



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

**MAGISTRAT DR. JOSEPH MIFSUD
B.A. (LEG. & INT. REL.), B.A. (HONS.), M.A. (EUROPEAN), LL.D.**

**Il-Pulizija
(Spettur Elliot Magro
Spettur Robert Vella)
vs
Joseph Azzopardi**

Kumpilazzjoni 543/2017

Illum 24 ta' Ottubru 2019

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputat **Joseph Azzopardi** detentur tal-karta tal-identita' bin-numru 20577 (M) billi huwa akkuzat talli:

1. F'dawn il-Gzejjer Maltin, matul ix-xahar ta' Novembru 2015, u fix-xhur ta' qabel xjenetament xtara jew laqa' ghandu hwejjeg misruqa, mehuda b'qerq jew akkwistati b'reat sew jekk dan sar Malta jew barra minn Malta, jew xjenteament b'kull mod iehor li jkun indahal biex ibieghhom jew imexxhiom, liema oggetti kienu gejjin minn serq, u cioe cekkijiet tal-Bank BOV mahrugin fuq kont bankarju numru 40016490156 mahrugin f'isem Royston Muscat;
2. Kif ukoll talli f'dawn il-Gzejjer Maltin, fl-10 ta' Ottubru 2015 flimkien ma' peruna jew persuni ohra, b'mezzi kontra l-ligi, jew billi ghamlu uzu ta' ismijiet foloz, jew ta' xi kwalifiki foloz, jew billi nqded b'qerq iehor, ingann jew billi wrew haga b'ohra sabiex igieghlu titwemmen l-ezistenza ta' intraprizi foloz, jew ta' hila , setgha fuq haddiehor, jew ta' krediti mmaginarji, jew sabiex qanqlu tama jew biza dwar xi grajja kimerika, ghamlu qliegh ta' elfejn u tlett mitt ewro (€2300) ghadannu ta' Royston Muscat u/jew persuni ohra u/jew il-Bank BOV u/jew entita' jew entitajiet ohra;
3. Kif ukoll talli f'dawn il-Gzejjer Maltin, fis-7 ta' Novembru 2015 flimkien ma' peruna jew persuni ohra, bil-hsieb li ghamlu delitt urejtu dan il-hsieb, b'mezzi kontra l-ligi , jew billi ghamlu uzu ta' ismijiet foloz, jew ta' xi kwalifiki foloz, jew billi nqded b'qerq iehor, ingann jew billi wrew haga b'ohra sabiex iggieghlu titwemmen l-ezistenza ta' intraprizi foloz, jew ta' hila , setgha fuq haddiehor, jew ta' krediti mmaginarji, jew sabiex qanqlu tama jew biza dwar xi grajja kimerika, ghamlu qliegh ta' elfejn u tlett mitt ewro (€2300) ghadannu ta' Royston Muscat u/jew persuni ohra u/jew il-Bank BOV

u/jew entitá jew entitajiet ohra, liema reat mas sehxx minhabba xi haga accidentali u indipendenti mill-volonta tieghu;

4. U aktar f'dawn il-Gzejjer Maltin, fl-istess perjodu, cioe fis-7 ta' Novembru 2015 u fix-xhur ta' qabel f'dawn il-Gzejjer, flimkien ma' persuna jew persuni ohra, b'diversi atti maghmulin fi zminijiet differenti li jiksru l-istess dispozizzjoni tal-ligi u li gew maghmula b'rizoluzzjoni wahda, iffalsifikatu cedula, polza, ordni jew dokumenti ohra ffalsifikati, illi meta jigu pprezentati wiehed jista jircievi bihom hlas, jew jiehu l-kunsinna ta' l-oggetti, jew jigbor depozitu jew rahan minn ufficcju pubbliku, jew minn bank jew stabbiliment iehor mwaqqaf jew maghruf b'xi att pubbliku tal-Gvern, u cioe ffalsifikaw cekkijiet bin-numri 744 u 761 mahruqa fuq kont bankarju tal-BOV bin-numru 40016490156 ghad-dannu ta' Royston Muscat u/jew ta' persunaa ohra u/jew il-Bank BOV u/jew entita jew entitajiet ohra;
5. U aktar f'dawn il-Gzejjer Maltin, fl-istess perjodu, cioe fis-7 ta' Novembru 2015 u fix-xhur ta' qabel f'dawn il-Gzejjer, flimkien ma' persuna jew persuni ohra, b'diversi atti maghmulin fi zminijiet differenti li jiksru l-istess dispozizzjoni tal-ligi u li gew maghmula b'rizoluzzjoni wahda, xjenteament ghamel uzu minn cedola, polza, ordni jew dokumenti ohra ffalsifikati, illi meta jigu pprezentati wiehed jista jircievi bihom hlas, jew jiehu l-kunsinna ta' l-oggetti, jew jigbor depozitu jew rahan minn ufficcju pubbliku, jew minn bank jew stabbiliment iehor mwaqqaf jew maghruf b'xi att pubbliku tal-Gvern, ghad-dannu ta' Royston Muscat u/jew persuni ohra u/jew il-Bank

BOV u/jew entitá jew entitajiet ohra, liema reat mas sehxx minhabba xi haga accidentali u indipendenti mill-volonta tieghu;

6. U aktar f'dawn il-Gzejjer Maltin, fl-istess perjodu, cioe fis-7 ta' Novembru 2015 u fix-xhur ta' qabel f' dawn il-Gzejjer, flimkien ma' persuna jew persuni ohra, b diversi atti maghmulin fi zminijiet differenti li jiksru l-istess dispozizzjoni tal-ligi u li gew maghmula b'rizoluzzjoni wahda, ghamlu falsifikazzjoni f'att awtentiku u pubbliku, jew fi skrittura kummercjali jew ta' bank privat, b'falsifikazzjoni jew tibdil fl-iskrittura jew fil-firem, billi holqu pattijiet, dispozizzjonijiet jew obbligi foloz jew helsien minn obbligi f'dawk l-atti jew skritturi wara li, kienu gew iffurmati, inkella zidtu jew biddiltu klawsoli, dikjarazzjonijiet jew fatti, illi dawk l-atti jew skritturi kellhom ikollom fihom jew kellhom jippruvaw, u cioe iffalsifikaw cekkiijiet bin-numri 744 u 761 mahruga fuq kont bankarju tal-BOV bin-numru 40016490156 ghad-dannu ta' Royston Muscat u/jew ta' persuna/a ohra u/jew il-Bank BOV u/jew entita jew entitajiet ohra;

7. U aktar f'dawn il-Gzejjer Maltin, fl-istess perjodu, cioe fis-7 ta' Novembru 2015 u fix-xhur ta' qabel f' dawn il-Gzejjer, flimkien ma' persuna jew persuni ohra, b' diversi atti maghmulin fi zminijiet differenti li jiksru l-istess dispozizzjoni tal-ligi u li gew maghmula b'rizoluzzjoni wahda, xjenteament ghamlu uzu minn att awtentiku u pubbliku u/jew ta' persuna/i ohra u/jew il-Bank BOV u/jew ta entita jew entitajiet ohra;

8. U aktar talli fl-10 ta' Ottubru 2015, flimkien ma persuna jew persuni ohra, gewwa dawn il-gzejjer Maltin ikkommetta serq ta' flus, liema serq sar ghad-dannu ta' Roysten Muscat u/jew xi persuna jew persuni ohra u/jew ta xi entita jew entitajiet ohra, u liema serq huwa aggravat bil-vjolenza numerika u bil-valur li ma jeccedix l-ammont ta' elfejn tliet mija u disgha u ghoxrin ewro u sebgha u tletin centezmu (€2,329.37);
9. U aktar talli fis-7 ta' Novembru 2015, flimkien ma persuna jew persuni ohra, gewwa dawn il-gzejjer Maltin bil-hsieb li jghamli delitt ta' serq ta' flus ghad-dannu ta' Roysten Muscat u/jew ta' persuna/a ohra u/jew entita jew entitajiet ohra, wrew dan il-hsieb b'atti esterni u tajtu bidu ghall-ezekuzzjoni tad-delitt liema delitt ma giex esegwit minhabba xi haga accidentali u indipendenti mill-volont taghkom, u li kieku sar kien ikun ikkwalifikat bil-vjolenza numerika u bil-valur li ma jeccedix l- €2,329.37;
10. U aktar talli fl-istess data, lok, hin u cirkostanzi kiser il-kundizzjonijiet ta' l-Artikolu 22 tal-Kap 446 tal-Ligijiet ta' Malta li gew mposti fuqu b'sentenza moghtija lilu nahar it-28 ta' Novembru 2016, mill-Qorti tal-Malta (Magistrat Dr. Saviour Demicoli LL.D), liema sentenza saret definittiva u ma tistax tigi mibdula;
- Il-Qorti giet wkoll mitluba li f'kaz ta htija tqis lill-imputat bhala li sar recediv ai termini ta' l-Artikoli 49 u 50 tal-Kap 9 tal-Ligijiet ta' Malta wara li kien misjub hati ta' diversi sentenzi moghtja lilu mill-Qrati ta' Malta, liema sentenzi saru definittivi u ma jistghux jinbidlu.

Il-Qorti giet mitluba tikkundanna lill-akkuzat għall-hlas ta' spejjez li jkollhom x'jaqsmu mal-hatra ta' esperti jew periti fil-proceduri hekk kif ikkontemplat mill-Artikolu 533 tal-Kap 9 tal-Ligijiet ta' Malta.

Rat in-nota tal-Avukat Generali (*a fol. 99 et seq.*) datata it-8 ta' Marzu 2019 li permezz tagħha bagħat lill-imputat biex jigi ggudikat minn din il-Qorti bhala Qorti ta' Gudikatura Kriminali kif mahsub taht:

- Fl-artikoli 17 u 31 tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;
- Fl-artikolu 334 tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;
- Fl-artikoli 308, 309 u 310 (1) (b) tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;
- Fl-artikoli 41, 308, 309 u 310 (1) (b) tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;
- Fl-artikoli 18 u 167(1) tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;
- Fl-artikoli 18 u 169 tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;
- Fl-artikoli 18 u 183 tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;
- Fl-artikoli 18 u 184 tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;
- Fl-artikoli 261(a), 261(c), 262(1)(b), 267 u 280(2) tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;

- Fl-artikoli 41, 261(a), 261(c), 262(1)(b), 267 u 280(2) tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;
- Fl-artikolu 22 tal-Att dwar il-Probation, Kapitolu 446 tal-ligijiet ta' Malta;
- Fl-artikoli 49 u 50 tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta;
- Fl-artikolu 533, tal-Kodici Kriminali, Kapitolu 9 tal-Ligijiet ta' Malta.

Rat illi, waqt l-udjenza tat-8 ta' April 2019 (*a fol. 103*) gew moqrija l-Artikoli mibghuta mill-Avukat Generali fit-8 ta' Marzu 2019, u f'liema seduta l-imputat iddikjara li ma kellux oggezzjoni li l-kaz tieghu jigi trattat u deciz minn din il-Qorti bi procedura sommarja.

Rat l-atti kollha ta' dan il-procediment u d-dokumenti esebiti.

Saru s-Sottomissjonijiet fl-Awla fis-seduta ta' nhar l-24 ta' Lulju 2019 (*a.fol. 117 et. Seq.*)

Il-fatti specie tal-kaz

Dan il-kaz kellu l-bidu tieghu meta Royston Muscat kien ikkuntatjat dwar cheque li suppost hareg hu. Dan ic-cheque issarraff wara li kienet iffalsifikata l-firma tieghu. Muscat meta mistoqsi dwar ic-cheque book "*was very confused and was asked about his cheque book where he stated that he used it two days ago but he doesn't know exactly where he might have placed it*". Il-pulizija rnexxilhom jarrestaw lil certu

Noel Micallef u dan wara li pprova jsarraff cheque fil-fergha tal-BOV l-Marsa nhar is-6 ta' Novembru 2015. L-istess Micallef zvela mal-pulizija li mieghu kien involut huh Roderick u li c-cheque kien ghaddiehulu l-imputat Joseph Azzopardi. Din ma kinetx l-ewwel darba. Noel Micallef qal lill-pulizija li c-cheque kien ta' elfejn u tlett mitt ewro (€2,300) u minn dawn tliet mija qasmuhom hu u huh filwaqt li ghaddew l-elfejn (€2,000) l-oħra lill-imputat Joseph Azzopardi.

XHIEDA

F'dan il-process xehdu tmien (8) xhieda kif gej;

Spettur Elliott Magro (*a fol 19 et. seq.*); Noel Micallef (*a fol 26 et. seq.*); Royston Muscat (*a fol 34 et. seq.*); Ivan Gaffiero (*a fol 57 et. seq.*); Roderick Micallef (*a fol 63 et. seq.*); WPS 261 Donna Frendo Magro (*a fol 72 et. seq.*); Spettur Elliott Magro (*a fol 90 et. seq.*); Spettur Matthew Galea (*a fol 106 et. seq.*).

Kunsiderazzjonijiet Legali Generali

Kif din il-Qorti kellha opportunita li tosserva f'diversi pronuncjamenti tagħha, huwa principju fundamentali tal-process penali li sabiex l-akkuzat jigi misjub hati tal-akkuzi migjuba fil-konfront tiegħu, tali akkuzi dawn ghandhom jigu pruvati oħtre kull dubju dettat mir-raguni. Fis-sentenza mogħtija mill-Qorti tal-Appell Kriminali fl-ismijiet **Il-Pulizija vs Peter Ebejer**,¹ il-Qorti fakkret li l-

¹ Deciza fil-5 ta' Dicembru 1997

grad ta' prova li trid tilhaq il-Prosekuzzjoni **hu dak il-grad li ma jhalli ebda dubju dettat mir-raguni u mhux xi grad ta' prova li ma jhalli ebda ombra ta' dubju.** Id-dubji ombra ma jistghux jitqiesu bhala dubji dettati mir-raguni. Fi kliem iehor, dak li l-gudikant irid jasal ghalih hu, li wara li jqis ic-cirkostanzi u l-provi kollha, u b'applikazzjoni tal-buon sens tieghu, ikun moralment konvint minn dak il-fatt li trid tipprova l-Prosekuzzjoni. Il-Qorti tal-Appell ghamlet riferenza ghall-ispjegazzjoni tal-espressjoni "*beyond reasonable doubt*" moghtija minn Lord Denning fil-kaz **Miller v Minister of Pension:** "*Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence 'of course it is possible but not in the least probable', the case is proved beyond reasonable doubt, but nothing shall of that will suffice.*"²

L-Inammissibilita tal-Istqarrija Moghtija mill-Imputat

Qabel xejn jehtieg li tigi indirizzata mill-Qorti l-istqarrija moghtija mill-imputat hix inammissibbli bhala prova fid-dawl tal-fatt li l-imputat ma kienx assistit minn Avukat tal-fiducja tieghu **waqt l-ghoti tal-istqarrija** u allura dan illeda d-dritt fundamentali tieghu ghal smiegh xieraq.

² 1974 - ALL Er 372

Mill-atti jirrizulta li l-imputat rrilaxxa stqarrija nhar il-14 ta' Frar, tal-elfejn u sittax (2016) u kien irrinunzja li jikkonsulta ma' Avukat tal-ghazla tieghu qabel ma ta l-istqarrija.

Madankollu, l-imputat ma nghatax id-dritt għall-assistenza legali waqt l-interrogatorju tieghu, stante illi dan id-dritt ma kienx vigenti fiz-żmien tal-każ odjern. Fil-fatt dan id-dritt dahal fis-sehħ fit-28 ta' Novembru 2016, permezz tal- Avviż Legali 401 tal-2016.

Il-Qorti hawnhekk taghmel riferenza għas-sentenza mogħtija mill-Qorti Kostituzzjonali fil-5 ta' Ottubru 2018, fl-ismijiet **Christopher Bartolo vs Avukat Generali et.** Ir-rikorrenti minkejja li qabel irrilaxxja l-ewwel stqarrija, kien ingħata parir mingħand l-avukat tieghu li f' dak l-istadju ma jgħid xejn lill-pulizija, huwa xorta waħda rrisponda għad-domandi waqt l-interrogatorju li sarlu, bir-rizultat li stqarr fatti li kienu inkriminanti għalih. Dan in kwantu ammetta li kien jixtri d-droga kemm għall-uzu personali tieghu, kif ukoll sabiex ibiegh minnha lil terzi. Fis-sentenza tagħha, il-Qorti Kostituzzjonali qalet hekk dwar l-istqarrijiet rilaxxjati mill-istess rikorrenti mingħajr il-jedd ta' assistenza legali waqt l- interrogatorji tiegħu:

“36. Mill-premess jirrizulta manifest li l-istqarrijiet rilaxxjati mir-rikorrent ser ikollhom kif fil-fatt gja` kellhom quddiem il-Qorti Kriminali impatt fil-proceduri kriminali, mhux in kwantu għall-ammissjonijiet, izda in kwantu l-kontenut tagħhom kien ittiehed in konsiderazzjoni fil-quantum tal-piena imposta fuqu mill-Qorti Kriminali, u issa huwa car li anke l-Qorti tal-Appell Kriminali ser tiehu konsiderazzjoni tal-kontenut tal-istqarrijiet f'dan ir-rigward. Għalhekk, għalkemm il-proceduri kriminali għadhom

pendenti u ghalhekk ma jistax f'dan l-istadju jigi determinat jekk kienx hemm lezjoni ta' smigh xieraq f'dawk il-proceduri, jekk l-istqarrijiet jithallew fil-process tal-proceduri kriminali, dawn wisq probabbilment ser isir uzu minnhom mill-Qorti tal-Appell Kriminali bi pregudizzju jew vantagg ghall-akkuzat fil-kwantifikazzjoni tal-piena, kemm dik karcerarja kif ukoll ghal dak li tirrigwarda l-multa li tista' tigi imposta.

37. Fid-dawl tal-premess it-tehid tal-istqarrijiet zgur li ser ikollhom impatt fuq l-ezitu tal-process kriminali u, ladarba dan isir, x'aktarx ser isir ksur tad-dritt tal- rikorrent ghal smigh xieraq tenut kont tal-fatt li dawn gew rilaxxjati mir-rikorrent fl-assenza ta' avukat li jassistih. Ghalhekk huwa xieraq li, filwaqt li f'dan l-istadju ma jistax jinghad jekk kienx hemm lezjoni ta' dan id-dritt fundamentali tar-rikorrent peress li l-proceduri kriminali ghadhom pendenti, dawn ma jithallewx jibqghu fl-inkartament tal-process kriminali."

Allura minkejja illi r-rikorrenti f'dak il-każ, kien inghata l-jedd li jikkonsulta ma' avukat qabel l-ewwel interrogatorju tieghu u anke eżercita dan il-jedd, il-Qorti ordnat illi l-istqarrijiet tieghu ma jithallewx fl-inkartament la darba kien ser ikollhom impatt fuq l-ezitu tal-process kriminali.

Din kienet ukoll il-konkluzjoni tal-Qorti tal-Appell Kriminal fis-sentenza taghha tal-20 ta' Novembru 2018, fl-ismijiet Il-**Pulizija vs Claire Farrugia**, f'liema każ dik il-Qorti skartat bhala inammissibbli l-istqarrijiet tal- imputata, wahda minnhom gumentata, u dan

ghaliex għalkemm hija ngħatat id-dritt li tottjeni parir legali qabel l-istqarrijiet tagħha, liema dritt hija għażlet li ma teżercitax, madankollu hija ma ngħatatx id-dritt li tkun assistita minn avukat waqt l-interrogatorji li sarulha u dan stante li dan id-dritt ma kienx għadu vigenti fiz-żmien in kwistjoni.

Iżjed riċenti mbagħad, fis-sentenza tagħha fl-ismijiet **Il-Pulizija (Spettur Malcolm Bondin) vs Aldo Pistella** tal-14 ta' Dicembru 2018, f'liema każ l- appellat kien ingħata l-jedd li jottjeni parir legali qabel l-interrogotarju tiegħu u anke eżercitax, iżda ma ngħatax il-jedd li jkun assistit minn avukat waqt dan l- interrogatorju, stante illi anke f'dak il-każ, fiz-żmien in kwistjoni, dan il-jedd ma kienx vigenti fil-liġi Maltija, il-Qorti Kostituzzjonali reġgħet irribadiet il-konkluzjonijiet tagħha fis-sentenza precedenti fl-ismijiet **Christopher Bartolo vs Avukat Generali et:**

“14. Ghalkemm, bhall-ewwel qorti, taqbel mal-appellanti illi f'dan l-istadju għadu ma seħħ l-ebda ksur tal-jedd għal smiġh xieraq, madankollu, kif osservat fil-każ ta' Malcolm Said, il-qorti xorta hija tal-fehma li ma jkunx għaqli li l-proċess kriminali jithalla jitkompla bil-produzzjoni tal-istqarrija tal-akkużat Pistella ladarba din, għallinqas f'parti minnha, ittiegħdet mingħajr ma Pistella kellu l-għajjnuna ta' avukat. Għalhekk, għalkemm għadu ma seħħ ebda ksur tal-jedd għal smiġh xieraq, fiċ-ċirkostanzi huwa għaqli illi, kif qalet l-ewwel qorti, ma jsir ebda użu mill- istqarrija fil-proċess kriminali sabiex, meta l-proċess kriminali jintemm, ma jkunx tniġġes b'irregolarità – dik li jkun sar użu minn stqarrija li

ttieħdet mingħajr ma l-interrogat kellu l-għajnuna ta' avukat – li tista' twassal għal konsegwenzi bħal tħassir tal-process kollu."

L-istess linja ta' hsieb ghandha ghalhekk tapplika fil-kaz li ghandha quddiemha l-Qorti. Fic-cirkustanzi l-istqarrija tal-imputat odjern ghandha titqies bhala leziva tad-drittijiet tieghu u ghalhekk inammissibbli u dan anke fid-dawl tas-sentenzi u pronuncjament supra citati. **Ghalhekk il-Qorti sejra tiskarta l-istqarrija tal-imputat odjern, kif ukoll kwalunkwe referenza għal tali stqarrija li saru fix-xhieda u fl-atti processwali bhala kompletament inammissibbli.**

Presumption of facts u provi cirkostanzjali

Il-Qorti qabel tghaddi biex tanalizza l-imputazzjonijiet thoss li ghandha taghmel espozizzjoni dwar il-*presumption of facts* u l-provi cirkostanzjali.

Fi kliem Sir Rupert Cross,

Presumptions of fact (praesumptiones hominis) are merely frequently recurring examples of circumstantial evidence, and instances which have already been mentioned are the presumption of continuance, the presumption of guilty knowledge arising from the possession of recently stolen goods and the presumption of unseaworthiness in the case of a vessel which founders shortly after

*leaving port. These are all inferences which may be drawn by the tribunal of fact.*³

Bhala eżempju ta' prova indizzjarja li minnha wiehed jista' jigbed konkluzzjoni partikolari, l-istess awtur jaghti l-eżempju tad-drawwa (*habit*):

*The fact that someone was in the habit of acting in a given way is relevant to the question whether he acted in that way on the occasion into which the court is inquiring.*⁴

U fl-edizzjoni tal-2018 ta' **Archbold** jinghad hekk dwar presunzjonijiet ta' fatt:

These are inferences which the court may draw from the facts which are established, but it is not obliged to draw.

For example where a defendant charged with handling stolen goods is found to be in possession of those goods without any explanation, this circumstantial evidence may give rise to a provisional conclusion that the defendant is the handler of those goods.

In some cases a rebuttable presumption of law imposes a legal burden of proof which must be satisfied to the requisite standard of proof in order to rebut the presumption, whereas some presumptions merely impose an evidential burden.

For example, the presumption that a machine was working

³ Cross, R., Cross on Evidence Butterworths (London), 1979, p. 124. Ikkwotat mill-Prim Imhalled Vicent Degaetano fl-Appell Kriminali Inferjuri Il-Pulizija vs Louis Gauci Borda deciz 24 ta' April, 2002: Appell Nru 228/2001

⁴ ibid. p. 40.

properly may be rebutted by merely adducing evidence to the contrary: *Tingle, Jacobs and Co v. Kennedy* [1964] 1 W.L.R. 638. In contrast, in order to rebut the presumption, created by section 74(3) of the Police and Criminal Evidence Act 1984, that the defendant committed an offence of which he was convicted, the Court of Appeal has held that the defence must prove on the balance of probabilities that the defendant did not commit the offence: *Watson* [2006] EWCA Crim. 2308. Similarly, in *Miell* [2008] 1 Cr.App.R. 23, the Court of Appeal treated s.74(3) as shifting the burden of proof onto the accused. In *C*[2011] 1 Cr.App.R. 17, however, the Court of Appeal, without reference to *Watson*, referred, at p.225, to s.74(3) as creating an “evidential presumption” and indicated that “if the defendant does adduce evidence to demonstrate that he is not guilty of the offence, it remains open to the Crown then to call evidence to rebut the denial”. In *Clift* [2012] EWCA Crim. 2750 the Court of Appeal indicated that s.74(3) shifts the burden of proof to the defendant and that the prosecution is not required to prove to the criminal standard the matters covered by s.74(3). Equally, in *R. v. O’Leary* [2013] EWCA Crim 1371 the Court of Appeal held at para.19 that, “The effect of section 74(3) is that the defendant bears the burden of proving that he did not commit the offence”.

In *Zawadzka* [2016] EWCA Crim 1712, where evidence of a theft conviction committed in Poland by the defendant was

admitted in a murder trial, the Court of Appeal accepted that the judge should have directed the jury that if the defendant proved on the balance of probabilities that she had not committed the offence then the jury should 'dismiss it from their minds'.

Even where a presumption imposes a legal burden of proof, if the imposition of a legal burden of proof upon the defence would give rise to a violation of art. 6(2) of the ECHR it may be necessary to read down the relevant statutory provision under section 3(1) of the Human Rights Act 1998, in line with the principles that were considered at §§ [10-11](#) and [10-12](#), *ante*, such that it merely imposes an evidential burden. Indeed, statute may expressly impose the evidential burden of rebutting a presumption upon the defendant. For example, in relation to the evidential presumptions about consent which section 75 of the Sexual Offences Act 2003 created, s.75(1) provides that:

"... the complainant is to be taken not to have consented to the relevant act unless sufficient evidence is adduced to raise an issue as to whether he consented, and the defendant is to be taken not to have reasonably believed that the complainant consented unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it."

It appears that the effect of this provision is that the burden of disproving the relevant issue remains on the prosecution

provided that evidence that is not merely “fanciful or speculative” has been adduced to raise the issue: *Ciccarelli*[2011] EWCA Crim. 266.⁵

Huwa minnu li fl-**Artikolu 638(2) tal-Kap. 9** ix-xhieda ta' xhud wiehed biss, jekk emnut minn min ghandu jiggudika fuq il-fatt hija bizzejjed biex taghmel prova shiha u kompluta minn kollox, daqs kemm kieku l-fatt gie ppruvat minn zewg xhieda jew aktar. Ghalhekk jispetta lill-Qorti tara liema hija l-aktar xhieda kredibbli u vero simili fic-cirkostanzi u dan a bazi tal-possibilita'. Huwa veru wkoll li l-Qorti ghandha tqis provi cirkostanzjali jew indizzjarji sabiex tara jekk hemmx irbit bejn l-imputat u l-allegati reati. Dan qed jinghad ghaliex ghalkemm huwa veru li fil-kamp penali l-provi indizzjarji hafna drabi huma aktar importanti mill-provi diretti, pero' hu veru wkoll li provi indizzjarji jridu jigu ezaminati b'aktar attenzjoni sabiex il-gudikant jaccerta ruhu li huma univoci.

Fil-fatt il-Qorti hawnhekk taghmel referenza ghal-sentenza moghtija mill-Qorti tal-Appell Kriminali fil-hmistax (15) ta' Gunju, 1998 fil-kawza fl-ismijiet '**Il-Pulizija vs Jason Lee Borg**', fejn kien gie ritenut li provi jew indizzji cirkostanzjali ghandhom ikunu univoci, cioe' mhux ambigwi. Ghandhom ikunu indizzji evidenti li jorbtu lill-akkuzat mar-reati u hadd iktar, anzi l-akkuzat biss, li huma l-hati u l-provi li jigu mressqa, ikunu kompatibbli mal-presunzjoni tal-innocenza tieghu. Illi ghalhekk huwa importanti fl-isfond ta' dan il-kaz li jigi ppruvat li kien l-imputat biss li ghamel dak li gie akkuzat

⁵ *Archbold: Criminal Pleading, Evidence and Practice* – 2018 Sweet & Maxwell (London), para. 10-15, p. 617-618.

bih u ghalhekk il-Qorti sejra tikkunsidra kwalunkwe prova possibilment cirkostanzjali li tista' torbot lill-imputat b' mod univoku bir-reati addebitati lilu. Fil-fatt kif gie ritenut fis-sentenza moghtija mill-Qorti tal-Appell Kriminali fis-sitta (6) ta' Mejju, 1961 fil-kawza fl-ismijiet 'Il-Pulizija vs Carmelo Busuttil',

"Il-prova ndizzjarja ta' spiss hija l-ahjar prova talvolta hija tali li ipprova fatt bi precizjoni matematika."

Illi huwa veru li fil-kamp penali, il-provi indizzjarji hafna drabi huma aktar importanti mill-provi diretti. Hu veru wkoll li l-provi indizzjarji jridu jigu ezaminati b'aktar attenzjoni sabiex wiehed jaccerta ruhu li huma univoci.

Archbold jghid:

"Where reliance has been placed by the prosecution on circumstantial evidence the proper approach is to determine whether a reasonable jury properly directed would be entitled to draw an adverse inference from the combination of factual circumstances by dismissing other possible explanations in relation to that evidence: Jabber [2006] EWCA Crim. 2694; G [2012] EWCA Crim. 1756. In London Borough of Haringey v. Tshilumbe, 174 J.P. 41, a senior environmental health practitioner for the local authority had affixed a hygiene emergency prohibition notice to T's premises. After the notice was affixed he returned to the premises and found a group of individuals sitting at a table eating food from plates and drinking from cans. It was alleged that T had failed to comply with the notice as he had continued to operate the premises

as a food business. The magistrates held that T had no case to answer as the local authority had produced no evidence that the food and drink that were on the table had been provided to the occupants of the premises by T in the course of a food business. It was held that justices had been wrong to find that there was no case to answer; it could be inferred from the circumstances that the premises were being used for a food business and the defendant should have explained himself at trial. Strong circumstantial evidence may be sufficient for the court to find a case to answer: Danells [2006] EWCA Crim. 628.⁶

Illi din hija ezattament il-pozizzjoni hawn Malta, kif fil-fatt giet konfermata b'sentenza moghtija mill-Qorti tal-Appell Kriminali nhar id-disgha ta' Jannar, 1998 fil-kawza fl-ismijiet '**Il-Pulizija vs Emanuel Seisun'**.

Din il-Qorti thoss u tghid li provi cirkostanzjali huma bhall-katina li tintrabat minn tarf ghal tarf, b'sensiela ta' ghoqiedi li jaqblu ma' xulxin u li flimkien iwasslu fl-istess direzzjoni⁷.

Xjentement (Knowingly)

Fir-rapport dwar il-kaz **Taylor's Central Garages (Exeter) Limited v Roper**⁸ Devlin J jaghti numru ta' osservazzjonijiet dwar it-tifsira tal-

⁶ Ibid. Pg. 533 para 8-119

⁷ Il-Qorti fliet fid-dettal l-argumenti migjuba fis-sentenza fl-ismijiet **Il-Pulizija vs Abdellah Berrard et** moghtija mill-Magistrat Consuelo Scerri Herrera fid-19 ta' Mejju 2014

⁸ Local Government Review Reports volume 115, page 445

kelma xjentament "knowingly" u kif tkun stabbilita x-xjenza f'kaz kriminali:

*"It seems to me to be very important in cases of this sort that lay justices, who are not necessarily very skilled in the handling of evidence and in the drawing of distinctions which the law requires to be drawn, should have explained to them by the prosecution, where the burden is on the prosecution, exactly what sort of knowledge the prosecution desires to be found. There are, I think, three degrees of knowledge which it may be relevant to consider in cases of this sort. The first is actual knowledge, and that the justices may infer from the nature of the act that was done, for no man can prove the state of another man's mind, and they may find it, of course, even if the defendant gives evidence to the contrary. They may say: 'We do not believe him. We think that was his state of mind.' They may feel that the evidence falls short of that, and, if they do, they have then to consider what might be described as knowledge of the second degree. They have then to consider whether what the defendant was doing was, as it has been called, shutting his eyes to an obvious means of knowledge. Various expressions have been used to describe that state of mind. I do not think it is necessary to describe it further, certainly not in cases of this type, than by the phrase that was used by Lord Hewart CJ, in a case under this section, *Evans v Dell* (1). What the Lord Chief Justice said was: 'The respondent deliberately refrained from making inquiries, the results of which he might not care to have.'*

*"The third sort of knowledge is what is generally known in law as constructive knowledge. It is what is encompassed by the words 'ought to have known' in the phrase 'knew or ought to have known.' It does not mean actual knowledge at all, it means that the defendant had in effect the means of knowledge. When, therefore, the case of the prosecution is that the defendant failed to make what they think were reasonable inquiries it is, I think, incumbent on the prosecutor to make it quite plain what they are alleging. There is a vast distinction between a state of mind which consists of deliberately refraining from making inquiries, the result of which the person does not care to have, and a state of mind which is merely neglecting to make such inquiries as a reasonable and prudent person would make. If that distinction is kept well in mind, I think justices will have less difficulty in determining what is the true position. The case of shutting the eyes is actual knowledge in the eyes of the law; the case of merely neglecting to make inquiries is not actual knowledge at all, but comes within the legal conception of constructive knowledge, which is not a conception which, generally speaking, has any place in the criminal law."*⁹

II-Crown Prosecution Service (CPS) jaghti din l-ispjega ta' "knowledge":

Implied knowledge for the summary offences includes actual subjective knowledge proven by evidence but it may also include wilful blindness. It is always open to a tribunal of fact to base a finding of knowledge on evidence that the defendant had deliberately shut his eyes to the obvious or refrained from inquiry

⁹ Ibid. pg 449

because he suspected the truth but did not want to have his suspicion confirmed **Westminster City Council v Croyalgrange Ltd** 83 Cr. App. R.155.

In Flintshire CC v Reynolds [2006] EWCH 195 (Admin) it was alleged that Mrs Reynolds had knowingly produced information she knew to be false in a material particular for the purpose of obtaining a benefit or other payment or advantage. Mrs Reynolds evidence was that she signed the form completed by her husband without reading it. It was held that constructive knowledge is not enough to demonstrate that something has been done knowingly in the context of a criminal statute (in this instance section 112 SSAA 1992).

F'sentenza moghtija mill-Qorti ta'l-Appell fl-Ingilterra fl-ismijiet **Regina vs Hilda Gondwe Da Silva** il-kelma suspett inghatat is-segwenti tifsira:

"The word suspect means that the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice."

Il-kelma 'xjentement' fl-akkuza odjerna hawnhekk tfisser li jrid ikun hemm kemm intenzjoni specifika kif ukoll dik generika. **Manzini** fil-fatt jaghti spjegazzjoni taz-zewg tipi ta' *mens rea* f'dan id-dolo. Huwa jsostni li:

"il dolo generico consiste nella volonta` cosciente e libera e nell'intenzione di compiere la falsificazione sapendo di agire senza diritto",

Filwaqt li:

"dolo specifico ha come fine di procurare a se o ad altrui un vantaggio o di recare ad altri un danno."

Ir-reat in ezami jirrikjedi l-element intenzjonali. Il-Ligi tirrikjedi li l-agent ikun **xjentement** ghamel dikjarazzjoni falza. Kif qalet din il-Qorti kif diversament presjeduta:

Il-kelma 'xjentement' tfisser li jrid ikun hemm kemm intenzjoni specifika kif ukoll dik generika. Manzini fil-fatt jaghti spjegazzjoni taz-zewg tipi ta' mens rea f'dan id-dolo. Huwa jsostni li: "il dolo generico consiste nella volonta` cosciente e libera e nell'intenzione di compiere la falsificazione sapendo di agire senza diritto", filwaqt li: "dolo specifico ha come fine di procurare a se o ad altrui un vantaggio o di recare ad altri un danno."¹⁰

Huwa principju fundamentali fil-ligi Kriminali u ben ribadit fil-gurisprudenza taghna li sabiex wiehed jinstab hati ta' reat, mhux bizzejjed illi jigi ppruvat l-element materjali izda huwa necessarju li jigi ppruvat l-element formali: *Actus Non Facit Reum Nisi Mens Sit Rea*. Fis-sentenza *il-Pulizija vs Marco Farrugia, Kevin Galea u*

¹⁰ Il-Pulizija vs Raimondo Farugia deciza 20.09.2015.

Marcel Mizzi deciza mill-Qorti tal-Appell Kriminali (Sede Inferjuri), il-Qorti tal-Appell qalet li:

*huwa necessarju li sabiex ikun hemm dan id-delitt, bhal kull delitt iehor, mhux bizzejjed li jigi pruvat l-element materjali biss, izda l-prosekuzzjoni trid tipprova, lil hinn minn kull dubju ragjonevoli, li kien jezisti fl-istess hin li qed isir l-att materjali, l-element tal-mens rea, l-element formali.*¹¹

KONSIDERAZZJONIJIET LEGALI DWAR L-IMPUTAZZJONIJIET

Ricettazzjoni -Artikolu 334 tal-Kap. 9

Dwar ir-reat ta' ricettazzjoni, l-artikolu 334 tal-Kap. 9 tal-Ligijiet ta' Malta jipprovdi li huwa ħati ta' reat kull min f'Malta, "xjentement jilqa' għandu jew jixtri ħwejjeġ misruqa, meħuda b'qerq, jew akkwistati b'reat, sew jekk dan isir f'Malta jew barra minn Malta, jew, xjentement, b'kull mod li jkun, jindaħal biex ibiegħhom jew imexxihom". Ix-xjenza meħtieġa fir-ricettatur tirrigwarda l-provenjenza kriminuża generika, u ma tirreferix għad-dettalji speċifiċi tar-reat prinċipali tas-serq, fis-sens li hija xjenza li tista' tiġi dedotta miċ-ċirkostanzi tal-każ. Dan l-element intenzjonali jirrikjedi li r-ricettatur kien jaf, jew li miċ-ċirkostanzi partikolari tal-każ, kien messu ragjonevolment jaf li l-oġġett li ser jakkwista ġej minn provenjenza kriminuża.¹²

¹¹ Deciza nhar il-31.05.2001.

¹² Ara Appell Kriminali, **Il-Pulizija v. Nazzareno Zarb et**, 16 ta' Dicembru 1998.

Ir-reat tal-frodi u l-falsifikazzjoni

Illi sabiex jissussisti r-reat tal-frodi jew truffa gie ritenut kostantement fil-gurisprudenza u fis-sentenzi tal-qrati taghna illi iridu jinkonkorru diversi elementi.¹³ Ibda biex irid ikun hemm ness bejn is-suggett attiv u is-suggett passiv tar-reat u cioe' bejn minn qieghed jikkometti ir-reat u il-vittma. Hemm imbaghad l-element materjali ta' dana ir-reat u cioe' l'uzu ta' ingann jew raggieri li iwasslu lil vittma sabiex isofri it-telf patrimonjali. Finalment jenhtieg li jkun hemm l-element formali tar-reat konsistenti fid-dolo jew fl-intenzjoni tat-truffatur jew frodatur li jinganna u dana sabiex jikseb profitt jew vantagg ghalih innifsu. Jekk xi wiehed jew iktar minn dawn l-elementi huma nieqsa, allura ir-reat tat-truffa ma jistax jissussisti.

Imbaghad dwar l-element formali tar-reati ta' truffa l-Imhalled Guze Flores kellu dan xi ighid:

“...Kwantu jirrigwarda l-element formali, cioe' kwantu jirrigwarda d-dolo ta' dan ir-reat ta' truffa, jinghad illi jrid jkun hemm qabel xejn l-intenzjoni tal-frodatur li jipprokura b'ingann l-konsenja tal-flus jew oggett li jkun fi profit ingust tieghu. L-ingustizzja tal-profitt tohrog mill-artikolu 308 tal-Kodici Kriminali fejn il-kliem “bi hsara ta' haddiehor” ma jhallux dubbju dwar dan. Jigifieri biex ikun hemm l-element intenzjonali tar-reat ta' truffa, hemm bzonn li s-suggett attiv tar-reat fil-mument tal-konsumazzjoni tieghu ikun konxju

¹³ L-Imhalled Edwina Grima amplifikat dak li l-Qrati rritenew

ta'l-ingustizzja tal-profitt u b'dan il-mod il-legittima produttivita tal-profitt hija bizzejjed biex teskludi d-dolo."

Illi f'sentenza moghtija mill-Corte di Cassazione Penale gie deciz illi biex jissusti dana it-tip ta' reat huwa necessarju illi jezistu *"I tre momenti di cui si compone il reato e' cioe' la produzione dell'artificio, nella successive induzione in errore e nella consequenziale produzione dell'ingiusto profitto per l'agente."* (Cassazione penale sez.II 3 ottobre 2006 n.34179)

"L'agente ... deve volere non solo la sua azione, ma anche l'inganno della vittima, come conseguenza dell'azione stess, la disposizione patrimoniale, come conseguenza dell'inganno e, infine, la realizzazione di quell profitto che costituisce l'ultima fase del processo esecutivo del delitto. Naturalmente occorre che la volonta sia accompagnata dalla consapevolezza del carattere frodatorio del mezzo usato, dell'ingiustizia del profitto avuto in mira e del danno che ne deriva all'ingannato¹⁴."

Illi l-artikolu 309 tal-Kapitolu 9, imbaghad jikkontempla ir-reat minuri tal-frodi innominat. Illi ghar-rigward ta' dana ir-reat, ghalkemm l-element tar-"raggiri" jew l-"artifzji", huwa nieqes u allura anke gidba semplici hija bizzejjed ghal fini tal-kummissjoni ta' dana ir-reat, izda dana irid bil-fors iwassal sabiex il-vittma u cioe' is-suggett passiv ta' dana ir-reat isofri xi telf patrimonjali. Illi kif gie deciz fis-sentenza **Il-Pulizija vs Carmela German** (Appelli Kriminali Inferjuri 30/12/2004): *"Kwantu ghal kwistjoni jekk il-gidba semplici*

¹⁴ Francesco Antolisei, ikkwotat f'sentenza ohra moghtija mill-Qorti ta'l-Appelli Kriminali (Il-Pulizija vs Patrick Spiteri deciza 22/10/2004)

- a differenza ta' l-artifizji u raggiri - tistax tammonta ossia twassal ghar-reat ta' frodi innominata, ir-risposta hija certament fl-affermattiv, basta li tali gidba tkun effettivament tammonta ghal qerq, cioe' intiza jew preordinata sabiex il-persuna l-ohra (il-vittma) taghmel jew tonogs milli taghmel xi haga li ggibilha telf patrimonjali bil-konsegwenti arrikkiment ghal min jghid dik il-gidba u basta, s'intendi li tkun effettivament waslet ghal dana it-telf min-naha u arrikkiment min-naha l-ohra."

Il-Qorti taghmel referenza ukoll ghas-sentenza *Il-Pulizija vs Raymond Ferris*¹⁵, deciza mill-Qorti tal-Magistrati nhar il-21 ta' Mejju 2015 fejn hemm referenza ghal giurisprudenza ohra.

L-Antolisei¹⁶ dwar l-elementi tar-reat ta' frodi jghid hekk:

"Dalla definizione legislative sopra riportata si desume che la fattispecie oggettiva della truffa consta dei seguenti elementi:

- 1) un particolare comportamento del reo, che il codice designa con l'espressione "artifici o raggiri";*
- 2) la causazione di errore, il quale, come vedremo, deve a sua volta dare origine a una disposizione patrimoniale;*
- 3) un danno patrimoniale derivato dall'inganno con conseguente ingiusto profitto per l'agente o altra persona;"*

Dawn l-elementi huma identici ghal dak li dejjem tkellmu dwarhom il-Qrati taghha fejn irritenew li l-elementi huma:

¹⁵ Moghtija mill-Magistrat Consuelo Scerri Herrera

¹⁶F. Antolisei; Manuale Di Diritto Penale, Parte Speciale I, Ed., 1986, pagina 294.

- (i) in-ness bejn is-suggettattiv u s-suggett passiv tar-reat;
- (ii) l-element materjali konsistenti fl-uzu ta' ingannjew raggiri;
- (iii) l-element ta' dannu patrimonjali; u
- (iv) l-elementi formali li jikkonsisti f' dolo jew fl-intenzjoni tat-truffar.

Dwar f'hiex jikkonsisti l-ingann jew raggiri, l-Qorti tal-Magistrati fis-sentenza ta' Raymond Ferris qalet li:

“Illum, ghalhekk, huwa assodat fil-gurisprudenza taghna illi biex ikun hemmir-reat tat-truffa, ghal dawk li huma artifizji, ma hix bizzejjed is-semplici gidba, izda jinhtieg li jkun hemm ukoll l-apparat estern li jaghti fidi lil dik il-gidba. Irid ikun hemm dik il-“magna callidibus ad decipiendum aliquamaddibite”; irid ikun hemm dik l-impostura li tikkonstringi lil dak li jkun lijemmen, li tnehhi kull suspett u li tipparilizza d-diligenza tal-iffordat utissorprendilu il-bwona fede tieghu.”

Dwar l-element tal-profitt, l-istess Qorti irriteniet li:

“Pero' kif inghad, element essenzjali iehor tar-reat in dizamina huwa t-telf patrimonjali li ggarrab il-vittma bil-konsegwenti qliegh ghall-agent, liema telf u qliegh ikunu r-rizultat ta' xi haga li taghmel jew tonqosha milli taghmel il-vittma ghax tkun giet imqanqla”.

Manzini jghid li semplici ommissjoni ma hijiex bizzejjed:

“Ma l’artificio, sia esso positivo o negativo, deve sempre consistere in una azione dell’ingannatore, e non già una semplice omissione. Per la truffa, quando non si simula, si deve dissimulare ciò che si è fatto o si sta facendo, non ciò che si è ommesso di fare, giacchè in quest’ultimo caso manca manifestamente ogni “artificio” e tanto più ogni raggiro.”¹⁷

Illi dwar il-Ligi, l-imputat jinsab akkuzat kemm bir-reat tal-frodi kif ukoll tal-falsifikazzjoni. Illi ghar-rigward tal-akkuza tal-frodi jew truffa ai termini ta’ l-artikolu 308 tal-Kodici Kriminali u tal-frodi innominat ai termini ta’ l-artikolu 309, fil-ligi taghna sabiex ikun hemm il-kommissjoni ta’ dawn ir-reati jrid ikun gie perpetrat mill-agent xi forma ta’ ingann jew qerq, liema ingann jew qerq ikun wassal lill-vittma sabiex taghmel jew tonqos milli taghmel xi haga li iggibilha telf patrimonjali bil-konsegwenti qligh ghall-agent. Dan it-telf hafna drabi jkun jikkonsisti billi l-vittma, proprju ghax tkun giet ingannata volontarjament taghti xi haga lil-agent. Jekk l-ingann jew qerq ikun jikkonsisti f’ raggiro o artifizji – dak li fid-dottrina jissejjah il-*mise en scene* – ikun hemm it-truffa; jekk le, ikun hemm ir-reat minuri ta’ frodi innominata (jew lukru frawdolent innominat) – (ara sentenza **Il-Pulizija vs Anthony Francis Willoughby** deciza Appelli kriminali 12/02/1999).

Illi ghalhekk biex jissusti dana it-tip ta’ reat gie ritenut kostantament fil-gurisprudenza u fis-sentenzi tal-qrati illi iridu jinkonkorru diversi elementi. Ibda biex irid ikun hemm ness bejn is-suggett attiv u is-

¹⁷ Vincenzo Manzini, *Trattato Di Diritto Penale Italiano*, Ed., 1986, Vol 9, pagina 689.

suggett passiv tar-reat u cioe' bejn minn qieghed jikkometti ir-reat u il-vittma. Hemm imbaggad l-element materjali ta' dana ir-reat u cioe' l'uzu ta' ingann jew raggieri, 'l hekk imsejja *mis en scene*, li iwasslu lil vittma sabiex isofri it-telf patrimonjali. Finalment huwa necessarju li ikun hemm l-element formali tar-reat konsistenti fid-dolo jew fl-intenzjoni tat-truffatur jew frodatur li jinganna u dana sabiex jikseb profitt jew vantagg ghalih innifsu. Jekk xi wiehed jew iktar minn dawn l-elementi huma nieqsa, allura ir-reat tat-truffa ma jistax isehh. (ara sentenza deciza fit-22 ta' Frar 1993, fl-ismijiet **Il-Pulizija vs Charles Zarb**, Il-Qorti ta'l-Appelli Kriminali (sede inferjuri) ghamlet esposizzjoni ferm preciza, studjata u dettaljata ghar-rigward ta'l-elementi ta' dana ir-reat)

Illi f'sentenza ohra moghtija mill-Qorti tal-Appelli Kriminali (sede inferjuri) per Imhallef Harding fl-ismijiet **Il-Pulizija vs Gunner Joseph Lebrun** gie deciz: "Il-fatt ta' min jiffalsifika cheque u jsarrfu f'bank jikkonkreta d-delitt ta' stelljonat jew excroquerie, ghaliex hemm mhux biss l-ingann, imma ukoll l-apparat menzjonier arkitettat biex jakkredita l-ingann."

Illi ghar-rigward tar-reat tal-falsifikazzjoni, il-ligi taghna tikkontempla diversi forom ta' falz f'dokumenti pubblici u skritturi privati. Fil-fatt il-ligi taghna taghmel anke distinzjoni bejn il-falz ideologiku u il-falz materjali. Kif gie ritenut f'diversi sentenzi moghtija mill-qrati taghna fosthom f'sentenza moghtija mill-Qorti ta'l-Appell Kriminali fl-ismijiet "**Il-Pulizija vs Paul Galea**" deciza 17 October 1997:

“Id-differenza bejn il-falz materjali u il-falz ideologiku hi spjegata mill-awturi b’dan il-mod: fil-waqt li fil-kaz tal-falz ideologiku d-dokument ikun iffalsifikat biss fis-sustanza u cioe’ fil-kontenut tiegħu, ikun hemm falsità materjali meta d-dokument ikun wiehed mhux genwin, mentri il-falz ideologiku, għalkemm id-dokument ikun genwin “non e’ veridico, perche colui che lo ha formato gli fa dire cose contrarie al vero”. Għall-finijiet tad-dottrina in tema ta’ falsità jkun hemm dokument kull fejn hemm kitba, attribwibbli għal persuna identifikabbli, liema kitba tkun tikkontjeni esposizzjoni ta’ fatti jew ta’ volonta. S’intendi b’kitba wiehed ma jifhimx biss is-sinjali alfabetici, izda tinkludi dawk numerici, stenografici u anke kriptografici, basta li dik il-kitba tesprimi hsieb li jkun jiftiehem minn kulhadd jew minn certu numru ta’ nies. Il-kitba f’dan is-sens tista’ issir kemm bl-id, kif ukoll b’mezzi mekkanici, b’mezz indelibbli jew li jista’ jithassar u fuq kwalsiasi mezz li jista’ jiehu imqar temporanjament il-messagg ...”.

L-artikolu 167 tal-Kap 9 tal-Ligijiet ta’ Malta jipprovdi bhala reat kull min jiffalsifika xi dokument kif deskritt fl-istess artikolu.

Skond Sir Anthony Mamo, kif imfisser fl-appunti tiegħu w imsemmija fis-sentenza mogħtija mill-Qorti tal-Appell Kriminali nhar s-sittax ta’ Marzu 1999 fil-kawza fl-ismijiet **Il-Pulizija v Alfred Sant et,**

“Our criminal code ... like the models on which it was originally framed, does not give a general definition of forgery, only in respect of certain of the crimes of forgery of public and private writings, it specifies the special ways in which the particular crimes may be

committed... In two ways ... may in general a forgery be committed, either by making in whole or in part a false document [counterfeiting] or by altering a genuine document."

Ai finijiet tad-dottrina in tema ta' falsita, ikun hemm dokument kull fejn hemm kitba, attribwibbli ghall-persuna identifikabbli, liema kitba tkun tikkontjeni esposizzjoni ta' talba jew dikjarazzjoni ta' volonta. Sintendi, b'kitba wiehed ma jifhimx biss s-sinjali alfabetici izda tinkludi dawk numerici, stenografati u anke kriptografici, basta li dik il-kitba tesprimi hsieb li jkun jiftiehem minn kulhadd jew minn certu numru ta' nies.

Il-kitba f'dan s-sens tista ssir kemm bil-id, kif wkoll b'mezzi mekkanici, b'mezzi indellibbli jew li jista jithassar, u fuq kwalsiasi mezz li jista jiehu, import temporanjament il-messagg - karta, parcmna, injam, gebel, hadid, plastic etc... [vide **Il-Pulizija v Paul Galea deciza mill-Qorti tal-Appelli Kriminali nhar s-sbatax ta' Ottubru, 1997**]

L-artikolu 169 tal-Kap 9 tal-Ligijiet ta' Malta imbaghad jipprovdi bhala reat li kull min xjentement aghmel uzu minn dokument falz kif imsemmi fl-artikoli 165, 167 u 168 tal-Kap 9 tal-Ligijiet ta' Malta.

Ma hemmx dubbju ghalhekk li ghal ezistenza ta' dan r-reat, jinhtieg li l-prosekuzzjoni tipprova li l-imputat ghamel uzu minn dokument kif imsemmi f'din d-disposizzjoni tal-ligi xjentement.

KONKLUZZJONI

L-obbligu li tipprova l-htija tal-imputat irid ikun assolut, oltre kull dubju dettat mir-raguni w f'kaz li jkun hemm xi dubju ragjonevoli, l-Prosekuzzjoni tigi kunsidrata li ma ppruvatx il-kaz taghha ta' htija w ghalhekk il-Qorti hija obbligata li tillibera.

Il-kaz tal-prosekuzzjoni huwa msejjes principalment fuq ix-xiehda ta' Noel Micallef u Roderick Micallef li kienu processati quddiem Qorti diversament preseduta fejn kien hemm ammissjoni.

Uhud mill-versjonijiet jikkostitwixxu *hearsay evidence* u ghalhekk ma humiex prova tal-kontenut taghhom. Izda l-Qorti ta' l-Appell Kriminali fir-rigward ta' evidenza simili fil-kaz **Il-Pulizija v. Fabio Schembri**¹⁸ kienet osservat li hu ben stabbilit li waqt li prova hearsay ma hix prova tal-kontenut ta' dak li jigi rapportat li ntqal, hi prova li dak rapportat li ntqal fil-fatt intqal fic-cirkostanzi ta' data, post u hin li ntqal u in kwantu tali hi cirkostanza li mehuda ma' provi u cirkostanzi ohra tista' wkoll tikkontribwixxi ghall-apprezzament li taghmel il-Qorti.

Il-Prosekuzzjoni lanqas rnexxielha tipprova li kien sar serq ta' *cheque book* minghand Royston Muscat. Tant li fil-police report (a fol 77) hemm innizzel li Muscat meta mistoqsi dwar ic-cheque book "*was very confused and was asked about his cheque book where he stated that he used it two days ago but he doesn't know exactly where he might have placed it*". Li kien pruvat hu li cekkijiet minn tieghu kienu imsarfa wara li saret firma li sintendi ma kinetx ta' sid ic-cheque book jew inkella

¹⁸ Deciza fl-1 ta' Frar 2011

persuna awtorizzata li tista' tiffirma kieku f'kaz fejn hemm persuni awtorizzati li jistghu jiffirmaw.

Ghalkemm fl-istqarrija l-Ispettur Elliott Magro semmielu jekk joggezzjonax li jitqabbad espert tal-kalligrafija, dan l-espert qatt ma saret talba ghalih u ghalhekk f'dan il-process hemm nuqqas kbir. Dan in-nuqqas ifisser li l-firem li allegatament gew iffalsifikati u li ffirma l-imputat ma jistax ikun konfermat. Din il-prova krucjali kienet torbot lill-imputat b'mod xjentifiku mal-kaz.

Skont l-awtur Blackstone fil-ktieb "**Criminal Procedure**" (2001 para. D 22.15 pagna 1622) jiddefenixxi kif decizjoni tkun **unsafe or unsatisfactory**:

"..... means that in cases of this kind, the Court must in the end ask itself a subjective question whether we are content to let the matter stand as it is or whether there is not some lurking doubt in our minds which makes us wonder whether an injustice has been done. This is a reaction which may not be based strictly on the evidence, as it is a reaction which can be produced by the general feel of the case as the Court experiences it."

Dan gie spjegat ukoll mill-Qorti tal-Appell (Sede Superjuri) fil-kawza fl-ismijiet "**Repubblika ta' Malta vs Ivan Gatt**" [1.12.1994] fejn intqal:

"fi kliem iehor, l-ezercizzju ta' din il-Qorti fil-kaz prezenti w f'kull kaz iehor fejn l-appell ikun bazat fuq apprezzament tal-provi, huwa li tezamina l-provi dedotti, tara jekk, anki jekk kien hemm verzonijiet kontradditorji – kif normalment ikun hemm – xi wahda minnhom setghetx illiberament u senament tigi emnuta

minghajr ma jigi vjolat il-principju li d-dubju ghandu jmur favour l-akkuzat u jekk tali verzjoni setghet tigi emnuta w evidentement giet emnuta l-funzjoni anzi d-dover ta' din il-Qorti hu li tirrispetta dik id-deskrizzjoni w dak l-apprezzament. Ghalhekk huwa l-kompitu ta' din il-Qorti li tezamina b'mod profond li l-provi kollha migjuba w migbura w in partikolari t-traskrizzjonijiet tax-xhieda w l-istqarrija illi l-appellant ghamel mal-Pulizija jwasslu ghal dik il-konkluzzjoni. Fi kliem iehor, il-kaz mhux wiehed azzardat legalment u kontra kull principju legali li wiehed jasal ghal konkluzzjoni ta' rejeta', imma hu kaz fejn l-appellant jista' ma jitwemminx f'dak li qal u l-Ewwel Qorti setghet ghalhekk legittimament u ragjonevolment tikkonkludi kif ikkonkludiet fuq il-provi¹⁹.

Din il-Qorti wara analizi tal-provi migjuba quddiemha tinsab f'qaghda li tiddikjara illi f'dan il-kaz, mehud kollox flimkien, din il-Qorti ma tpoggietx f'pozizzjoni li fiha tista legittimament tiddikjara l-htija tal-imputat skont il-ligi. Il-Qorti hi konvinta li Joseph Azzopardi mhux ta' subajgh f'halqu u seta' kellu xi involvement b'xi mod f'dan il-kaz izda dan mhux bizzjejjed biex il-Qorti ssibu hati tal-imputazzjonijiet migjuba kontrih. Il-mistoqsija li l-Qorti ma sabitx twegiba ghalha hi, ghaliex l-imputat dahal fl-intrigu li jdahhal persuni ohra biex isgharfu cekkijiet "misruqa jew misplaced" u jesponi lilu nnifsu billi jmur hu stess u jibqa' barra l-bank? Ghaliex ma ngabarx is-cctv footage tal-bank fejn provaw isarf u c-cheque u xi footage minn hdejn id-detox centre? Il-firma li sid ic-cheque book qal

¹⁹ Ara wkoll : **Pulizija vs Wahid Elawami** Qorti tal-Appell Inferjuri 1.09.2004

li mhix tieghu ghaliex ma gietx verifikata ta' min tassew setghet kienet? Tista' l-Qorti toqghod biss fuq il-kelma ta' Noel Micallef u Roderick Micallef? Min kellu c-cheque book ta' Royston Muscat? Ghand min kien ic-cheque book ghaliex Muscat stess kien konfuz u ma setghax iwiegeb hu x'sar mic-cheque book tieghu? Allura kif il-Prosekuzzjoni tippretendi li l-Qorti ssib lil xi hadd hati ta' ricettazzjoni meta lanqas biss hemm rapport li c-cheque book kien misruq ?

Il-Qorti analizzat l-provi migjuba quddiemha inkluz ix-xhieda mismugha u applikay dak li jipprovdi l-Artikolu 637 tal-Kapitolu 9 fejn jipprovdi gwida cara lill-Gudikant kif ghandu japprezza xhieda ta' xhud:

id-decizjoni tithalla fid-diskrezzjoni ta' min ghandu jiggudika l-fatti, billi jittiehed qies tal-imgieba, kondotta u karattru tax-xhud, tal-fatt jekk ix-xiehda ghandhiex mis-sewwa jew hix konsistenti, u ta' fattizzi oħra tax-xiehda tiegħu, u jekk ix-xiehda hix imsaħħa minn xiehda oħra, u tac-cirkostanzi kollha tal- kaz.

Huwa minnu li fl-**Artikolu 638(2) tal-Kap. 9** ix-xhieda ta' xhud wiehed biss, jekk emmnut minn min ghandu jiggudika fuq il-fatt hija bizzejjed biex taghmel prova shiha u kompluta minn kollox, daqs kemm kieku l-fatt gie ppruvat minn zewg xhieda jew aktar. Ghalhekk jispetta lill-Qorti tara liema hija l-aktar xhieda kredibbli u vero simili fic-cirkostanzi u dan a bazi tal-possibilita'. Huwa veru wkoll li l-Qorti ghandha tqis provi cirkostanzjali jew indizzjarji sabiex tara jekk hemmx irbit bejn l-imputat u l-allegati reati. Dan qed

jinghad ghaliex ghalkemm huwa veru li fil-kamp penali l-provi indizzjarji hafna drabi huma aktar importanti mill-provi diretti, pero' hu veru wkoll li provi indizzjarji jridu jigu ezaminati b'aktar attenzjoni sabiex il-gudikant jaccerta ruhu li huma univoci.

Il-Qorti fliet sewwa ix-xhieda ta' Noel Micallef u Roderick Micallef u ma thossx li fuq din ix-xhieda tista' ssib htija fuq l-akkuzi ta' ricettazzjoni jew ir-reat alternattiv ta' serq u ta' frodi u falsifikazzjoni ta' firem fil-konfront tal-imputat.

DECIDE:

Ghal dawn il-mottivi l-Qorti ma ssibx lill-imputat Joseph Azzopardi hati tal-imputazzjonijiet migjuba kontra tieghu u minnhom tilliberah.

Dr. Joseph Mifsud
Magistrat