



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

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

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

vs.

Paul Spiteri

Numru: 419/2018

Illum 18 ta' Gunju 2019

Il-Qorti;

Rat l-imputazzjonijiet migjuba kontra l-imputat **Paul Spiteri**, iben il-mejjet George u Rose nee' Spiteri, imwieled Kercem, Ghawdex, nhar is-17 ta' Frar 1964, residenti fil-fond 'Mount Carmen', Triq Anton Calleja, Kercem, Ghawdex u detentur tal-karta' tal-identita' bin-numru 6764(G), akkuzat talli nhar l-1 ta' Mejju 2018 ghall-habta ta' sebgha u kwart ta' filghodu (7:15a.m.) waqt li kien qieghead fl-inhawi maghrufa Ta' Boroz, limiti ta' Kercem, Ghawdex u/jew fil-vicinanze matul iz-zmien ta' qabel;

- 1) Minghajr licenzja tal-Kummissarju tal-Pulizija, kellu fil-pussess tieghu jew taht il-kontroll tieghu, jew kellu f'idejh jew fuqu, arma tan-nar jew munizzjon barra minn fond jew post li jaghmel mieghu minghajr ma' kellu licenzja taht l-Att dwar l-Armi u dan bi ksur tal-Artikolu 5(1) tal-Kapitolu 480 tal-Ligijiet ta' Malta;
- 2) U aktar talli fl-istess data, hin, lok u cirkostanzi gie fil-pussess ta' arma tan-nar jew munizzjoni xorta ohra milli b'licenzja u minnufih naqas jaghti avviz taghhom lill-Kummissarju tal-Pulizija, halli jordna jekk dik l-arma tan-nar jew munizzjoni ghandhomx jinzammu taht idejn il-Pulizija jew taht idejn il-persuna li tkun tat dak l-avviz u dan bi ksur tal-Artikolu 41 tal-Kapitolu 480;
- 3) U aktar talli fl-istess data, hin, lok u cirkostanzi bhala detentur ta' licenzja taht l-Att dwar l-Armi, naqas li jhares il-kundizzjonijiet imsemmija f'din il-licenza u dan bi ksur tal-Artikolu 27(1) tal-Kapitolu 480;
- 4) U aktar talli fl-istess data, hin, lok u cirkostanzi akkwista jew gie f'idejh arma tan-nar u munizzjon xorta ohra milli kellu fil-licenzja, minghajr ma' avza minnufih lill-Kummissarju tal-Pulizija b'dan u dan bi ksur tal-Artikolu 41 tal-Kapitolu 480;
- 5) U aktar talli fl-istess data, hin, lok u cirkostanzi kellu arma tan-nar li ma kinitx antika, artistika, storika jew rari, minghajr ma kienet immarkata permanenti b'numru ta' serje li bih din tkun

tista' tigi identifikata u li turi l-pjanca tal-manifattur u dan bi ksur tal-Artikolu 44(1) tal-Kapitolu 480;

- 6) U aktar talli fl-istess data, hin, lok u cirkostanzi bhala persuna li ghandu licenzja biex jakkwista jew ikollu fil-pussess tieghu xi armi regolari jew munizzjon, naqas milli jzomm armi regolari jew munizzjon fil-kustodja tieghu b'tali mod li ma jkunux jistghu jigu f'idejn haddiehor u dan bi ksur tal-Artikolu 47(1) tal-Kapitolu 480;
- 7) U aktar talli fl-istess data, hin, lok u cirkostanzi bhala detentur ta' licenzja taht xi dispozizzjoni ta' Att dwar l-Armi, naqas milli jhares il-pattijiet tal-licenzja jew li kellu fil-pussess jew kien qiegħed igorr xi arma tan-nar jew munizzjon mhux specificati fil-licenzja mahruġa lilu u dan bi ksur tal-Artikolu 52 tal-Kapitolu 480;
- 8) U aktar talli fl-istess data, hin, lok u cirkostanzi waqt l-istagun magħluq għall-kacca tal-ghasafar minn fuq l-art ikkaccja jew prova jikkaccja xi ghasfur, jew garr munizzjoni għat-teħid tal-kacca jew arma tan-nar barra l-ghata tagħha u dan bi ksur ta' Regolamenti 15 u 18(1)(a) ta' S.L. 549.42;
- 9) U aktar talli fl-istess data, hin, lok u cirkostanzi kellu fil-pussess tieghu arma tan-nar li tiehu aktar minn zewg ta' skratacc fil-kompartiment tagħha fl-istess hin;

Il-Qorti giet mitluba li f'kaz ta' htija tordna l-konfiska tal-*corpus delicti* u s-sospensjoni ta' kull licenza jew permess mahruga taht ir-Regolamenti dwar il-Konservazzjoni tal-Ghasafar Selvaggi, taht it-Taqsima XV tal-Kodici tal-Ligijiet tal-Pulizija u taht l-Att dwar l-Armi (Kap. 480) ghall-perjodu applikabli;

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

Semghet il-provi;

Semghet, waqt is-seduta tal-31 ta' Jannar 2019, lill-Prosekuzzjoni tiddikjara li ma kellhiex aktar provi xi tressaq f'dan il-kaz u b'hekk ghalqet il-provi taghha;

Semghet, waqt is-seduta tas-7 ta' Meju 2019, lid-Difiza tiddikjara li ma kellhiex aktar provi xi tressaq f'dan il-kaz u b'hekk ghalqet il-provi taghha;

Semghet sottomissjonijiet finali da parte tal-Ispettur Bernard Charles Spiteri ghall-Prosekuzzjoni u da parte ta' Dr. Mario Scerri ghall-imputat.

XHIEDA

F'dan il-kaz xehdu seba' (7) xhieda:

PC 1525 Patrick Farrugia (a fol. 21 et seq.), Spettur Bernard Charles Spiteri (a fol. 32 et seq.), Nicholas Barbara (a fol. 49 et seq.), Paul Bray (a fol. 51 et seq.), Alice Tribe (a fol. 64 et seq.), l-imputat Paul Spiteri (a fol. 70 et seq.) u Joseph Grech (a fol. 76 et seq.).

Stante li x-xhieda kollha jinsabu traskritti l-Qorti mhix se terga' tirriproduci dak li ntqal fix-xhieda hawnhekk.

KUNSIDERAZZJONIJIET GENERALI LEGALI

Preliminari¹

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

Għalkemm verament li l-komparixxi li fuqha hemm l-imputazzjonijiet hija ritenuta bhala *un avviso a comparire*, l-imputazzjonijiet huma dejjem ta' indoli penali. Ir-regoli tal-procedura ma jistgħux jigu interpretati b'mod wiesa' tali li l-

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

parametri tal-azzjoni penali jigu spustati jew mibdula. Altrimenti d-difiza ma tkunx tista' tiddefendi ruħha kif jixraq.

Quddiem din il-Qorti jekk persuna tinstab hatja tehel piena. Jekk ma tinstabx hatja tigi mehlusa mill-imputazzjonijiet dedotti. Il-valutazzjoni dwar jekk persuna tkunx hatja jew le tiddependi dejjem fuq il-provi li jingiebu quddiemha (u quddiem ebda post jew *medium* ieħor) u l-istess valutazzjoni hija marbuta mal-imputazzjonijiet kriminali li jkunu gew miktuba u prezentati quddiemha mill-Pulizija Ezekuttiva jew skont kif ikunu gew mizjuda jew mibdula fl-istadju opportun – u dejjem mhux aktar tard minn meta l-Prosekuzzjoni tkun iddikjarat il-provi tagħha magħluqa. Altrimenti jekk ma jkunx hekk l-akkuzatur ikun jista' jbidel il-parametri tal-azzjoni penali skont meta jidhirli u skont l-andament ta' dak li jkun qed isehh jew li jkun irrizulta matul il-kors tal-process penali.

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

Is-setgħat ta' din il-Qorti u r-rimedji li din il-Qorti tista' tagħti f'kull kaz huma limitati u ristretti għal dawk li huma previsti mil-Ligi u fil-Ligi. Din il-Qorti ma għandiex is-setgħa, ossia *carte blanche*, li tiddeciedi kif trid u tipprovdi kull rimedju li jidhliha f'moħħha jew

li trid jew li tkun tixtieq tagħti. Il-provvedimenti tagħha huma limitati għal dawk provduti fil-Kodici Kriminali.

Din il-Qorti ma tistax tiegħu post jew tissostitwixxi l-Qorti Civili kompetenti jew tagħti rimedji ta' natura civili li mhumiex previsti mill-Kodici Kriminali bħala li jistgħu jigu emanati minn Qorti ta' Gudikatura Kriminali.

F'kull kaz pero', stante li din hija Qorti ta' Gudikatura Kriminali hija marbuta bit-termini tal-imputazzjoni skont kif spjegat aktar 'il fuq. Aktar minn hekk, quddiemha, huwa dmir tal-Prosekuzzjoni li tipprova l-kaz tagħha skont kif proferit fl-imputazzjoni kontestata sal-grad ta' konvinciment morali u sufficjenza probatorja lil hinn minn kull dubju dettat mir-raguni. Mill-banda 'l oħra, jekk id-difiza tagħzel li tressaq xi provi jew sottomissjonijiet **kif sar f'dan il-kaz fejn l-imputat Paul Spiteri u x-xhud Joseph Grech spjegaw li fid-data tal-imputazzjonijiet ta' dan il-kaz l-imputat kien qieghed jahdem f'lant tax-xoghol f'Belt differenti mill-inhawi tar-rahaj fejn saru l-allegati reati**, huwa bizzzejjed għad-difiza li tikkonvinci lill-Qorti bit-tezi tagħha fuq bazi ta' konvinciment morali li jistrieħ fuq bilanc ta' probabbilta' u f'kaz li dan iseħħ, u l-Qorti ma thossix moralment konvinta li l-Prosekuzzjoni laħqet il-grad ta' prova rikjesta minnha, allura l-Qorti trid tillibera lill-imputat.

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

Biss din il-Qorti ma tistax tieqaf hawnhekk. Hija marbuta li tiggudika dan il-kaz skont l-akkuza li giet magħmula mill-Prosekuzzjoni kontra l-imputat u ma tistax tbiddel hi bis-setgħa tagħha stess il-parametri tal-kawza intrapriza mill-Prosekuzzjoni u tiddeciedi kif jiftlilha jew tmur lil hinn mill-imputazzjoni prezentata lilha mill-Prosekuzzjoni.

KUNSIDERAZZJONIJIET LEGALI DWAR L-AKKUZI

Il-Qorti meta kienet qeghda tanalizza dan il-kaz zammet quddiem ghajnejha dak li qalet il-Qorti tal-Appell fejn tidhol identifikazzjoni ta' persuni mixlija dwar kacca jew insib illegali fil-kawza l-**Pulizija vs Emanuel Muscat**² deciza mill-Imhalled David Scicluna fejn intqal li *“ma jistax jiġi eskluż li kien hemm persuna injota li kienet qed tagħmel użu mill-mansab”* u dak li ntqal fil-kawza fl-ismijiet il-**Pulizija vs Joseph Axiak**³ deciza mill-Prim Imhalled Silvio Camilleri:

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

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

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

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

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

Dock identification

Il-Qorti tagħmel referenza wkoll għal dak li ntqal fis-sentenza fl-ismijiet **Il-Pulizija vs Stephen Azzopardi**⁴ dwar *dock identification*, fejn intqal:

“Illi l-perikolu ta' in dock identification huwa evidenti. Fil-fatt il-Privy Council⁵ jirreferi għal the obvious danger that a defendant occupying the dock might automatically be assumed by even a well intentioned eye-witness to be the person who had committed the crime with which he or she was charged”.

⁴ Deciza fit-13 ta' Lulju 2017 mill-Qorti tal-Magistrati bħala Qorti ta' Gudikatura Kriminali ppreseduta mill-Magistrat Doreen Clarke

⁵ Ref **Tido vs The Queen** (2011) UKPC 16 per Lord Kerr

Dwar dock identification l-Archbold jghid:

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

Where such evidence is admitted the court should remember the dangers of relying on such evidence, that (if the defendant was denied the advantage of participating in an identification procedure) the defendant has been disadvantaged by not participating in an identification procedure and that an identification witness may assume that the person in the dock is the person who committed the offence.⁶

Il-filmat esebit

Fil-ktieb *Electronic Evidence*⁷, Stephen Mason jispjega li:

“Surveillance cameras are very much part of life in the twenty-first century, the foundations of which began in the latter decades of the twentieth century. Evidence of images from security cameras can be very helpful in identifying the perpetrators of crime, and the enhancement of the images, together with the use

⁶ Archbold Magistrates’ Courts Criminal Practice 2018 Pg 654

⁷ Ippubblikat minn LexisNexis U.K. t-tieni edizzjoni ppubblikata fl-2010 pg. 345 para. 10.91

of more advanced techniques such as facial mapping, can help to identify parties to an offence."

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

*"A photograph (or film) the relevance of which can be established by the testimony of someone with personal knowledge of the circumstances in which it was taken (or made), may also be admitted to prove the commission of an offence and the identity of the offender."*⁸

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

"First, whenever the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken, the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. In addition he should instruct them as to the reason for the need for such a warning and should make some reference to

⁸ Pg. 2545 f' *Real Evidence* F8.58

the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken. Provided this is done in clear terms the judge need not use any particular form of words.

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

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

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

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

'Things are an independent species of evidence as their production calls upon the court to reach conclusions on the basis of its own perception and not on that of witnesses directly or indirectly reported to it ...

Although it was devised by Bentham and adopted by Best, 'Real evidence' is not a term which had received the blessing of common judicial usage. There is general agreement that it covers the production of material objects for inspection by the judge or jury in court, but it is debatable how much further the term should be extended'.

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

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

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

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

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

Ikompli:

'The court must, before admitting recordings as evidence be satisfied that the evidence which may be yielded is relevant and that the recording produced is authentic and original ... The above principles apply to the use of film produced by hidden, automatic security cameras installed in banks and elsewhere for the purpose of recording robberies and other incidents. The jury are entitled to consider the film as identification evidence of the persons recorded on it, subject to the foundational requirements stated above" see eg 'R v Dodson; R v Williams [1984] Crim LR 489; see "Taylor v Chief Constable of Cheshire [1986] 1 WLR 1979'.

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

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

confidence, if he has any, can be assessed in the light of what the court itself can see"

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

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

Mill-video footage u l-istills ghalkemm tidher persuna li setghet wettqet reati marbuta mal-kacca m'hemmx indikazzjoni certa li l-persuna li tidher huwa l-imputat u jekk meta jirrizulta li kien prezenti ghax ma cahadx li jkun f'dawk l-inhawi minhabba l-ghelieqi li ghandu kienx qieghed jikser xi regolament marbut mal-kacca jew iwettaq xi reat iehor.

KONKLUZZJONI

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

Certament ix-xhieda ta' xhud wiehed biss, jekk emmnut, hija bizzejjed biex tikkostitwixxi prova shiha u kompluta minn kollox, daqs kemm kieku l-fatt ikun gie pruvat minn zewg xhieda jew aktar⁹. U kif gie ritenut fis-sentenza fl-ismijiet **Il-Pulizija vs Joseph Thorne** tad-9 ta' Lulju 2003, "*mhux kull konflitt fil-provi ghandu awtomatikament iwassal ghal-liberazzjoni tal-persuna akkuzata. Imma l-Qorti, f'kaz ta' konflitt fil-provi, trid tevalwa l-provi skond il-kriterji enuncjati fl-artikolu 637 tal-Kodici Kriminali u tasal ghall-konkluzjoni dwar lil min trid temmen u f'hiex ser temmnu jew ma temmnux*"¹⁰.

Il-Qorti tal-Appell Kriminali fil-kawza fl-ismijiet **Il-Pulizija v. Brian Caruana** fit-23 ta' Mejju 2002 qalet li:

⁹ Ara artikolu 638(2) tal-Kap. 9

¹⁰ Ara wkoll Appell Kriminali **The Police vs Graham Charles Ducker**, 19 ta' Mejju 1957.

“Kollox jiddependi mill-assjem tal-provi u mill-evalwazzjoni tal-fatti li jagħmel il-ġudikant u jekk il-konkluzjoni li jkun wasal għaliha il-ġudikant tkun perfettament raġġunġibbli bl-użu tal-logika u l-buon sens u bażata fuq il-fatti, ma jispettax lil din il-Qorti li tissostitwiha b’oħra anki jekk mhux neċessarjament tkun l-unika konkluzjoni possibbli.”

Il-Prosekuzzjoni qeghda tibbaża l-provi tagħha fuq tlett punti. Prinċiparjament għandek l-ewwel wieħed li huwa l-affidavit ta’ żewġ pulizija li jiffurmaw parti mis-sezzjoni tal-Administrative Law Enforcement (ALE) li kienu infurmati min-naħa tal-Birdlife u dawn kien aċċedew fuq il-post. Minn hemm kien elevat senter.

It-tieni punt insibu r-relazzjoni tal-espert tekniku PC1525 Patrick Farrugia li dan eżamina l-arma in kwistjoni. Instab li *s-serial number* ta’ din l-arma li huwa mħassar.

It-tielet punt huma x-xhieda ta’ tlett rappreżentanti tal-Birdlife Nick Barbara, Paul Bray u Alice Tribe flimkien mal-filmat u r-ritratti mehudin minnu.

Il-Prosekuzzjoni, ma pprezentatx provi dwar l-ownership tad-diversi għelieqi li ssemew tul il-kaz. Rigward il-quad bike li tidher fil-filmat u ritratti esebiti ma ngabx rappreżentat ta’ Transport Malta sabiex jabbina dan il-mezz tat-trasport mal-imputat.

Meta d-difiza staqsiet lix-xhud Alice Tribe dwar il-persuna li kienet qeghda twettaq l-illegalitajiet hija wiegbet '*I can't be one hundred percent but I think so*'.

Il-Qorti thoss li f'dan il-kaz il-Prosekuzzjoni setghet rabtet lill-imputat mas-senter jekk effettivament kien hu l-persuna li uza u heba s-senter billi jittiehdu l-impronti digitali tieghu u jaraw jekk fuq is-senter elevat kienx hemm marki tas-swaba'.

Il-Qorti tinnota li a bazi tal-provi prodotti, il-Prosekuzzjoni ma gabitx il-provi tal-elementi rikjesti mil-ligi ghar-reati addebitati lill-imputat u l-provi migjuba mill-prosekuzzjoni jieqfu ferm 'il boghod mill-piz tal-prova rikjest mil-ligi u cioe' dak fi grad ta' certezza morali minghajr dubju dettat mir-raguni. Kwindi l-prosekuzzjoni ma ppruvatx il-kaz taghha fil-grad li huwa rikjest fil-kamp penali.

Kawzi tal-Kacca u Insib

Il-Qorti tappella lill-Pulizija sabiex meta jkun hemm kazijiet bhal dawn iressqu provi li jikkorraboraw il-hidma siewja li jwettqu l-ghaqdiet volontarji f'dan il-qasam, f'dan il-kaz il-Birdlife.

Inutli li jsir sforz minn dawn l-ghaqdiet u anke jipprezentaw certu evidenza li *prima facie* jindikaw illegalitajiet u mbaghad ma

jittressqux provi sufficienti fil-kamp kriminali biex jorbtu lill-persuna imputata mal-akkuzi migjuba fil-konfront taghha.

DECIDE:

Ghalhekk fic-cirkostanzi l-Qorti ma tistax issib htija fil-konfront tal-imputat u tilliberah.

Il-Qorti tordna l-konfiska u d-distruzzjoni tas-senter esebit f'dawn l-atti u mmarkat bhala DOK PF1, li mix-xhieda li ta PC1525 Patrick Farrugia nstab li *s-serial number* ta' din l-arma li huwa mhassar. Il-Qorti turi t-thassib taghha li ghad hawn armi fl-idejn li m'huma registrati fuq hadd. Il-fatt li din l-arma kellha *s-serial number* imhassar huwa ta' thassib ghaliex jista' jkun li armi bhal dawn lill hinn minn reati marbuta mal-kacca jistghu jintuzaw biex jitwettqu reati serji hafna.

**Dr. Joseph Mifsud
Magistrat**