bhala l-partner taghha,¹⁸⁸ qalet li Grant kien fil-kcina meta semghet hoss qawwi u sabitu mitluf minn sensieh mal-art. Qaltlu li fl-ahhar sitt ijiem kien beda jaqa' ta' spiss,¹⁸⁹ *"...He used to suffer from high cholesterol, high blood pressure.....Today and yesterday he was falling from the chair and had been falling off for the past 6 to 7 days"*.¹⁹⁰

Illi mir-rapport tal-abbli espert rrizulta li fuq il-kadavru ta' Ayers kien hemm **numru ta' tbengil, lacerazzjonijiet, abrazzjonijiet u tbengil iehor kompatibbli ma blunt trauma**. Jirrizulta li Mario Scerri wasal fuq il-post fil-11:10pm u kkonkluda li Ayers kien ilu mejjet madwar erba (4) sighthat mill-hin tal-ezami. Dan ipoggi il-hin tal-mewt ghall-habta tas-7pm. L-espert filwaqt li jiddikjara li Ayers ma kienx taht effetti ta' xi medicinali, hu kategoriku *"Illi evidentemente kien hemm evidenza ta' neglect"*.¹⁹¹

Hu ta' rilevanza l-fatt li kif jirrizulta mir-rapport ta' Dr. Michael Scott-Ham¹⁹² *"there was no evidence to suggest that he had recently taken any of the drugs tested for, inkluz il benzodiazipine li suppost kien qieghed fuqhom. Igifieri ma kienx hawn evidenza klinika farmakologika illi dana kien qieghed jehodhom. Therefore he would not have been under their influence when he died and none contributed to his demise..... li kieku qieghed fuq Valium, benzodiazipine, u kien qieghed jehodhom regolari, kien jimmarkalu fit-toxicology wara l-mewt tieghu at therapeutic levels. Il-fatt illi ma mmarkax, ovojament illi ma kienx qieghed johodhom qabel ma miet."*. Ma kienx sar test tossikologiku ghal Simvastatin. *"ittestjajna ghall-opiate drugs bhall Heroine,*

¹⁸⁷ Fol.895

¹⁸⁸ Fol.48

¹⁸⁹ Fol.51-52

¹⁹⁰ Fol.49

¹⁹¹ Fol.53 tar-relazzjoni a fol.204

¹⁹² Fol.60 tar-Rapport ta' Dr. Mario Scerri a fol.204

Morphin, Codaine, Dihydrocodine u Pholcodine. Amphetamine like drugs bhall Extasy u hekk, Metadone, Benzodiazepines, li l-Valium huwa inkluz u kien negattiv, a range of chemically based drugs, including certain anti-depressants, anti-histamines, igifieri dana general screen ta hemm therapeutic, aw ta prescribed drugs u non-prescribed drugs. Filfatt gie kollox negattiv. ma kienx qieghed jiehu xejn minnhom.". Filwaqt li kien hemm bzonn ir-ricetta l-hadra ghal benzodiazepine, ghal amlodipine u simvastatin hemm bzonn ricetta normali.¹⁹³L-abbli espert jikkonferma li ma kienx ha x-xhieda tal-imputata peress illi setghet tigi investigata.¹⁹⁴ Ikompli "*Neville Ayers ... kellu lezjonijiet, bazikament bruises, li kienu in different stages of healing, igifieri li ma sarux f'okkazzjoni wahda. ... kien hemm xi abrazzjonijiet ukoll. Bazikament huma pressure points dawn, il-pressure lesions illi forsi ghamel xi zmien fl-istess pozizzjoni, lacerazzjonijiet illi jistghu ikunu kompattibli ma blunt trauma, tbengil ma blunt trauma in different stages of healing, imbaghad kien liebes hwejjeg illi dana, gharwien kien f'dak, u l-kaz kien fit-12 t'Ottubru. Kien il-bard u kien mal-art. Igifieri kien hypothermic zgur dar-ragel.*"¹⁹⁵In kontro-ezami kkonferma li minhabba l-eta` pressure points jiformaw facilment, filwaqt li griehi idumu biex ifiequ.¹⁹⁶

Illi **Dr. Michael Scott-Ham** xehed fil-kors ta' dawn il-proceduri u wara li kkonferma r-rapport maghmul minnu spjega li "*samples from Mr. Liers [recte: Ayers], there was no alcohol and drugs present in those items, so that shows he was not intoxicated by alcohol or under the influence of drugs when he died and therefore none of them contributed to his death*"¹⁹⁷.... There was a test carried out for a range of OPA, for a range of vitamin like drugs, including ectasy, for methadone, for a range of benzidimes drugs and various others and the range what we call chemical basic drugs which includes certain medication but also some drugs abuse such as Cathomines, Preperosimes and testing for some pain killing drugs such as Paracetamol, Aspirin and Iboprufen."¹⁹⁸

Illi **Dr. Ali Safraz** ikkonferma r-rapport tal-awtopsja ta' David Grant minn fejn kien gie konkluz li dan miet kawza ta' "*pulmonary ambulism.... a blood clot which blocked the main artery to the lungs.*"¹⁹⁹ F'dak ir-rapport

¹⁹³ Fol.898

¹⁹⁴ Fol.899

¹⁹⁵ Fol.900

¹⁹⁶ Fol.901

¹⁹⁷ Fol.1391

¹⁹⁸ Fol.1392

¹⁹⁹ Fol.771

Illi l-patologisti Profs. Marie Therese Camilleri u Dr. Safraz Ali kkonstataw li David Grant kien *emaciated*, kellu *“bedsores over the left buttock and lateral aspect of the left knee”*. Il-mewt tieghu giet deskritta bhala wahda kagunata minn *“pulmonary thromboembolism”*.²⁰⁰

Rigward Neville Ayers jghid li *“He had quite a few not fatal injuries but he has other injuries... There is bruising of the upper eyelid of the right eye extending to the lower eyelid, there is a laceral contused wound also in the upper eyelid. There are lacerations of the lower posterior aspect of the left arm and medium border of the left forearm. There is also bruising over the left forearm. There is a bruise on the posterior aspect of the left arm and there is a superficial tear of the left lobule. There are bruises and superficial skin loss of the right arm. There is a bruise on the right cheek. There is a superficial wound of the left thumb. There is a bruise on the lateral side of the right knee. There is a haematoma over the right temporal region. There is a large area of bruising over the rightal region extending to the oxibital region. These are the external injuries.”*. Dawn il-griehi fil-fehma tal-abbli espert gew kkaguanti minn *repeated trauma*. In kontro-ezami jikkonferma li l-cause of death kienet *pneumonia* ghalkemm jibqa' l-fatt li kien hemm *“several severe injuries.... He has multiple injuries on different sides. So I don't think it is an accidental fall.”*²⁰¹

Illi il-Professur Marie Therese Camilleri xehdet li David Grant kien miet kawza ta' *pulmonary thromboembolism* *“Cappa demm igifieri maghqud, illi ghaqdet u kien hemm ghallura, ic-cirkolazzjoni fil-pulmuni tieqaf... tista tigi anke minn lack of mobility, igifieri jekk bniedem ikun fis-sodda jew ma jiccaqlaqax, id demm jaghaqad, u mbaghad jekk perezempju ma jkunx qed jixrob bizejjed ovjament ikun hemm inqas likwidu u tiffaforixxi dawn l-emboli.”*. Tkompli tispjega kif il-griehi ma kienux konsonanti mal-eta` tieghu, *“kellu ferita fuq ir-right eyelid, kellu abrasions fuq ghonqu, kellu pressure points fil-right upper right knee, bed sores over the left buttock and lateral aspect of the left knee. Igifieri dana he was only 67. His general condition was very poor.... his general condition was poor.”*²⁰² Dak li jikkawza *pulmonary thromboembolism* tghid: *“The commoner causes are immobilisation and dihydration and also surgical conditions. This*

²⁰⁰ Fol.28-29

²⁰¹ Fol.773-774. Ir-Rapport hu esebit a fol.775- Dok. AS

²⁰² Fol.905-906

*guy did not have a surgical condition*²⁰³*Jien diga ghidt illi hi kawza naturali. Dik hija kawza naturali pero seta' kien hemm affarijjiet illi setghu aggravawha.....Jew ipprecipitawha.*"²⁰⁴ Dwar Neville Ayers tixhed li l-kawza tal-mewt immedjata kienet il-*pneumonia*, **infezzjoni tal-pulmun**,²⁰⁵**fejn persuna dghajffa tinhakem b'mod aktar kiefer.**²⁰⁶

Illi l-espert forensiku **Dr. Mario Scerri** flimkien mal-esperti medikci **Profs. Emanuel Farrugia** u **Mr. Peter Ferry**, ippreparaw rapport kongunt²⁰⁷ wara li ezaminaw filmati tal-vittmi, rapport tal-awtopsja kif ukoll il-*medical files* taghhom li ntbghatu mill-awtoritajiet gudizzjarji Nglizi. Dawn rrimarkaw li Grant u Ayers kienu *frail* u kienu jbgħatu minn **kundizzjonijiet cirkulatorji** li jimplikaw *possible reduced life expectancies*. **Il-videos u r-ritratti tal-vittmi mehudin bihom bla hwejjeg u fejn jidhru in distress huwa fatt most unusual.** Dawn kien jixirqilhom jigu mghejjuna u johorgu mill-istat li kienu fih mhux jittieħdu filmati taghhom f'dak l-istat! **Ikkonkludew ukoll li Ayers ma kienx kapaci jiddeciedi għalih innifsu u għalhekk gie mcaħhad minn attenzjoni medika.**

Fix-xhieda minn taghhom *viva voce* intqal: "*Il-filmati jidhru t-tnejn li huma frail, speċjalment Ayers kien bl-ippurgar iswed ngħidulu Melaena, possibilment bleeding li jista' jigi mill-istonku, tal-eta' ukoll, hu kien frail hafna u haga li nnutajna li huwa waqt li kien frail daqshekk ibatu bil-Parietal Vascular Disease, dawn it-tnejn, waqt li kien f'dik il-kundizzjoni bil-Melaena, bl-ippurgar ma' kullimkien, l-imputata deheret li ma haditx azzjoni, fis-sens illi sejhet għall-ghajjnuna medika, le le osservazzjoni tagħna, anzi haditlu l-filmati u tghidlu fejn waqajt, kif waqajt, ghidilna kif waqajt. Din ahna, t-tlieta li ahna ma rajnhiex haga li tregi li hija normali fic-cirkostanzi li kien fihom Ayers..... t-toxicology f'Ayers ma rrizulta xejn, assolutament xejn.....ma kienx taht xi effett ta' xi droga illi tnaqqaslu l-kapacita' li jiffunzjona etc. Din għamilna din l-osservazzjoni għall-fatt illi fil-filmati jidher li hi qegħda tkellmu lil Ayers u hu qed igedwed bid-diskors, pero' eliminajnih għax dan kien biss jumejn qabel il-mewt. Eliminajna li kien taht xi effett ta' droga bħal Benzodiazepines jew hekk li jisslowjawlu l-ispeech jew il-funzjonijiet tiegħu jirritardjawhomlu. Dik għamilna dik l-osservazzjoni a bazi tal-fatt ta' Scotham.**Fl-anzjanita', c-cirkolazzjoni dghajffa, l-eliminazzjoni tad-***

²⁰³ 907

²⁰⁴ Fol.909

²⁰⁵ Fol.912

²⁰⁶ Fol.914

²⁰⁷ Dok. SFF a fol.1464

droga ddum aktar, jigifieri wiehed kien jistenna li jsib anke f'livell baxx ta' xi medicinali, filfatt ma kien hemm xejn"²⁰⁸ Dr. Scerri li kien ezamina fizikament lil Ayers ikompli: *"Vjolenza akuta as such li kkagunatlu l-mewt dirett, ma deherx li kien hemm, pero' nigbdu l-attenzjoni li kien hemm hafna lezzjonijiet in different stages of healing, continuous trauma, fhimtha, li din qed tihhilja u mbaghad ghandu trauma ohra, daww rajnihom f'Ayers u anke rajnihom fi Grant"*.²⁰⁹

Illi **Mr. Peter Ferry** jixhed dwar id-dehra ta' Grant fil-jum qabel mewtu *"jien innutajt li kien astenic, kien batut, frail, kellu low body mass index hafna, kien hemm jidhru fuq il-filmata xi sinjali ta' tbengil fuq mohhu u partijiet ohra ta' gismu per ezempju r-ras, u l-id ix-xellugija, ma stajtx nifhem x'qieghed jghid jien ikkonkludejt fin-nuqqas ta' sahha, ahna fil-geratrija nghidulha frailty, kien iktar frail milli stajt nara fuq in-noti medici u anke xi ritratt li ttiehed qabel, ma kelliex id-data tieghu jigifieri ddeterjora, l-istat ta' sahha tieghu tidher li ddeterjorat."* Dwar il-filmata ta' Ayers jghid *"Jien li laqatni fit-tieni filmata li kien hemm, t-tieni persuna Neville Ayers, l-aktar li laqatni li kellu ppurgar iswed, niezel mieghu waqt li kien fil-banju li ghalija ghax jien tabib, ma nafx ghal min mhux tabib xi tfisser imma ppurgar iswed.....F'ritratt zgur jidher li hemm ppurgar iswed u dan jidher li qieghed fil-banju jipprova jqum u ma jistax.....l-ippurgar iswed jista' jkun tkun il-kawza tal-medicina li kien qed jiehu"*.²¹⁰ Izid *"Il-kundizzjoni originali taghhom hija simili, ic-cirkolazzjoni t-tnejn kellhom problema dawn, ic-cirkolazzjoni, mard fic-cirkolazzjoni. Hija l-istess marda, wahda li taffetwa l-mohh u l-ohra li taffetwa c-cirkolazzjoni tas-saqajn u filfatt t-treatment huwa simili hafna ta' xuxlin..... Id-dar posthom imma mbaghad, oovjament, generalment ikollhom kura kontinwa ma' jew spezialista' jew tabib tal-familja,"*²¹¹

Illi l-**Professor Emanuel Farrugia** jixhed hekk: *"Li laqatna li kien li ghandek zewg Inglizi anzjani, t-tnejn morda, t-tnejn morda mhux hazin, jigifieri dawn kemm ha jghixu nahseb illi, ghalina t-tobba mhux surpriza li jaqa' u jmut, jigifieri ghalina dik hija mportanti u s-similarity bejn iz-zewg kazijiet, fejn ghandna dawn iz-zewg kazijiet jixbhu daqshekk lil xulxin, dik kienet unusual, u t-tieni haga li kienet unusual illi meta dawn kienu qeghdin litteralment f'poverta ta' moviment, litteralment mal-art illi ghalina l-aktar haga simplici kienet taqbad it-telefon u ccempel l-ambulanza u*

²⁰⁸ Fol.1453

²⁰⁹ Ibid.

²¹⁰ Fol.1455

²¹¹ Fol.1456

ghalkemm jidher il-pazjent jghid kemm il-darba li ma rridx immur l-isptar, hemmekk hemm diffikulta' jekk inti whether you over rule the person or not, u ddiskutejniha hafna ahna u qbilna li at that point in time we would have over ruled what the patient was saying. Din mhux qed nghiduha lightly, ghax nemmnu hafna li l-pazjent ghandu dejjem the last say, pero' jkun hemm mumentu u nahseb li dan kien wiehed minnhom li dan il-pazjent ghandu jigi rikoverat f'dak l-istadju li kien."²¹²

Ghalhekk gie ppruvat li hi kienet konsapevoli tal-eta` u tal-istorja medika taghhom, kif jista' jitqies li din ma ppermettietx li sahhithom u persunithom issirhom hsara meta ma tatx kaz ghall-waqat ta' Grant kawza tal-loss of balance kif lanqas ma tat kaz ghad-djufija ta' Ayers wara dak l-ipurgar kollu fejn minflok ghenitu, hallietu gharwien huta f'banju minghajr ilma u dan mhux fl-eqghel tas-sajf izda f'Ottubru.

Illi hu hawn li x-xhieda ta' Mizzi dwar kif l-imputata kienet tippermetti li Ayers joqghod gharwien f'banju minghajr ilma, anzi kienet hi stess li tnehhilu l-ilma biex Ayers jiksah u jigi mgieghel johrog mill-banju, takkwista rilevanza meta jitqies li Dr. Scerri kkonstata li kien *hypothermic* filwaqt li l-awtopsja kkonkludiet li miet kawza ta' *pneumonia*!!

Illi Mizzi xehdet dan "I saw him and I saw him without water. And I told her: "What happened, because he is without water. And he is going to get cold." And she told me: "Now I removed the water because he wants to stay there and for any chance he is going to get cold and he came out from that bath. And I told her that he was without water. And she told me: "Yes I know, I just now removed the water, to get up from the bath."".²¹³ Matev ukoll jikkonferma kif Ayers kien jigi mitluq gharwien fil-banju: "I saw him in the bathroom and his condition has changed to the extent that sometimes he was naked in the bath, lying, and his condition was visibly getting bad.in the bathroom he was visibly unable to move freely on his own. He was either lying in the bath naked and sometimes he had done a pipi or koko in the bathroom or he was outside leaning out"²¹⁴.

Imiss issa li fid-dawl ta' dawn ir-rizultanzi processwali jigu kkunsidrati r-reati li tinsab addebitata bihom l-imputata.

²¹² Fol.1457

²¹³ Fol.226-228

²¹⁴ Fol.234-235

Konsiderazzjonijiet Legali

Ikkunsidrat,

Illi fin-nota ta' rinviju għall-gudizzju minn tiegħu, l-Avukat Generali qed jindika r-reat ta' omicidju involontarju minkejja li l-ewwel zewg akkuzi jittrattaw l-omicidju volontarju.

Issir riferenza għas-sentenza tal-Qorti tal-Appell Kriminali (Superjuri) **Ir-Repubblika ta' Malta v. Paschalino Cefai** fejn gie trattat verdett fejn l-akkuzat għalkemm ma nstabx hati tar-reat t'omicidju volontarju instab hati tar-reat kompriz u involut tal-offiza gravi fuq il-persuna.²¹⁵

Fis-sentenza **Il-Pulizija vs Mark Meli u Omissis** il-Qorti kellha okkazzjoni tikkunsidra meta tista' tinstab htija f'reat kompriz u involut f'reat iehor li persuna tkun giet akkuzata bih:²¹⁶

8. Issa bħalma qalet din il-Qorti diversament presjeduta fl-Appell Kriminali fl-ismijiet **Il-Pulizija v. Michael Carter** deciz fis-7 ta' Dicembru 2001, meta "r-rinviju għall-gudizzju jsir skond is-subartikolu (3) tal-Artikolu 370 (u allura wiehed qed jittellem fuq għall-anqas reat wiehed, fost dawm imputati, li huwa ta' kompetenza tal-Qorti Kriminali), in-nota ta' rinviju għall-gudizzju tassumi rwol simili għal dak ta' l-att ta' akkuza quddiem il-Qorti Kriminali. Fin-nota ta' rinviju għall-gudizzju skond l-Artikolu 370(3) ma jistgħux jizdiedu reati li dwarhom ma tkunx saret il-kumpilazzjoni; l-Avukat Ġenerali, naturalment, jista' jnaggas reat jew reati u anke jzid skużanti. Bhal fil-każ tal-att ta' akkuza, jekk fin-nota ta' rinviju għall-gudizzju taht l-imsemmi Artikolu 370(3) l-Avukat Ġenerali jakkuza lil xi hadd bħala awtur ta' reat, il-Qorti tal-Maġistrati, wara li tkun akkwistat il-kompetenza bil-kunsens ta' l-akkuzat (Art. 370(3)(c)), tista' ssibu hati ta' tentattiv ta' dak ir-reat, jew ta' reat iehor anqas gravi iżda kompriz u involut f'dak ir-reat, jew bħala kompliċi f'dak ir-reat" (sottolinear ta' din il-Qorti).

9. Fil-każ in eżami huwa evidenti li bir-rinviju għall-gudizzju tat-18 ta' Awissu 2008 magħmul skond is-subartikolu (3) ta' l-artikolu 370 tal-Kap. 9, meta fil-paragrafu (a) l-Avukat Generali ċċita l-artikoli 214 u 221 tal-Kap. 9 tal-Liġijiet ta' Malta huwa kien qiegħed jiddikjara illi mill-atti tal-kumpilazzjoni dehrli li tista' tinsab htija (jew htijiet) tar-reat ta' offiza fuq il-persuna (skond l-artikolu 214) liema offiza hi ta' natura hafifa (skond l-artikolu 221). L-artikolu 214 fil-fatt huwa l-artikolu li jikkontempla r-reat ta' offiza fuq il-persuna. L-artikoli sussegwenti mbagħad jiddistingwu għall-finijiet ta' piena bejn offiza gravi, offiza gravissima u offiza hafifa. Galadarba l-Avukat Ġenerali, fin-nota ta' rinviju tiegħu, abbina l-artikolu 214 ma' l-artikolu 221, dan ifisser illi kien qiegħed jakkuza lill-appellant Mark Meli li kkawza offiza ta' natura hafifa. Fl-akkuzi originali, l-appellant kien gie akkuzat permezz ta' l-ewwel tliet imputazzjonijiet bir-reati ta' tentattiv ta' omicidju ta' Mark Bencini (l-ewwel imputazzjoni), li kkağuna offiza ta' natura gravissima fuq Mark Bencini (it-tieni imputazzjoni), u li kkağuna offiza ta' natura gravi fuq Mark Bencini (it-tielet imputazzjoni). Permezz tan-nota ta' rinviju, dawn it-tliet imputazzjonijiet ġew irtirati, bħalma ġiet irtirata

²¹⁵ Per. S.T.O. Prim Imhalled Silvio Camilleri; Onor Imhalled David Scicluna, Onor. Imhalled Joseph Zammit McKeon; Deciza 8 t'Ottubru, 2015; Att ta' Akkuza Nru. 30/2013

²¹⁶ Per Onor. Imhalled Dr. David Scicluna; Deciza 03 ta' Novembru, 2014; Appell Kriminali Numru. 108/2012

wkoll l-imputazzjoni li mbotta lil haddiehor fit-triq biex iweggagghom jew jinsultahom (is-seba' imputazzjoni).

Imbghad f'**Il-Pulizija vs Peter Borg** deciza mill-istess Qorti ntqal:²¹⁷

Illi ma hemmx dubju li r-rinviju għall-gudizzju li jagħmel l-Avukat Generali għandu jitqies bħallikieku hu att ta' l-akkuza, u hekk kif fuq att ta' akkuza, skond l-artikolu 467 (4) il-guri (jew il-Qorti) tista' ssib htija ta' reat jew reati iżgħar, basta li dan jew dawn ir-reati jkunu komprizi w involuti f' xi parti ta' l-att ta' l-akkuza, hekk ukoll il-Qorti tal-Magistrati (Malta) bħala Qorti ta' Gudikatura Kriminali, tista' ma ssibx htija skond l-artikoli ndikati fir-rinviju għall-gudizzju tal-Avukat Generali imma ssib htija ta' reat jew reati minuri komprizi u involuti. Dan għaliex ir-regoli imsemmija fis-subartikoli (2) u (4) tal-artikolu 467 tal-Kodici Kriminali gew dejjem ritenuti li japplikaw għall-Qrati ta' Gustizzja Kriminali kollha. (Ara. App. Krim. "Il-Pulizija vs. omissis u Carmelo Agius" [24.5.2002], "Il-Pulizija vs. Emmanuel Camileri et" [23.11.2001] "Il-Pulizija vs. Andrew Ellul Sullivan et" [20.3.2003] , "Il-Pulizija vs. Michael Carter" [7.12.2001] u oħrajn.) Għalhekk l-Ewwel Qorti kellha tindaga jekk fil-fatt irrizultax xi reat kompriz w involut qabel ma tillibera għal kollox lill-appellat kif għamlet.

Illi l-Qorti tal-Appell Kriminali fis-sentenza tagħha fl-ismijiet **Il-Pulizija vs Carmen Rapinett** sostniet:

Din il-Qorti, fil-waqt li tikkoncedi li l-Ewwel Qorti setgħet legalment u ragjonevolment tat il-beneficju tad-dubju lill-appellata fuq jekk l-offizi kienux volontarji, ma tistax taqbel mal-apprezzament tal-fatti li għamlet l-Ewwel Qorti meta skolpat pjenament lill-appellata anki mir-reat kompriz w involut ta' offizi involontarji ta' natura gravi kagjonati b' nuqqas ta' hsieb u bi traskuragni da parti tagħha bħala omm tal-minuri li kienet tkun wahedha d-dar magħha.

Illi ma hemmx dubju li taht is-sistema legali tagħna il-koncett tal-prevedibilita' huwa determinanti biex tirradika ruha il-"*culpa*" jew eghmil negligent li jwassal għall-event dannuz, u li jekk l-event dannuz, għalkemm mhux mixtieq u previst, seta' jigi previst, allura ikun hemm il-"*culpa*" li twassal għar-responsabbilta' kriminali, ghax kif jgħid il-CARRARA (Programma 84) :-

"il non aver previsto la conseguenza offensive sconfinata la colpa dal dolo . Il non averla potuto prevedere sconfinata il caso dalla colpa."

u kif irriteriet il-Corte di Cassazione Taljana (13.V. 1907 , in Giust. Penale , 1907 , 772) :-

"e' sempre il concetto della prevedibilita' dell' evento ...quello su cui si fondano , se non esclusivamente , almeno principalmente , e la teorica di diritto e il codice positivo nei reati colposi."

(ara. App. Krim. "**Il-Pulizija vs. Lorenza Dimech**" [27.6.2002] fejn gew trattati l-obbligi ta' min jonqos li jissorvelja tfal iżgħar li jkunu fdati fil-kustodja tiegħu.)

Ikkonsidrat;

²¹⁷ Per Onor. Imhalled Joseph Galea Debono; Deciza 10 ta' Novembru, 2005; Appell Kriminali Numru. 196/2005

Illi ghalhekk din il-Qorti tqis li ghall-inqas l-appellata Rapinett kellha tinstab hatja tar-reat kontinwat t' offizi gravi involontarji fuq il-persuna....

Ghalhekk stabbilit li tista tinstab htija fl-imputata ghall-omicidju involontarju, irid jigi ddeterminat jekk jezistux l-elementi rikjesti sabiehx jissussisti dan ir-reat u cioe` jekk kienx hemm da parti taghha l-*"culpa"*, jew eghmil negligenti, li wassal ghall-event dannuz. Kemm il-darba jigi pruvat li l-event dannuz, ghalkemm mhux mixtieq u previst, seta' jigi previst, allura ikun hemm il-*"culpa"* li twassal ghar-responsabbilta' kriminali.

Ir-Reat ai termini tal-Artikolu 225 tal-Kodici Kriminali

Issir riferenza ghas-sentenza tal-Qorti tal-Appell Kriminali **Il-Pulizija vs Dorianne Camilleri**:²¹⁸

Fil-fatt artikolu 225 jittellem fuq *"nuqqas ta' hsieb, traskuraggni, nuqqas ta' hila fl-arti jew professjoni tieghu u nuqqas ta' tharis ta' regolamenti"*

Fid-dottrina u l-gurisprudenza kontinentali jezistu zewg teoriji partikolari dwar il-kuncett ta' negligenza: it-teorija oggettiva u dik suggettiva. L-ezami ghat-teorija oggettiva mhux wiehed li hu mmirat biex jistabilixxi jekk il-persuna ipprevedietx jew setghetx tipprevedi dak l-incident partikolari tal-kaz izda jekk l-agir ta' dik il-persuna jaqax taht l-obbligu ragjonevoli ta' attenzjoni li kull persuna fis-socjeta` hija prezunta li ghandu jkollha f' cirkostanza partikolari. Min-naha l-ohra t-teorija suggettiva tenfasizza fuq kemm wiehed ikun vigilantanti bil-limitazzjonijiet tieghu personali f' dak il-kaz partikolari.

Ghalkemm il-legislatur naqas milli jaghti spjegazzjoni tat-termini *"nuqqas ta' hsieb u traskuragni"*, madanakollu l-Qrati taghna dejjem interpretaw dawn it-termini bhala nuqqas ta' attenzjoni u ta' tehid ta' prekawzjonijiet li kienu mistennija f' cirkostanza partikolari. Tali interpretazzjoni taghmel sens hafna iktar meta tikkunsidra li l-Kodici taghna huwa bbazzat fuq il-Kodici Taljan tal-1889 fejn l-ezami ta' negligenza huwa wiehed suggettiv.

Di piu' il-gurista Sir Anthony Mamo, fin-Noti tieghu, jistipula illi ghalkemm il-legislatur jonqos milli jaghti definizzjoni ta' dawn it-termini pero' **"it is clear that by them the law means generally the absence of such care and precautions as it was the duty of the defendant to take in the circumstances."** Il-Professor Mamo kompli jsostni li **"the essence of negligence is made to consist in the "possibility of foreseeing" the event which has not been foreseen"**.²¹⁹

²¹⁸ Per Onor. Imhalled Edwina Grima, Deciza 28.02.2018

²¹⁹ Lectures in Criminal Law, Volume 1

Din hija t-tezi li dejjem giet accettata mill-Qrati taghna. Fis-sentenza tal-Qorti tal-Appell Kriminali fl-ismijiet ‘ **Il-Pulizija vs Richard Grech**’²²⁰ gie deciz li l-kuncett ta’ traskuragni jimplika “**certa non-kuranza, certu abbandun kemm intellettiv kif ukoll materjali.**” Ghaldaqstant skond l-insenjament tal-gurisprudenza nostrana, li llum il-gurnata hija ormai wahda palesi, sabiex l-appellanti setghet tinsab hatja li saqet b’ nuqqas ta’ hsieb jew bi traskuragni, kien jehtieg li tali hsara tkun preveddibli, ghalkemm mhux prevista.

Fis-sentenza tal-Qorti Kriminali fl-ismijiet ‘ **Pulizija vs Perit Louis Portelli**’²²¹ gie stipulat li:

“Hu mehtieg ghall-kostituzzjoni tar-reat involontarju skond l-art. 239 [illum 225] tal-Kodici Penali illi tirrikorri kondotta volontarja negligenti – konsistenti generikament f’ nuqqas ta’ hsieb (“imprudenza”), traskuragni (“negligenza”), jew nuqqas ta’ hila (“imperizia”) fl-arti jew professjoni jew konsistenti specifikatament f’ nuqqas ta’ tharis tar-regolamenti – li tkun segwita b’ ness ta’ kawzalita’ minn event dannuz involontarju.

Ghandu jigi premess illi, ghall-accertament tal-htija minhabba f’ kondotta negligenti, ghandu jsir il-konfront tal- kondotta effettivament adoperata ma’ dik ta’ persuna li s-sapjenza rumana identifikat mal-“bonus pater familias”, dik il-kondotta, cioe, illi fil-kaz konkret kienet tigi wzata minn persuna ta’ intelligenza, diligenza u sensibilita’ normali: kriterju li filwaqt li jservi ta’ gwida oggettiva ghall- gudikant, ihallih fl-istess hin liberu li jivvaluta d-diligenza tal-kaz konkret. “La diligenza del buon padre di famiglia costituisce un criterio abbastanza indeterminato per lasciare al giudice gran liberta’ di valutazione.” (Giorgi, Teoria delle Obbligazioni, II, 27, p. 46)”

Fis-sentenza moghtija mill-Qorti tal-Appell Kriminali fil-11 t’ Ottubru 2012 fl-ismijiet : **Il-Pulizija v Peter Stroud**²²², il-Qorti ccitat dak illi qal Archbold fil-’ *Criminal Pleading, Evidence and Practice*:

“Where death results in consequence of a negligent act, it would seem that, to create criminal responsibility, the degree of negligence must be so gross as to amount to recklessness. . . Probably, of all the epithets that can be applied “reckless” most nearly covers the case ... but whatever epithet be used, and whether an epithet be used or not, in order to establish criminal responsibility, the facts must be such that . . . the negligence of the prisoner went beyond a matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the state and conduct deserving punishment...”

Issir riferenza wkoll ghas-sentenza fl-ismijiet **Il-Pulizija vs Ludwig Micallef**:²²³

²²⁰ Deciza nhar il-21 ta’ Marzu, 1996 per Onor. Imhallet V. DeGaetano

²²¹ Deciza nhar l-4 ta’ Frar, 1961 per Onor. Imhallet J. Flores

²²² Per Onor. Imhallet M. Mallia

²²³ Deciza mill-Qorti tal-Magistrati (Malta) bhala Qorti ta’ Gudikatura Kriminali fis-17 ta’ Awwissu, 2010, Nru 753/2006 per Onor. Magistrat Dr. Consuelo-Pilar Scerri Herrera. Il-konsiderazzjonijiet legali maghmula minn din il-Qorti gew abbraccjati fis-sentenzi tal-istess Qorti, diversament preseduta fil-kawzi fl-ismijiet **Il-Pulizija vs**

.... fil-materja tal-kolpuz hemm necessarjament l-element t'attivitá diretta ghal xi fini partikolari, li minhabba nuqqas ta' certu prekawzjoni jistghu jigu lezi jew danneggjati jew impregudikati l-interessi ta' terzi. Il-konnotat karettistiku tal-kulpa huwa l-prevedibiltá tal-event dannuz, li kondotta llegali ta' xi hadd tista' ggib. Din hija l-kulpa normali jew l-hekk imsejha 'colpa incosciente' a differenza minn dik imsejha 'colpa cosciente', li hija l-kulpa bl-element fiha tal-previst tal-akkadut.

Hemm diversi forom ta' kodotta kolpuza derivanti minn att ta' negligenza, imprudenza, imperizja u non ossevanza tal-ligijiet, regolamenti, ordnijiet u simili.

L-imprudenza tigi mill-agir ta' xi hadd minghajr ma jiehu l-opportuni kawteli.

In-negligenza tigi mid-disattenzjoni u disakkuratezza tal-agent fil-kondotta tieghu.

L-imperizja hija l-forma specifika tal-kulpa professjonali cioe' kif jghid **Manzini**:- "L-inettitudine e insufficienza professionale generale o specifica, nota all' agente di cui egli vuole non tener conto".

Il-kulpa tista' tkun dovuta wkoll ghal non osservanza tal-ligijiet, regolamenti, ordnijiet u simili bhal ma huma l-assjem ta' regoli predisposti mill-Ordinanza tat-Traffiku –Kap 65, il-High Way Code – Motor Vegicle Regulations – bl-iskop li jigu evitati l-possibilitajiet ta' hsara u dannu lil terzi.

Il-Qorti hi ghalhekk sejra tezamina bir-reqqa x'inhuma l-ingredjenti tar-reat principali in ezami, u cioe' ta' dak kontemplat fl-**Artikolu 225 tal-Kap. 9**, u cioe' tar-reat li bih gie akkuzat l-imputat, u cioe' omicidju involontarju. L-**artikolu 225 tal-Kap 9** jiddisponi s-segwenti:

"Kull minn b'nuqqas ta' hsieb, bi traskuragni jew b'nuqqas ta' hila fl-arti jew professjoni tieghu, jew b'nuqqas ta' tharis tar-regolamenti, jikkaguna l-mewt ta' xi hadd ..."

Issa ghalhekk, wiehed irid jifli l-elementi li jikkostitwixxu dan r-reat, li huma bazikament tlieta u cioe:-

1. b'nuqqas ta' hsieb, bi traskuragni, jew b'nuqqas ta' hila fl-arti jew professjoni tieghu jew b'nuqqas ta' tharis tar-regolamenti ;
2. ktaguna l-mewt ;
3. fuq persuna.

Fis-sentenza moghtija mill-Qorti tal-Appelli Kriminali nhar il-21 ta' Marzu 1996 fl-ismijiet il-**Pulizija vs Richard Grech** dik il-Qorti sostniet is-segwenti:-

"Huwa mehtieg ghal kostituzzjoni tar-reat involontarju skond l-artikolu 225 tal-Kodici Penali, li tirrikorri kondotta volontarja, negligenti – konsistenti generikament f'nuqqas ta' hsieb, imprudenza fl-arti jew fil-professjoni, jew konsistenti specifikament f'nuqqas ta' tharis ta' regolamenti, li tkun segwita b'ness ta' kawzalita' minn event dannuz involontarju. Ghandu jigi premess li ghal accertament tal-htija minhabba f'kondotta effettivament adegwata ma' dik ta'

Edward Bonnici (27.010.2016), u **Il-Pulizija vs Rudolph Gatt** (03.02.2016), it-tnejn per Onor. Magistrat Dr. Josette Demicoli.

persuna li s-sapienza umana identifikat mal- bonus pater familias, dik il-kondotta cioe' fil-kaz konfet, kienet tigi uzata minn persuna ta' intelligenza, diligenza u sensibilita normali, kriterju dan li filwaqt li jservi ta' gwida objettiva ghal gudikant, jhallieh fl-istess hin, liberu li jivvaluta d-diligenza tal-kaz konkret."....

Fil-kawza fl-ismijiet **Il-Pulizija v Leonard Grech** deciza mill-Qorti tal-Appell Kriminali nhar il-hamsa ta' Settembru, 1990, il-Qorti dahlet fid-dettal dwar in-natura tal-kolpa f'dawn il-kawzi. In succint fuq skorta ta' awturi u gurisprudenza, t-tre pod tal-kolpa gie definit bhala:

1. la volontarieta dell'atto;
- 2 la mancata previsione dell'effetto nocivo;
- u
- 3 la possibilita di prevedere.

Bhala konkluzzjoni tad-definizzjoni li din il-Qorti trid taghti lit-terminologija culpa, ghalhekk jibqa' dejjem li l-element taghha huwa volontarieta' tal-att, in-nuqqas ta' previzjoni tal-effetti dannuzi ta' dak l-att u l-possibilita' ta' previzjoni ta' dawk l-effetti dannuzi. Jekk l-effetti dannuzi ma kienux prevedibbli, hlief b'diligenza straordinarja li l-ligi ma tesigix u li semmai tista' ggib culpa levissima li ma hiex inkriminabbli, ma hemmx htija. (vide **Il-Pulizija vs John Vella** deciza nhar il-15 ta' Dicembru 1958 mill-Qorti ta' l-Appelli Kriminali). [sottolinejar tal-Qorti]

Fis-sentenza fl-ismijiet **Il-Pulizija vs Aaron Camilleri et** gie deciz:²²⁴

"Kif inghad fis-sentenza **Il-Pulizija vs Saverina sive Rini Borg et**, deciza mill-Qorti tal-Appell Kriminali fil-31 ta' Lulju 1998, "Skond l-Artikolu 225 tal-Kodici Kriminali, sabiex jirrizulta d-delitt ta' omicidju involontarju, hemm bzonn li tirrikorri kondotta volontarja negligenti, konsistenti generikament f'nuqqas ta' hsieb (imprudenza), negligenza jew traskuragni, jew ta' hila (imperizja) fl-arti jew professjoni, jew konsistenti specifikatament fin-nuqqas ta' osservanza tal-ligijiet, regolamenti, ordnijiet u simili, li tkun segwita b'ness ta' kawzalita', minn akkadut dannuz involontarju".

Il-gurist **Francesco Carrara** jghid hekk dwar il-culpa, "... il tripode sul quale si aside la colpa sara` sempre questo - 1° volontarieta` dell'atto - 2° mancata previsione dell'effetto nocivo - 3° possibilita` di prevedere."²²⁵

Bl-istess mod, il-**Professur Anthony J. Mamo**, fin-noti tieghu, jghid hekk:

"In these definitions the essence of negligence is made to consist in the "possibility of foreseeing" the event which has not been foreseen. The agent who caused the event complained of, did not intend or desire it, but could have foreseen it as a consequence of his

²²⁴ Qorti tal-Magistrati (Malta) Bhala Qorti ta' Gudikatura Kriminali, Onor. Magistrat Dr Natasha Galea Sciberras, 25.04.2014, Kump. Nru 609/1993

²²⁵ **Carrara F.**, "Programma Del Corso Di Diritto Criminale", Vol. I (Parte Generale), p. 88.

act if he only had minded: so his negligence lies in his failure to foresee that which is foreseeable".²²⁶ [sottolinejar tal-Qorti]

U fis-sentenza fuq citata, gie ritenut hekk dwar il-kondotta kolpuza:

"... kondotta kolpuza hija definita bhala kondotta volontarja li tikkaguna event dannuz, mhux volut, izda prevedibbli, li seta' jigi evitat bl-uzu ta' attenzjoni jew prudenza fi grad ta' persuna normal".

Hemm diversi forom ta' kondotta kolpuza derivanti minn att ta' negligenza, imprudenza, imperizja u non ossevanza tal-ligijiet, regolamenti, ordnijiet u simili.

L-imprudenza tekwivali ghal "un atto inconsiderato e rischioso" maghmul b' "leggerezza" jew "sconsideratezza"²²⁷ u kif jghid **Antolisei**, "L'imprudenza e' propriamente l'avventatezza, l'insufficiente ponderazione ed implica sempre una scarsa considerazione per gli interessi altrui".²²⁸ U kif insibu fin-**Novissimo Digesto Italiano**, "Si comporta con imprudenza che tiene una condotta positive dalla quale occorre astenersi perche' capace di cagionare un determinato evento di danno o di pericolo, o che e' stata compiuta in modo non adatto, cosi' da essere, pericolosa per l'altrui diritto penalmente tutelato. E', quindi, una forma di avventatezza, un agire senza cautela."²²⁹ Bl-istess mod, fissentenza fl-ismijiet **Il-Pulizija vs Saverina sive Rini Borg et**, fuq citata inghad illi "L-imprudenza tigi mill-agir ta' xi hadd minghajr ma jiehu l-opportuni kawteli".

In-negligenza tigi mid-disattenzjoni u disakkuratezza tal-agent fil-kondotta tieghu, fil-waqt illi "l-imperizja hija l-forma specifika tal-kulpa professionali cioe', kif jghid il-**Manzini**: inettitudine e insufficienza professionale, generale e specifica, nota all'agente, di cui egli vuole non tener conto".²³⁰.....

Dwar id-diligenza rikjesta fil-kamp kriminali, il-**Professor Anthony Mamo** jghid illi "The amount of prudence or care which the law actually demands is that which is reasonable in the circumstances of the particular case. This obligation to use reasonable care is very commonly expressed by reference to the conduct of a 'reasonable man' or of an 'ordinarily prudent man', meaning thereby a reasonable prudent man: "negligence", it has been said, "is the omitting to do something that a reasonable man would do, or the doing something that a reasonable man would not do" ... What amounts to reasonable care depends entirely on the circumstances of the particular case as known to the person (**Carrara**, Programma, § 87n.) whose conduct is the subject of enquiry. Whether in those circumstances, as so known to him, he used due care – whether he acted as a reasonably prudent man – is in general a mere question of fact as to which no legal rules can be laid down."²³¹

²²⁶ **Prof. Sir A. J. Mamo**, Lectures in Criminal Law, p. 67

²²⁷ Dizionario Zingarelli, (2002) "Vocabalorio della Lingua Italiana", **Nicola Zingarelli** (Edizzjoni 12, Gunju2001).

²²⁸ **Antolisei F.**, "Manuale di Diritto Penale: Parte Generale", Edizzjoni 15 (Giuffre', 2000), p. 366.

²²⁹ Novissimo Digesto Italiano, Vol. III, p. 548.

²³⁰ **Il-Pulizija vs Saverina sive Rine Borg**, fuq citata

²³¹ Lectures in Criminal Law (First Year), p. 71.

Illi gie ampjament ippruvat li l-imputata kienet negligenti fl-ghemil taghha. Traskurat dawk li kienu l-aktar bzonn ghajnuna medika. Tant kienet konsapevoli tal-fatt li kellhom bzonn kura u kura immedjata li hasset il-bzonn tiddokumenta b'filmati l-istat mizerabbli u pjetuz ta' sahha li kienu fih fl-istess hin li tistqasihom jekk riedux immorru sptar – **indikazzjoni cjara li hi rrikonoxxiet li dawn kienu nies posthom kien fl-isptar sabiex ma tibqax issirilhom hsara lil sahhithom jew li tigi perikolata hajjithom!!** Setghet tipprevedi x'kienu ser ikunu l-konsegwenzi u kien ghalhekk li zbarkat fuq dokumentarju li hadet u ddirigiet hi stess! Kien ovvju li dawk fdati fil-kura taghha kellhom htiega ta' sptar. Il-mistqosijiet taghha fl-ahjar ipotezi kienu nsensati, vojta u ridikoli. L-ommissjoni taghha mminnat rreparibbilment id-*duty of care* li kellha obbligu tizvolgi lejn Ayers u Grant.

Izda kif sewwa rrilevat l-abbli difiza fit-trattazzjoni minn taghha, mir-rizultanzi medici u dawk patologi, ma giex soddisfacentement ippruvat in-ness ta' kawzalita` bejn l-ommissjoni tal-imputata li ssejjah ghall-ghajununa medika - sa mill-bidu nett u fiz-zewg kazijiet meta rat sahhiet Ayers u Grant jiddeterjoraw minflok qaghdet tigbed filmati - u l-imwiet ta' dawk li lejhom indubbjament assumiet *duty of care* lejhom meta iddecidiet tilqagghom go darha.²³²

Fil-fatt mistoqsijin mill-abbli difensur jekk in-nuqqas ta' trattament li garrbu setghax ikun il-kawza tal-mewt ta' Grant, it-twegiba tal-esperti medici kienet “Assolutament ma tistax tghid b'certezza”. Dwar Ayers jghidu “Direttament ma tistax torbtu...impossibli tghid, impossibli, jekk dan per eżempju kellu d-demm baxx ghax you know kellu anemia jew xi haga, kieku gie rikoverat, nahseb li seta' kien hemm attentat to save his life... How do we know, we cant be sure”.²³³ Il-patologi jikkonkludu li filwaqt li Grant miet of *natural causes* minn kawza ta' *pulmonary thromboembolism*²³⁴ il-kawza tal-mewt ta' Neville Ayers kienet *pneumonia*.²³⁵

Ghalhekk l-imputata qed tigi liberata mill-ewwel zewg imputazzjonijiet u cioe` mill-akkuzi tal-omicidju involontarju ta' David Grant u Neville Ayers.

²³² Dwar il-kuncett tad-*duty of care* vide riferenzi fis-sentenza **Il-Pulizija vs Salvatore Chircop et ; Deciza 6 ta' Marzu, 2019.**

²³³ Fol.1459

²³⁴ Fol.28-29

²³⁵ Fol.773-774. Ir-Rapport hu esebit a fol.775- **Dok. AS**

Ir-Reati ai termini tal-Artikoli 257A u 257C tal-Kodici Kriminali

Illi l-akkuzata tinsab akkuzata bir-reati ravvizati bl-artikoli 257A u 257C tal-Kodici Kriminali li huma kapijiet alternattivi ghal xulxin.

Bl-Att XXXI tal-2014, mfassal fuq il kapitolu li jittratta *Elder or Dependent Adult Abuse* fil-Californian Penal Code²³⁶ il-legizlatur introduca fid-dritt penali Malti istitut disinjat specifikatament biex jipprotegi persuni anzjani u adulti dipendenti.

Illi l-artikolu 257A(1) tal-Kodici, fl-ahhar forma tieghu, jaghmel ukoll riferenza ghall-kuncett ta' kura li wiehed jista' jkollu ta' persuna anzjana jew adult dipendenti:

Persunawaqt li jkollha l-kura u l-kustodja ta' persuna anzjana jew adult dipendenti, xjentement iggieghel jew tippermetti li l-persuna jew is-sahha tal-persuna anzjana jew adult dipendenti ssirilhom hsara.....

Illi fis-sentenza tal-Qorti tal-Appell Kriminali fl-ismijiet **Ir-Repubblika ta' Malta vs Omissis, Concetta Decelis, Jason Louis Paul Decelis** inghad:²³⁷

Jigifieri certament il-gurati setghu ragjonevolment jikkonkludu mhux biss li l-appellanti kienet volontarjament assumiet a duty of care izda wkoll li volontarjament ommettiet milli ssejjah ghajnuna medika nonostante li l-kondizzjoni ta' Rachel Bowdler kienet tidher aghar minn dik li kien ikun fiha t-tifel taghha.....

Mela aktar u aktar l-appellanti ma jmissha gatt iddecidiet li tiehu fidejha r-responsabbilta' ghall-kura ta' Rachel Bowdler u kien indikat li ssejjah l-ghajnuna medika sabiex tezimi ruhha minn kull responsabbilta'

Tajjeb hawn li ssir referenza ghal dak li jinghad mill-awturi Timothy H. Jones u Michael G. A. Christie fil-ktieb taghhom **Criminal Law** mis-serje **Greens Concise Scots Law**²³⁸ dwar il-kuncett ta' *duty of care* jew *duty to act*:

*"There are also instances where the common law would probably impose a duty to act. This will be the case where an individual has undertaken to do something upon which the health and safety of others depends. Examples of this are the cases of **William Hardie**, where a charge of culpable*

²³⁶ **Chapter 13. Crimes Against Elders, Dependent Adults, and Persons with Disabilities**; Article 368.

²³⁷ Per STO Prim Imhalled Vincent De Geatano, Onor Imhalled David Scicluna, Onor Imhalled Joseph R. Micallef ; Deciza 25 ta' Settembru 2008.

²³⁸ **W. Green/Sweet & Maxwell**, Edinburgh 1996, p. 46.

homicide brought against an Inspector of Poor who had ignored the deceased's application for poor relief was held to be relevant, and an English case, **R. v. Instan**, where a fatal omission by a niece to provide food and medical attention for her invalid aunt resulted in a manslaughter (equivalent to culpable homicide) conviction. The crimes in these two examples were committed by failing to fulfil a legal duty. In **William Hardie** the legal duty was derived from a contract. The failure to act was not just a breach of contract with his employer, however, but provided the basis for a conviction: the duty of care also extended to members of the public he was paid to protect. In **Instan** the duty had been assumed voluntarily. This would seem to imply that if someone agreed to look after a neighbour's child and the child drowned in the bath while that child-minder was watching television, then a conviction for culpable homicide could ensue. This scenario could be analysed either in terms of a voluntary assumption of a duty of care or of a contractual obligation."

U f **Blackstone's Criminal Practice 2004** naqraw²³⁹:

"If a person voluntarily undertakes to care for another who is unable to care for himself as a result of age, illness or other infirmity, he may thereby incur a duty to discharge that undertaking, at least until such time as he hands it over to someone else. In **Instan** [1893] 1 QB 450, **D** lived with her aunt, who was suddenly taken ill with gangrene in her leg and became unable either to feed herself or to call for help. **D** did not give her any food, nor did she call for medical help, even though she remained in the house and continued to eat her aunt's food. She was convicted of manslaughter. The principle laid down in **Instan** was applied and extended in **Stone** [1977] QB 354. Stone's sister, Fanny, came to live with him and his mistress, Dobinson. Fanny was suffering from anorexia, but was initially able to look after herself. Gradually, however, her condition deteriorated, until she became bed-ridden. She needed medical help, but none was summoned and she eventually died in squalor, covered in bed sores and filth. Stone and Dobinson were each convicted of her manslaughter and the Court of Appeal upheld their convictions. **Because they had taken Fanny into their home, they had assumed a duty of care for her and had been grossly negligent in the performance of that duty.**

The fact that Fanny was Stone's sister was merely incidental to this."

[sottolinejar u emfazi tal-Qorti]

Imbagħad f'**Archbold – Criminal Pleading, Evidence and Practice 2006**²⁴⁰ jingħad dwar id-duty of care:

"The duty of care belongs more to the fields of contract and tort than to this work. However, the following should be noted.

"(a) It is in general for the judge to decide whether there is evidence capable of giving rise to a duty of care, and, if there is, it is for the judge to give the jury appropriate directions, but it is for the jury to decide, in the light of those directions, whether the defendant in fact owed the deceased a duty of care; but there might be exceptional cases where a duty of care obviously existed, as between doctor and patient or where Parliament had imposed a statutory duty, and, in such cases, the judge could properly direct the jury as to the existence of the duty: **R. v. Willoughby** [2005] 1 Cr.App.R. 29, CA. See also **R. v. Khan and Khan, ante**, and **R. v. Sinclair**, 148 N.L.J. 1353, CA (978400/2/4 Yf).

²³⁹ Para. A1.14 p. 9.

²⁴⁰ p.1799 -1800, para. 19-111.

“(b) A person may become liable for manslaughter by neglect of a positive duty arising from the nature of his occupation: **R. v. Lowe** (1850) 3 C. & K. 123 (an engineer in charge of the lift in a mine left it in the care of an ignorant boy); **R. v. Markus** (1864) 4 F. & F. 356 (a doctor absenting himself for the purpose of sport or some similar activity left unattended a patient whom he knew to be in a precarious condition); **R. v. Curtis** (1885) 15 Cox 746 (a local authority officer neglected to provide medical assistance to a destitute person). To hold that a person who supplied controlled drugs to another, owed the other a duty of care when the other, having consumed the drugs in his presence, was in obvious need of medical attention, would undoubtedly enlarge the class of persons to whom a duty of care was owed: **R. v. Khan and Khan, ante. Cf. R. v. Sinclair, ante**: whilst there is no authority holding that a medically unqualified person is under a duty to render assistance to a stranger or could come under such duty by virtue of the passage of time, a person who had been instrumental in his friend obtaining a fatal overdose of drugs, and who remained with him throughout the period of unconsciousness might come under such duty; and **R. v. Ruffell** [2003] 2 Cr.App.R.(S.) 53, CA: where the appellant, an experienced drug user, and the deceased, a friend who had been clean for some time, went to the appellant’s family home, after an evening’s drinking and there injected themselves with heroin, following which the deceased became ill, whereupon the appellant took steps to revive him, it had been open to the jury to find that the appellant had assumed a duty of care towards the deceased.”..... [sottolinejar tal-Qorti]

Fid-dawl ta’ dan l-insenjament gie ppruvat li l-imputata assumiet ghalha nfisha *duty of care* versu Ayers u Grant.

Dak li jrid jigi pruvat hu jekk fil-waqt li l-imputata kellha l-kura ta’ Grant u Ayers, xjentement gghelet jew ippermetiet li l-persuna jew is-sahha taghhom isirihom hsara.

Konkluzzjoni

Illi l-konkluzzjonijiet tat-tobba dwar kemm kien *unusual* u *uncalled for* li persuni *frail* u fi stat ta’ sahha tant hazina, jigu ffilmjati huma konstatazzjonijiet ta’ fatt li l-Qorti ghamlet hija stess malli rat il-filmati degradanti, dizgustanti li jqanqlu biss ghajb u stmerrija ghall-mod li bih gew trattati dawn l-anzjani hekk privi mis-sahha meta sabu rwiehom *unwilling actors* fejn propju giet sfruttata l-vulnerabbilita` taghhom; gie sfruttat b`mod skandaluz u oxxenn l-istat ta’ sahha deterjorat taghhom. Persuni mcahnda minn bizzejjed sahha biex jghidulha “*ieqaf*”, “*le*”! Dawn kienu persuni li mhux talli jidher bic-cjar li kienu qed jigi *filmed* kontra l-volonta` taghhom, imma aghar minn hekk dawn ma kienux f`posizzjoni li jwaqqfuha milli tkompli tumiljahom b’tant krudelta` w indifferenza ghat-tbghatija vizzibbli taghhom. Minkejja l-ispjegazzjonijiet inkreduli, ludikri u fantaxxjentifici taghha dwar ir-raguni ghaliex

iffilmjathom, jibqa l-fatt li persuni f' dik il-posizzjoni, meta huma l-aktar debboli, l-aktar vulnerabbli, mifnija mill-kondizzjonijiet medici li gja saret ampja riferenza ghalihom, **jigu mghejjuna kellhom bzonn u mhux ikomplu jigu mzebilha gharwenin bil-feci mdellek u niezel minnhom jew mixhutin kobba mal-art jew mhollija jghaffgu fuq il-feci tagghom stess.**

Illi t-tehid tal-filmat wahdu jammonta ghall-forma ta' *distress*, tbghatija mentali inflitta kapriccozament u gratwitament, meta minflok fittxet li tghinhom **xjentement hallithom ikkrepati mal-art jew f'banju mghawwgin u mghakksin, gharwenin f'xhur ta' kesha, Frar u Ottubru, sakemm bil-kumdita` kollha u b'uzu sarkastiku w krudili ta' kliem bhala "my darling" u "my love" kompiet b'sensiela ta' domandi b'menefregizmu li qatt sa issa din il-Qorti ma rat bhalu.** Persuni *visibly distressed* fejn jiggieldu man-nifs biex ikunu kapaci jwiegbu d-domandi incessanti taghha. **Dawn thallew fl-istat fejn kien ovvju li minghajr ghajnuna immedjata u f'waqtha sahhithom u persunithom kienet qed tissirilha biss hsara u kienet qed tigi kontinwament perikolata.** Dan ghamlitu semplicement ghall-skop ahhari wiehed li jservi biss lilha - sabiex fi kliemha tezonera ruhha minn xi forma ta' responsabbilita` penali.²⁴¹

Fil-mumentu ta' tbahtija li kienu qed igarrbu min jghinhom riedu u mhux min jaghmel dokumentarju tal-mizerja w il-passjoni li kienu ghaddejmin minnha. Min ried jidher ddokumentat mimli bil-hmieg tieghu stess, mixhut bhal paljaza mal-art jew go banju, jissielet biex jiehu nifs? Inkapaci milli jqum mill-art wahdu?

Il-filmati wahdhom ma huma xejn ghajr forma ta' tbatija mentali li nffliggiet fuqhom. **Minbarra flushom, li tammetti li tawha, din spiccat biex hadithom anke id-dinjita`tagghom.**

Mhemmx dubbju li c-cirkostanzi u l-kondizzjonijiet li sabu rwiehom fihom Grant u Ayers kienu tali li sahhithom u persunthom kienet qed issirilhom hsara u jigu perikolati. Minn banda Grant kien kontinwament qed jitlef il-bilanc, waqa' wara waqa' fejn spicca mimli tbengil u lacerazzjonijiet, persuna li kienet gja` soffriet stroke, b'nifs maqtugh u kliem li ma jinftiemx. Mill-banda l-ohra Ayers jipporga swiedija, *frail* u ccassat. Gharwien huta mitluq ghar-riehu; f'banju minghajr

²⁴¹ Fol.679

ilma. X'ma jkunx *hypothemic*! X'ma jkunx aktar suggettibbli ghal *pneumonia* li jirrizulta miet kawza taghha!

It-tnejn li huma *disoriented, frail*, jartikulaw kliem b' diffikulta kbira tant li l-imputata stess igghielhom jirrepetu dak li kienu qed jghidu ghax jew kienu *inaudible* jew ma setghetx tifhem x' qalu. L-imputata stess indunat li kellhom bzonn sptar, ghalhekk hadet il-filmati. Madanakollu halliethom fis-sitwazzjoni li kienu fiha sa mewthom. B'ghemilha ppermetiet li sahhiet Grant u Ayers issirilhom hsara. Ma ddejjet xejn thallihom f'sitwazzjoni fejn sahhithom u persunithom jigu perikolati, bil-waqgħat kostanti fil-kaz ta' Grant u b'ippurgar iswed - sinjal *loud and clear* - li kien qed ibghati minn xi forma ta' *illness* jew *disease* fejn purgar kontinwu minghajr kura jista' jkollu konsegwenzi irriversibbli fuq dawk milquta aħseb u ara fuq anzjan ta' 78 sena! Fil-fatt l-istess filmati jidher mitluq bla sahha go banju ma jistax johrog minnu minghajr ghajnuna - prurgar kontinwu dak li jagħmel, iħallik bla sahha, ma tiflahx ticcaqlaq tant li persuni jingħataw mill-ewwel xi tip jew iehor ta' *rehydration salts* precizament biex ikun hemm *replacement* tal-*body fluids* li wiehed ikun tilef. Ayers thalla jkompli jiddeterjora f'nuqqas totali ta' kura medika.

Matev ukoll kien ra is-sahha ta' Ayers tiddeterjora quddiem ghajnejh: "his condition has changed to the extent that sometimes he was naked in the bath, lying, and his condition was visibly getting bad. Worse, from what it was in the beginning. I can say that the condition of the gentleman was changing because on the first day when I saw him, he was walking on his own, he was talking on his own, he was pretty active, but in 3, 4, days, the situation had changed with him, in the sense that in the bathroom he was visibly unable to move freely on his own. He was either lying in the bath naked and sometimes he had done a pipi or koko in the bathroom or he was outside leaning out²⁴²..... the state of this person was getting so bad that he was not really able to speak or to say anything. So, he was in such a state that he was not even to speak."²⁴³

²⁴² Fol.234-235

²⁴³ Fol.235

Bizzejjed jigi mfakkar dak li xehdu l-esperti medici.

- Dwar l-istat ta' sahha ta' Ayers, Dr. Scerri jghid: *"Illi evidentement kien hemm evidenza ta' neglect"*.²⁴⁴ Kif ukoll *"Neville Ayers ... kellu lezjonijiet, bazikament bruises, li kienu in different stages of healing, igifieri li ma sarux f'okkazzjoni wahda. ... kien hemm xi abrazzjonijiet ukoll. Bazikament huma pressure points dawn, il-pressure lesions illi forsi ghamel xi zmien fl-istess pozizzjoni, lacerazzjonijiet illi jistghu ikunu kompattibli ma blunt trauma, tbengil ma blunt trauma in different stages of healing, imbaghad kien liebes hwejjeg illi dana, gharwien kien f'dak, u l-kaz kien fit-12 t'Ottubru. Kien il-bard u kien mal-art. Igifieri kien hypothermic zgur dar-ragel."*²⁴⁵
- Inghad ukoll li *"bl-ippurgar ma' kullimkien, l-imputata deheret li ma haditx azzjoni, fis-sens illi sejhet ghall-ghajnuna medika, le le osservazzjoni taghna, anzi haditlu l-filmata u tghidlu fejn waqajt, kif waqajt, ghidilna kif waqajt. Din ahna, t-tlieta li ahna ma rajnhiex haga li tregi li hija normali fic-cirkostanzi li kien fihom Ayers²⁴⁶... Vjolenza akuta as such li kkagunatlu l-mewt dirett, ma deherx li kien hemm, pero' nigbdu l-attenzjoni li kien hemm hafna lezzjonijiet in different stages of healing, continous trauma, fhimtha, li din qed tihhilja u mbaghad ghandu trauma ohra, dawk rajnihom f'Ayers u anke rajnihom fi Grant".²⁴⁷ Mr. Ferry tkellem hekk fuq Ayers *"jien innutajt li kien astenic, kien batut, frail, kellu low body mass index hafna, kien hemm jidhru fuq il-filmata xi sinjali ta' tbengil fuq mohhu u partijiet ohra ta' gismu per ezempju r-ras, u l-id ix-xellugija, ma stajtx nifhem x'qieghed jghid jien ikkonkludejt fin-nuqqas ta' sahha, ahna fil-geratrija nghidulha frailty, kien iktar frail milli stajt nara fuq in-noti medici u anke xi ritratt li ttiehed qabel, ma kelliex id-data tieghu jigifieri ddeterjora, l-istat ta' sahha tieghu tidher li ddeterjorat... l-istess marda, wahda li taffetwa l-mohh u l-ohra li taffetwa c-cirkolazzjoni tas-saqajn u filfatt t-treatment huwa simili hafna ta' xuxlin..... Id-dar posthom imma mbaghad, oovjament, generalment ikollhom kura kontinwa ma' jew specialista' jew tabib tal-familja,"*²⁴⁸*

²⁴⁴ Fol.53 tar-relazzjoni a fol.204

²⁴⁵ Fol.900

²⁴⁶ Fol.1453

²⁴⁷ Ibid.

²⁴⁸ Fol.1456

- Minn naha tieghu Profs Farrugia ukoll qabel u jghid “ _dawn kienu qeghdin litteralment f’poverta ta’ moviment, litteralment mal-art illi ghalina l-aktar haga simplici kienet taqbad it-telefon u ccempel l-ambulanza... .. jkun hemm mumentu u nahseb li dan kien wiehed minnhom li dan il-pazjent ghandu jigi rikoverat f’dak l-istadju li kien.”²⁴⁹

- Intqal dan dwar David Grant: “kellu ferita fuq ir-right eyelid, kellu abrasions fuq ghonqu, kellu pressure points fil-right upper right knee, bed sores over the left buttock and lateral aspect of the left knee. Igifieri dana he was only 67. His general condition was very poor... his general condition was poor.”²⁵⁰

Illi fid-dawl tal-provi migjuba, l-fattispeci ta’ dan il-kaz jinkwadraw rwiehom fir-reat ravvizat bl-artikolu 257A tal-Kodici Kriminali (u cioe` fit-tielet u fir-raba imputazzjoni), u mhux f’dak ravvizat bl-artikolu 257C (il-hames u s-sitt imputazzjoni), li nghataw bhala kapijiet alternattivi ghat-tielet u r-raba imputazzjoni. Ghaldaqstant il-Qorti qed tastjeni milli tiehu konjizzjoni ulterjuri tal-hames u tas-sitt imputazzjonijiet.

Illi l-provi wrew li l-imputata kienet konsapevoli tal-eta` u tal-istorja medika taghhom, tal-kundizzjoni vizibbli taghhom, u taht cirkostanzi jew kondizzjonijiet li x’aktarx jikkawżaw offiza gravi fuq il-persuna jew mewt, xjentement gghelet u ppermettiet lil Grant u Ayers isofru. Gabet fuqhom ugigh fiziku u tbatija mentali mhux gustifikabbli meta halliethom fl-istat li kienu, sahsitra halliethom mixhutin mal-art hi u tigbed il-filmati. Gie ampjament ppruvat li kienet l-istess imputata li waqt li kellha l-kura taghhom xjentement gghelet u ppermettiet li persunthom u sahhithom ssirilhom hsara jew li tigi perikolata.

Kienet konxxja li Grant kienet taghtu *stroke* u li kien isofri minn *loss of balance*; minkejja li qed tarah bla nifs u baghtut, ghazlet li tkompli tinterrogah dwar ir-raguni ghaliex kien qed jaqa’ minflok li rat kif taghmel biex ma jibqax jaqa!

²⁴⁹ Fol.1457

²⁵⁰ Fol.905-906

Illi ma jistax jinghad li għalqet għajnejha għat-tbghatija tagħhom għax fethithom sew biex tigebed il-filmati tagħhom bagħtuti mitluqin mal-art jew f'banju mingħajr ilma. Halliethom, b'mod gratwit, issofru umiljazzjoni, jigu ffilmjati mal-art ma jistghux jiccaqalqu jew f'banju miksi bil-feci. Persuni li jidher bic-cjar ma jifilhux jitekellmu, mingħajr sahha, jagħjtu l-ghajta siekta għall-ghajnuna.

Illi dak li jirrikjedi l-artikolu 257A(1) tal-Kodici Kriminali hu li persuna li tippermetti jew iggieghel anzjan jew persuna vulnerabbli jsofri jew isirlu hsara, jew tipperikola s-sahha jew il-persuna tagħhom, tkun taf jew ikun imissha tkun taf li persuna hi anzjana jew adult dipendenti. Bl-ebda mod ma jirrikjedi li l-awtur ikun jaf jew imissu kien jaf x'kienu ser ikunu l-konsegwenzi tal-azzjoni jew ommisjoni tiegħu, altrimenti hawn jirrizultaw reati oħra u cioe` dawk ravvizati bl-artikoli 211 jew 225 tal-Kodici.

Izda l-artikolu 257A(2) tal-Kodici Kriminali jipprovdi:

Għall-finijiet ta' dan l-artikolu, persuna li tkun qiegħda għib ruħha b'mod dubjuż imissha tkun taf li persuna tkun persuna anzjana jew adult dipendenti jekk fil-qjies ta' persuna raġonevoli li jkollha l-istess informazzjoni din kienet kieku taħseb li dik il-persuna hi persuna anzjana jew adult dipendenti.

Illi mhemmx dubbju li Dragana kien taf sew l-eta` ta' David u Neville. Lanqas hemm xi farka dubbju li l-imputata kienet konxxja li kienu mhux biss anzjani izda anke adulti dipendenti meta tistaqsi lil Grant jekk kienitx qed tiehu hsiebu sew u kienet qed tagħmel minn kollox miegħu, waqt li lil Ayers turieh li ma kienx kapaci jnehhi l-hmieg tiegħu stess. Hi stess tagħti l-eta` tagħhom fix-xhieda tagħha meta ssemmi li meta ltaqgħet ma Grant 4 snin *qabel kellu "Sixty-three (63)." ²⁵¹ filwaqt li Ayers "He told me seventy-eight (78), he will be seventy-nine (79)." ²⁵²*

Issa ai termini tal-artikolu 257F(4)tal-Kodici Kriminali:

"persuna anzjana" tfisser persuna li għalqet l-età ta' sittin sena;

"adult dipendenti" tfisser persuna tal-età li tkun tbatu minn marda tal-ġisem jew tal-moħħ fi grad li minhabba fiha l-kapaċità tagħha li twettaq attivitajiet normali jew li tiproteġi d-drittijiet tagħha ikunu ristretti, inklużi, izda mhux limitati għal, persuni li jkollhom diżabilitajiet fl-iżvilupp tagħhom jew li l-kapaċitajiet fiżiċi u mentali tagħhom ikunu nagsu minhabba fl-età

²⁵¹ Fol.1530

²⁵² Fol.1541

Fid-dawl ta' dawn ir-rizultanzi processwali l-Qorti tqis li l-prosekuzzjoni irnexxielha tipprova sal-grad rikjest minnha li Dragana Mijalkovic, taht cirkostanzi u f'kundizzjonijiet li x'aktarx jikkawżaw offiża gravi fuq il-persuna jew mewt, u meta kellha l-kura ta' David Grant u Neville Ayers, persuni anzjani u adulti dipendenti, xjentement gġegħlet u ppermettiet li l-persuna jew is-saħħa tal-istess Grant u Ayers issirilhom ħsara. Fl-istess cirkostanzi xjentement gġegħlet u ppermettiet li Grant u Ayers jitqiegħdu f'sitwazzjoni li l-persuna jew is-saħħa tagħhom tkun fil-periklu meta naqset li ssejjah għall-assistenza medika jew tiehu dawk il-mizuri mistennija sabiex jingħataw il-kura li l-kondizzjoni ta' saħħithom kienet tirrikjedi. L-agir tagħha jinkwadra perfettament fic-cirkostanzi deskritti fl-artikolu 257A(1) tal-Kodici Kriminali.

Illi galadarba ma giex ppruvat li Grant jew Ayers soffrew offiża gravi fuq il-persuna tagħhom rizultat tal-imġiba tal-imputata, id-disposizzjoni tal-artikolu 257A(3) tal-Kodici Kriminali, li jipprovdi għal zieda fil-piena stabbilita fis-subartikolu (1) tal-istess artikolu, ma japplikax.

Piena

Illi dwar il-piena l-Qorti qiset in-natura tar-reati li qed tinstab htija dwarhom. Gie kkunsidrat il-fatt li dan ma kienx xi att izolat da parti tal-imputata izda l-għemil insensat, krudili u priv minn kull sens t'umanita` kien mifruq fuq medda ta' zmien. Il-bagħtut jixraqlu rispett u għajnuna mhux umiljazzjoni u sfruttament; saħansitra sfruttament tal-vulnerabbilita` tiegħu fejn mingħajr ebda tort jew htija jisfa' deprivat anke mill-aħhar haga li jibqalu meta jintlaqat mill-mard - id-dinjita` personali.

Għalkemm l-imputata ser tigi kkunsidrata bhala *first-time* offender, tenut kont li ma giex soddisfacentement ppruvat li gewwa s-Serbja għandha *criminal record*, il-vittmi f'dan il-kaz kienu tnejn. Ittiehed kont tal-fatt li lanqas ma gie attribwit lill-imputata r-reat kontinwat.

Issir riferenza għas-sentenza Il-Pulizija vs Francis Mamo:

Fil-verita l-iskop tal-piena muhiex wiehed ta' tpattija. Huwa ben stabbilit li l-piena m'għandhiex isservi bhala xi forma ta' vendikazzjoni tas-socjeta` fil-konfront tal-hati. Il-piena għandha diversi skopijiet. Wiehed minnhom huwa sabiex jigi **ripristinat it-tessut soċjali li jkun gie mcarrat** bil-għemil kriminali ta' dak li jkun. Taht dan l-aspett jassumu importanza, fost affarijiet ohra, kemm ir-rizarciment tad-dannu da parti tal-hati kif ukoll ir-riforma tal-istess hati.

Skop iehor tal-piena huwa dak li **tigi protetta s-socjeta`**. Dan l-iskop jitwettaq kemm billi fil-kaz ta' persuni li b'ghemilhom juru li huma ta' **minaccja ghas-socjeta` dawn jinzammu inkarcerati u ghalhekk barra mic-cirkolazzjoni, kif ukoll billi, fil-kaz ta' reati gravi, is-sentenza tibghat messagg car li jservi ta' deterrent generali**. Il-Qorti ta' gustizzja kriminali dejjem iridu jippruvaw isibu l-bilanc gust bejn dawn u diversi skopijiet ohra tal-piena.²⁵³

Illi huwa propju ghalhekk illi ghal kull reat il-Ligi ma tistipulax piena fissa imma tistipula minimu u massimu; jispetta lill-Qorti biex fid-diskrezzjoni taghha, u entro dawk il-parametri, teroga dik il-piena permezz ta' liema, skond ic-cirkostanzi ta' kull kaz, tipprova ssib dak il-bilanc gust bejn d-diversi skopijiet li ghandhom jintlahqu.....

Illi huwa car li l-imputat mhux persuna ta' kondotta vjolenti jew li ghandu bzonn ta' xi tip ta' riforma fil-karattru tieghu; dan pero ma jfissirx necessarjament li huwa m'ghandux jinghata piena karcerarja jekk hija din il-piena li tohloq dak il-bilanc gust bejn id-diversi skopijiet li jridu jintlahqu permezz taghha, inkluz dak li tibghat messagg car li jservi ta' deterrent.²⁵⁴

Illi fil-kaz in ezami l-imputat m'ghandux l-iskuza ta' l-inesperjenza jew il-blugha taz-zghozija; huwa ragel adult u ta' certa esperjenza li pero ghazel li jinjora dak li din l-esperjenza bil-fors kienet ghallimitu;....²⁵⁵

Fid-dawl tal-provi migjuba il-Qorti tqis lill-imputata bhala minaccja serja u rejali ghas-socjeta`; mara li ma ddejjet xejn tghix minn fuq irgiel anjani u vulnerabbli izda meta kienu huma li gew bzonn l-ghajnuna taghha din tathom darha, anzi, dahret lejhom u gibdet filmati tal-istat hazin mikrum ghall-ghajnuna medika li kienu jinhtiegu. L-ghemil minn taghha jitlob li hi tigi nkarcerata u mnehhija l-barra mic-cirkolazzjoni. Huwa ghemil ta' hruxija liema bhala li jisthoqq sentenza li sservi sabiex jintbghat messagg car li jservi ta' deterrent generali.

Messagg li l-abbuz fuq l-anzjani u adulti dipendenti sab it-tarka tal-ligi bl-*Att XXXI tal-2014*. Dan l-istrument legali ntroduca qafas legislattiv li l-ghan tieghu kien li kondotta simili tigi sanzjonata permezz ta' pieni horox. Dawk il-membri tas-socjeta` li huma l-aktar vulnerabbli, partikolarment l-anzjani, li haqqhom u jixirqilhom biss rispett u ghajnuna u mhux sfruttament; li jghixu minghajr thassib jew biza dwar l-inkoluminita` fizika tal-persuna taghhom jew tal-propjeta` li jkunu tul hajjithom hadmu, stinkaw ghaliha w li ghandhom kull dritt igawdu, sabu l-protezzjoni tal-Ligi.

²⁵³ **Ir-Republika ta' Malta vs Rene sive Nazzareno Micallef**, Appell Kriminali, Dec. 28.11.2006.

²⁵⁴ **Il-Pulizija vs Antoine Cassar**, Appell Kriminali, Dec. 22.09.2009.

²⁵⁵ Qorti tal-Magistrati (Malta) Bhala Qorti ta' Gudikatura Kriminali, per Onor. Magistrat Dr. Doreen Clarke, Dec. 14.02.2013; Kump. Nru.711/2008

L-artikolu 533 tal-Kodici Kriminali

Rigward it-talba tal-prosekuzzjoni ai termini tal-artikolu 533 tal-Kodici Kriminali, id-difiza ssostni li ma kienx hemm htiega ghal dak li skond hi hu *"pataflun ta' DNA"*.²⁵⁶ Jirrizulta li ma kien hemm l-ebda pataflun ta' kampjuni izda saru 35 *"DNA extraction and profiling including controls"*.²⁵⁷ Lanqas ma jirrizulta li l-espert kellha 'libera mano' u thalliet wahedha tiddeciedi hi x'ezamijiet kienu rikjesti kif allegat. Il-Magistrat tal-Ghassa kien qed jikkonduci inkjesta, kien fuq il-post u l-espert giet nominata minnu b'inkarigu definit u cioe` li jsiru *"daww il-prelevamenti necessari u daww l-ezamijiet kollha li jidrilhom xierqa, inkluz fuq il-post ta' fejn sehhet is-sejba tal-kadauru u f'kull fond u jew ambjent cirkostanti, kif ukoll fuq il-kadauru jew minn kampjuni mehuda mill-istess kadauru, kif ukoll fuq kull dokument iehor rilevanti u relatat ma dan il-kaz, u ghal dan il-ghan huma qeghdin jigu awtorizzati sabiex jaghmlu dak kollu li huwa mehtieg skont ix-xjenza u s-sengha taghhom sabiex iwettqu l-inkarigu taghhom b'mod komplut u shih skond il-Ligi"*.²⁵⁸ Jinghad ukoll li f'dak l-istadju kienet qed tigi investigata mewt potenzjalment kawza ta' omicidju volontarju w l-ezamijiet u analizi li saru kienu f'dak l-isfond; fejn *ab initio* ma jista' jigi eskluż xejn u fejn ghandu jigi nvestigat kull aspekt inkluz involviment ta' terzi. Lanqas ma hu minnu li ma kienx hemm ezami komparattiv tant li ttiehdu *nail scrappings* tal-imputata kif uoll ta' Ayers.

F'dawn ic-cirkostanzi l-Qorti ma tqisx li l-lanzanza tal-imputata ghandha tigi akkolta. Ma tezisti ebda raguni ghaliex fil-komputazzjoni tal-ispejjez peritali ghandhom jitnaqqsu l-ispejjez relatati mal-inkarigu ta' Dr. Marisa Cassar.

Decide

Ghal dawn il-mottivi, filwaqt li tillibera lill-imputata mill-ewwel u mit-tieni imputazzjoni u tastjeni milli tiehu konjizzjoni ulterjuri tal-hames u tas-sitt imputazzjoni, wara li rat l-artikoli 17, 31 u 257A(1)(2) tal-Kapitolu IX tal-Ligijiet ta' Malta, issib lill-imputata hatja tat-tielet u tar-raba imputazzjoni, u tikkundannaha hames snin u nofs prigunerija minn

²⁵⁶ Fol.1539

²⁵⁷ Fol.203

²⁵⁸ Fol.137

liema terminu ghandu jitnaqqas iz-zmien li l-imputata ghamlet taht arrest preventiv.

Inoltre` wara li rat l-artikolu 533 tal-Kapitolu IX tal-Ligijiet ta' Malta, tikkundanna lil hatja thallas lir-Registratur ta' din il-Qorti l-ammont ta' erbatax il-elf hames mija u erbatax l-ewro u tmienja u erbghin centezmu (**€14,514.48**) rapprezentanti spejjez peritali.

Tordna wkoll illi jekk l-ispejjez ma jithallsux immedjatament, dawn jigu kkonvertiti f'terminu ta' prigunerija ai termini tal-ligi.

Finalment in vista tal-fatt li rrizulta li l-hatja m'ghandhiex permess tirisjedi Malta, tirrikmanda li hekk kif tkun skontat is-sentenza imposta fuqha, jittiehdu dawk il-mizuri kollha spettanti lill-Ufficjal Principali Ghall-Immigrazzjoni ai termini tal-*Att dwar l-Immigrazzjoni*, Kapitolu 217 tal-Ligijiet ta' Malta, sabiex din titnehha minn dawn il-Gzejjer.

Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)
Magistrat