



**Fil-Qorti tal-Magistrati (Malta)  
Bhala Qorti ta' Ġudikatura Kriminali**

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

*Kumpilazzjoni Nru. 748/2018*

**Il-Pulizija  
(Spettur Joseph Mercieca)  
(Spettur Robert Vella)**

**-vs-**

**Mario Camilleri, tal-Karta tal-Identita` numru 345569M**

**Illum:** 10 ta' Dicembru, 2019

Il-Qorti,

Rat l-akkużi miġjuba fil-konfront tal-imputat Mario Camilleri u cioe` talli:

Matul l-ghodwa ta' nhar it-23 ta' Ottubru, 2018, mil-fond numru 82, Triq Kola Xara, Rabat, flimkien ma persuna ohra mhux maghrufa

1. Bil-hsieb li jagħmel delitt ta' serq wera dan il-hsieb b'atti esterni u ta bidu għall eżekuzzjoni tad-delitt, liema delitt ma giex esegwit minhabba xi haġa aċċidentali w indipendenti mill-volonta' tiegħu u li kieku gie esegwit, kien ikun delitt ta serq aggravat bil-mezz, bil-valur li jeċċedi l-elfejn tliett mija disġha u ghoxrin Euro u sebġha u tletin centezmu (€2,329.37), u bil-lok u liema attentat ta' serq sar għad-dannu ta' Raymond Abela u/jew ta' xi persuna/I u/jew ta' xi entita' u/jew entitajiet ohra.

2. Talli rrenda ruhu reċediv ai termini ta' l-Artikoli 49, 50 u 289 tal-Kap 9 tal-Liġijiet ta' Malta, b'sentenzi definittivi mill-Qrati ta' Malta.

Rat in-nota tal-Avukat Generali permezz ta' liema baghat lill-imputat biex jigi gudikat minn din il-Qorti bhala Qorti ta' Gudikatura Kriminali kif mahsub fis-segweni artikoli:<sup>1</sup>

1. Fl-Artikoli 20, 31, 41(1)(a), 261(b)(ċ)(e), 263, 264, 265, 266, 267, 269(ġ), 278(1)(2)(3), 279(b), 280(1)(2) u 281(a) tal-Kapitolu 9 tal-Liġijiet ta' Malta;
2. Fl-Artikoli 31, 49, 50 u 289 tal-Kapitolu 9 tal-Liġijiet ta' Malta;
3. Fl-Artikoli 382A, 383, 384, 385, 386 u 412C tal-Kapitolu 9 tal-Liġijiet ta' Malta;
4. Fl-Artikoli 17, 31, 532A, 532B u 533 tal-Kapitolu 9 tal-Liġijiet ta' Malta.

Rat li l-imputat m'ghandu l-ebda oggezzjoni biex il-kaz jigi hekk trattat.

Rat l-atti u d-dokumenti kollha.

Semghet it-trattazzjoni finali.

Ikkunsidrat-

L-Ispettur **Joseph Mercieca** xehed illi nhar it-23 ta' Ottubru, 2018, sar rapport l-Ghassa tar-Rabat minn certu Raymond Abela. Hu ma dahhalx fil-kaz mill-ewwel izda kien kellimu dwaru l-Ispettur Robert Vella peress li kien qed jinvestiga kazijiet ohrajn li jinvolvu l-vettura GBW 547, Volkswagon Golf ta' kulur blue skur, li tappartjeni lill-imputat Mario Camilleri.<sup>2</sup> L-Ispettur Vella spjegalu li kellu f'idejh filmati ta' dakinhar li twettqet is-serqa u ghaddielu numru ta' *stills* li kienu gew estratti mill-istess filmat. F'dawn ir-ritratti tidher cara il-vettura in kwistjoni li dakinhar tal-kaz kienet dehret ghall-ewwel darba

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<sup>1</sup> Fol.172

<sup>2</sup> Fol.53

fit-triq Kola Xaghra għall-habta tat-tmienja ta' filghodu. L-istess vettura baqgħet thuf fl-istess inhawi sal-habta ta' nofsinhar.<sup>3</sup> F'hin minnhom din il-vettura tidher tieqaf gewwa Triq Gwanni l-Għammiedi, kantuniera ma' Triq Kola Xaghra, ipparkjat fil-kantuniera ezatt, u żewġ peruni dehru jifthu l-*bonett* tal-vettura in kwistjoni, dehru jmorru quddiem ir-residenza derubata, jigifieri l-fond numru 82 Triq Kola Xaghra, iżda mill-filmat ma jidhirx li sgassaw il-bieb mill-ewwel. Dawn il-persuni jidhru jmorru t-tieni darba u jidhlu gewwa. Meta marru t-tieni darba il-vettura jidher li pparkjawha ftit iktar il-bogħod li ma tinqabadx bil-filmati. Sussegwentament jidhru zewġ persuni li hergin minn din ir-residenza u wara ftit sekondi tghaddi l-istess vettura minn taht il-*camera* minn quddiem il-fond derubat. Ix-xhud jgħid li l-vettura hija registrata f'isem l-imputat.<sup>4</sup> L-ispettur jixhed illi huwa qatt ma ra lil imputat isuq din il-vettura pero` l-ispettur Sean Pawney, li kien qed jinwestiga kaz iehor li jerga kienet tinvolvi l-istess vettura, infurmah li kien ra diversi drabi lill-imputat isuq il-vettura in kwistjoni.

Wara li gie mahrug mandat fil-konfront tal-imputat, dan gie interrogat fil-25 ta' Novembru, 2018, meta ttiehditlu stqarrija awdio-viziva<sup>5</sup> fejn l-imputat ma wiegeb għall-ebda domanda li saritlu; saħansitra lanqas il-*particulars* tieghu ma kien taha. Tul din l-istqarrija l-imputat intwera hames ritratti<sup>6</sup> li ghazel ma jiffirmahhomx; simili kif għamel dwar id-dikjarazzjoni ta' rifjut għall-parir legali.<sup>7</sup> Fis-26 ta' Novembru ttiehdet stqarrija ohra fejn l-imputat rega' baqa' sieket.<sup>8</sup> Fuq domanda tal-qorti rrizulta li l-imputat jirrisjedi Haż-Żebbuġ ma

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<sup>3</sup> *Ibid.*

<sup>4</sup> Fol.53-54

<sup>5</sup> **Dok JM 1** a fol 60

<sup>6</sup> **Dok. JM2** a fol. 61; ritratti mmarkati JM1-JM5

<sup>7</sup> Fol.55; Vide **Dok.JM** a fol. 59

<sup>8</sup> *Ibid.*

ommu u li kull darba li l-ispettur mar iffittxu r-Rabat sab biss lill-huh. Tfittxijiet ghall-vettura GBW 547 baqghu fin-negattiv u l-vettura baqghet *unaccounted for*.<sup>9</sup>

In kontro-ezami ikkonferma li fil-fond in kwistjoni ma nstabu l-ebda impronti tal-imputat u **dak li jorbot lill-imputat mat-tentattiv ta' serq hu l-fatt tal-vettura tieghu thuf ghal erba sieghat shah fl-akkwati tal-fond li gie sgassat, kif ukoll li l-persuni li jidhru hiergin mir-residenza kienu liebsin hwejjeg li kienu liebsin propju minn persuni li kienu qed juzaw il-vettura.** L-ispettur jiddikjara b'onesta` li l-filmat (u l-stills) ma jwasslux biex jigi identifikat l-imputat.<sup>10</sup>

Gew esebiti<sup>11</sup> zewg sentenzi moghtija fil-konfront tal-imputat Mario Camilleri moghtija nhar it-13 t' Awwissu, 2009<sup>12</sup> u fl-24 ta' Gunju, 1998<sup>13</sup>.

**L-Ispettur Robert Vella** spjega li fit-23 t' Ottubru, 2018, kien sehh tentattiv ta' serqa minn residenza numru 18, Triq Kola Xahra, Rabat. Dan sar maghruf wara rapport mis-sid, Raymond Abela, meta sab il-garaxx sgassat kif ukoll xi marki fuq tlett bibien li kienu jaghmlu parti mir-residenza tieghu. WPS 145 u WPC 57 marru fuq il-post fejn ghalkemm gie nnutat hafna taqlib rrizulta li mill-affarijiet ta' valur ma kien nsteraq xejn.<sup>14</sup> Saru spezzonijiet fil-madwar ghal-*cctv* u gie elevat *footage* li meta ezaminat giet innutata vettura partikolari, vettura ta' kulur skur bin-number plate GBW 547 li dakinhar li sehh il-kaz, deher tghaddi min l-istess triq f' diversi hinijiet. Deher ukoll illi f' hin minnhom din l-istess vettura giet ipparkjat fil-kantuniera ta' fejn hemm l-istess residenza. Min dan

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<sup>9</sup> Fol.56

<sup>10</sup> Fol.57-58

<sup>11</sup> Fol.115

<sup>12</sup> **Dok. JMZ 1** a fol. 117

<sup>13</sup> **Dok. JMZ 2** a fol. 120

<sup>14</sup> Fol.166-167

il-filmat jidhru xi persuni johrogu mil-karozza, jinzlu hafna drabi fejn ir-residenza, u eventwalment anke tidher l istess vettura pparkjata fil kantuniera fejn l-istess persuni jidhru li qed jiccekjaw xi haga fil-*bonett*.<sup>15</sup> L-ispettur Vella jkompli jixhed kif il-Pulizija kienet ilha ssegwi dik il-vettura ghall-numru ta' gimghat f'certi lokalitajiet, speċjalment f'dik tar-Rabat. Kien maghruf maghhom li l-istess vettura kien jaghmel uzu minnha l-imputat. Meta mitkellem l-imputat irrifjuta d-dritt ghall-parir legali<sup>16</sup> u għażel li ma jirrispondiex għad-domandi li bdew isirulu.<sup>17</sup>

**PS 180 Fabian Aquilina**<sup>18</sup> ikkonferma dak li xehdu l-ispetturi investigattivi in kwantu li l-imputat, wara li rrifjuta d-dritt għall-assistenza legali, irrifjuta li jiffirma d-dikjarazzjoni relattiva<sup>19</sup>. **Dr. Lennox Vella** esebixxa traskrizzjoni tal-interrogatorju li saru lill-imputat.<sup>20</sup> Tul dawn l-interrogazzjonijietl-imputat ma bediex iwiegeb għad-domandi li kienu qed issirulu.<sup>21</sup>

Mix-xhieda ta' **Stephen Cachia**, in rappreżentanza ta' Transport Malta, jirrizulta li l-vettura bin-numru tar-registrazzjoni GBW 547 hi wahda tal-ghamla Volkswagon ta' kulur blu w ilha rregistrata fuq l-imputat mill-25 ta' April, 2017.<sup>22</sup>

Xehed **Raymond Abela** sid id-dar in kwistjoni u spjega kif dakinhar tat-23 t'Ottubru, 2018, halla r-residenza tieghu għal habta tas-6:15am u rritorna xi l-

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<sup>15</sup> Fol.167-168

<sup>16</sup> **Dok.JM** a fol. 59

<sup>17</sup> Fol.168

<sup>18</sup> Fol.129-130

<sup>19</sup> **Dok.JM** a fol.59

<sup>20</sup> Fol.139

<sup>21</sup> **Dok.LV** u **Dok.LV1** a fol.141 et seq.

<sup>22</sup> Fol.25 et seq.

4pm fejn sab il-garaxx biswit id-dar fi Triq Kola Xaghra, miftuh.<sup>23</sup> Kif dahal id-dar sabha kollha mqallba. Jidher li l-malvienti l-ewwel pruvaw jidhlu mill-bieb principali izda irnexxilhom jidhlu mill-bieb tal-garaxx.<sup>24</sup> Il-valur tal-oggetti fid-dar jammontaw ghal madwar €20,000.<sup>25</sup> Qatt ma kien ra l-vettura murija lilu<sup>26</sup> qabel u bhala hsarat kien soffra €150 biex irranga is-serratura tal-bieb.<sup>27</sup>

**WPC 145 Graziella Zammit** spjegat kif Raymond Abela kien mar l-ghassa tar-Rabat sabiex jirraporta li kien sab id-dar tieghu, u cioe` 82, Triq Kola Xaghra, Rabat, sgassata minn diversi bibien.<sup>28</sup> Marret fuq il-post u sabet diversi marki ta' sgass ma' tlett bibien ta-residenza b'wiehed minnhom ikun sahansitra miftuh; rat taqlib f'kull kamra. Abela ma kien sab xejn nieqes.<sup>29</sup> Iccekjat *security camera* nstallata fil-qrib u cioe` fi Triq George Borg Olivier<sup>30</sup> ffit il-fuq mid-dar fuq in-naha opposta:<sup>31</sup> *"Stajt nosserva vettura ta' ghamla Golf tghaddi diversi drabi .... F'mument minnhom jidher jieqaf fil-kantuniera tat-triq jiftah il-bonett tal-imsemmija vettura u jiccekja naqra mal-madwar, l-istess persuna tidher tmiss il-bieb tar-residenza 82 taghmel kuntatt kemm mat-tieqa u kemm ma' partijiet ohra peress li l-istess residenza ghandha diversi entraturi bhal ma diga spjegajt qabel, u naghraf l-istess karozza u l-istess,<sup>32</sup>.... l-imsemmija karozza tidher diversi drabi, f'hin minnhom jidher jiftah il-bonett jaghmel xi haga u jhares lil hemm u l hazn u f'certi mumenti l-istess persuna li tohrog mill-karozza taghmel anke kuntatt mal-*

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<sup>23</sup> Vide ritratti a fol. 78

<sup>24</sup> Fol.109

<sup>25</sup> Fol.111

<sup>26</sup> Fir-ritratt JPX2; xhieda a fol.112

<sup>27</sup> Fol.113

<sup>28</sup> Fol.39

<sup>29</sup> Fol.40

<sup>30</sup> Fol.42

<sup>31</sup> Fol.43

<sup>32</sup> Fol.41

*bieb, mat-tieqa tal-imsemmija residenza.*"<sup>33</sup> Ikkonfermat li l-*stills* esebiti<sup>34</sup> ttiehdu mill-film tal-ghamlet rifereza ghalih.<sup>35</sup> **PC 57 Matthew Buhagiar** ukoll jikonferma dawn il-fatti.<sup>36</sup>

**PC 895 Joseph Scicluna** kkonferma il-**Current Incident Report**<sup>37</sup> redatt minnu.<sup>38</sup> **Joseph Vella** jixhed li kien ghadha *cctv footage* minn *cameras* li ghandu, fi Triq Kola Xaghra u ohra fuq Triq Borg Olivier, lill-Pulizija.<sup>39</sup> **PC580 Ismael Mercieca**<sup>40</sup> spjega li ghadha *hard drive* tal-ghamla 'Maxter' flimkien mas-*submission form* relattiva<sup>41</sup> lil WPS 69 stazzjonata mad-dipartiment tal-forensika. Fil-fatt **WPC 69 Lindsey Magro Garreth** spjegat kif filmat gie mghoddi lilha mill-pulizija tad-distrett tar-Rabat, liema filmat sussegwentement ghadha ghand is-sezzjoni tal-fotografija;<sup>42</sup> fatti kkonfermati minn **WPC 140 Chirsty Cremona** u mis-*submisison form*<sup>43</sup> minnha esebita. <sup>44</sup>

**PC1007 Jean Paul Pizzuto** esebixxa *stills*<sup>45</sup> u kopji tas-*cctv footage*<sup>46</sup> mghoddija lilu mill-Ispettur Mercieca,<sup>47</sup> filwaqt li **PC 1331 Darren Debattista** kkonferma ir-relazzjoni tieghu<sup>48</sup> w iddeskriva kif flimkien ma PC 813 kien mar fuq ix-xena

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<sup>33</sup> Fol.43

<sup>34</sup> **Dok.JP2** a fol.38

<sup>35</sup> Fol.41

<sup>36</sup> Fol.155

<sup>37</sup> **Dok.JS** a fol.50-52

<sup>38</sup> Fol.48-49

<sup>39</sup> Fol.164

<sup>40</sup> Fol.151

<sup>41</sup> **Dok. IM** a fol. 153

<sup>42</sup> Fol.105-106

<sup>43</sup> **Dok.CC** a fol.137-138

<sup>44</sup> Fol.135

<sup>45</sup> **Dok. JP2** a fol.38

<sup>46</sup> **Dok. JP** u **Dok. JP1** a fol.36 u 37

<sup>47</sup> Fol.33-35

<sup>48</sup> **Dok.DV** a fol. 75 et seq

u gibdu r-ritratti necessarji kif ukoll ghamlu ezamijiet ta' impronti digitali u xoghol iehor relattat max-xena tad-delitt.<sup>49</sup>

**Philip Camilleri**, hu l-imputat, xehed li jaħdem bhala *parker* faccata tas-Serkin u li l-imputat gieli kien imur jghaddi ftit tal-hin mieghu fejn gieli jmur kuljum u gieli darba iva w darba le. Meta kien imur hdejh l-imputat kien juza vettura Golf ta' kulur griz u dejjem mar hdejh wahdu.<sup>50</sup>

Gie ezaminat il-filmat li minn fuqu ttiehdu *l-stills*. **Mhemmx dubbju li minn kien qed jaghmel uzu mill-vettura tal-imputat kien responsabbli mill-sgass tad-dar ta' Abela.**

Ikkunsidrat.

Il-provi f' dan il-kaz huma is-segwenti:

1. Vettura registrata fuq l-imputat li ghal madwar erba (4) sighat tidher tghaddi diversi drabi minn quddiem id-dar li giet sgassata, il-lok tat-tentattiv ta' serq;
2. Il-vettura li tigi pparkjata ezatt mal-faccata tal-kantuniera tad-dar in kwistjoni;
3. Dawk li kienu qed jaghmlu uzu mill-vettura jidhru jaghmlu kuntatt mal-aperturi u mal-bibien tar-residenza;
4. Dak li jirrizulta bic-cjar li hu x-xufier tal-vettura jidher gej bil-girja u jidhol fil-fond li kienu ghadu kemm gie sgassat mill-persuna li kien riekeb mieghu;

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<sup>49</sup> Fol. 72-73

<sup>50</sup> Fol.175-177



5. Dawn **jibqghu mhux identifikabbli sal-grad mistenni** - li jidhru jiskandaljaw ir-residenza<sup>51</sup> (fejn jaslu jifthu l-grad tal-bieb ta' barra<sup>52</sup>) w anke hiergin minn gol-garaxx li jidher bil-bieb miftuh;<sup>53</sup>
6. Il-fetha tal-bieb tikkombaccja perfettament ma dik murija fir-ritratti tas-*scene of crime officers*, **Fs 181630-18 CKR 101**;<sup>54</sup>
7. Ritratt juri persuna qed taghmel mossa bhal li kieku qed iccempel il-qanpiena.<sup>55</sup>Fil-fatt il-qanpiena hi precizament fuq in-nahha tax-xellug tal-bieb (fuq il-lemin hekk kif thares lejha mill-faccata) kif jixhdu ir-ritratti f' **Dok. DV**.<sup>56</sup> Fil-fehma tal-qorti indikazzjoni ohra tal-iskandaljar li kien qed issir sabiex isir maghruf kienx hemm xi hadd id-dar!
8. Dawn il-persuni huma **liebsin ilbies identiku ghal dak milbus minn min qed jaghmel uzu mill-vettura**.<sup>57</sup>

Ghalhekk dan hu kaz msejjes ghal kollox fuq il-fatt li l-vettura li tidher fl-inhawi hi dik registrata f'isem l-imputat li skond huh, Philip Camilleri, kull meta mar hdejha kien juza golf ta' lewn griz. Izda **dan ix-xhud baqa' ma giex mitlub jikkonferma in-numru ta' registrazzjoni ta' dik il-vettura kif lanqas ma gie mitlub jikkonferma li l-vettura li tidher fl-stills esebiti hi precizament dik li qed jaghmel riferenza ghalha**. Din il-prova kienet tkun determinanti u evidenza cirkostanzjali b'sahhitha ferm li tippona lejn l-involviment tal-imputat. Jinghad ukoll li minn dawn l-atti processwali, u senjatament mix-xhieda ta' hu l-imputat, **minn imkien ma rrizulta li dik il-vettura kien**

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<sup>51</sup> *JPX 1; 3 8-11 f' Dok. JP2* a fol. 38

<sup>52</sup> *JPX 12-18*

<sup>53</sup> *JPX 19, 23-26, 29,*

<sup>54</sup> Fol.78

<sup>55</sup> *JPX 1*

<sup>56</sup> Vide ritratt a fol. 78-79

<sup>57</sup> Vide *stills* a fol. 38

**jaghmel uzu minnha l-imputat biss**, rizultanza li potenzjalment kienet tkompli ssahhah il-kaz tal-prosekuzzjoni.

Mhemmx dubbju li l-presenza kontinwa<sup>58</sup> tal-vettura registrata f' isem l-imputat fl-akkwati tal-post li gie sgassat, kif ben tajjeb tissottometti l-abbli prosekuzzjoni fis-sottomissjonijiet taghha, hi suspetuza ghall-ahhar u l-probabilita` kbira hi li l-imputat, bhala s-sid tal-vettura, ghandu x'jirrispondi ghall-akkadut in dezamina.

Izda **minkejja din il-probabilita` kbira kemm hi kbira**, li l-provi akkwiziti jwasslu ghaliha, kull ma tezisti hija semplici spekulazzjoni u fil-kamp penali mhemmx lok ghall-spekulazzjoni.

Ikkunsidrat,

Fis-sentenza tal-Qorti tal-Appell Kriminali (Sede Superjuri) fl-ismijiet **II-Pulizija vs Eleno sive Lino Bezzina** gie deciz:<sup>59</sup>

Illi l-grad ta' prova li trid tilhaq il-prosekuzzjoni, sakemm ma jkunx hemm specificat mod iehor fil-ligi, huwa tal-htija lil hinn minn kull dubbju dettat mir-raguni. Fil-kamp kriminali huwa l-oneru tal-prosekuzzjoni li tipprova l-akkuza taghha kontra l-akkuzat *'beyond reasonable doubt'*, kif gie deciz fil-kawza "**Pulizija vs Bugeja**", tas-26 ta' Marzu, 1987. Illi min-naha l-ohra d-difiza, msahha bil-presunzjoni tal-innocenza tal-akkuzat, tista' tibbaza u/jew tipprova l-kaz taghha anke fuq bilanc ta' probabbilita`, jgifieri jekk huwa probabbli li seta' gara dak li gie rrakkuntat mill-akkuzat kif korroborat mic-cirkostanzi jew le.

Illi dan ifisser li l-prosekuzzjoni ghandha l-obbligu li tipprova l-htija tal-akkuzat oltre` kull dubbju dettat mir-raguni u f'kaz li jkun hemm xi dubbju ragonevoli, il-prosekuzzjoni tigi kunsidrata li ma ppruvatx il-kaz taghha ta' htija u ghalhekk il-Qorti hija obbligata li tillibera.

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<sup>58</sup> **Dok. JM** a fol. 179-180 u **Dok. JM1** a fol. 181-182

<sup>59</sup> Per Onor. Imhalled Raymond C. Pace, Onor. Imhalled David Scicluna u Onor. Imhalled Joseph R. Micallef; Deciza 24 ta' April, 2003, Att t' Akkuza Numru 10/1994

Illi l-Onorabbli Qorti ta' l-Appell Kriminali (Sede Inferjuri) fil-kawza fl-ismijiet “**Pulizija vs Peter Ebejer**” deciza fil-5 ta' Dicembru, 1997 qalet illi:-

*“Ta' min ifakkar hawnhekk li l-grad ta' prova li trid tilhaq il-prosekuzzjoni hu dak il-grad li ma jhalli ebda dubbju dettat mir-raguni u mhux xi grad ta' prova li ma jhalli ebda ombra ta' dubbju. Id-dubbji ombra ma jistghux jitqiesu bhala dubbji 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. Ghamlet sew infatti l-ewwel qorti li ccitat b'approvazzjoni l-ispejgazzjoni moghtija minn Lord Denning fil-kaz “**Miller v. Minister of Pensions**” [1974] 2 All E.R. 372 tal-espressjoni “proof beyond a reasonable doubt”;*

*“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 short of that will suffice” (373-374).*

Fid-decizjoni taghha **Il-Pulizija vs Lela Ristic**,<sup>60</sup> il-Qorti tal-Magistrati (Malta) ghamlet ezami *funditus* dwar dak li jikkostitwixxi prova indizzjarja jew kif ahjar maghrufa ‘*circumstantial evidence*’:

At law the position in Malta relative to circumstantial evidence that can lead to a conviction was analysed in various judgments, including **Il-Pulizija vs. Abderrah Berrad et**<sup>61</sup> decided by the Court of Magistrates (Malta) where the main principles were outlined as follows : -

Huwa minnu wkoll kif rapportat aktar ‘l fuq 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-allegat reat. Dan qed jinghad ghaliex ghalkemm huwa veru li fil-kamp penali l-provi ndizzjarji hafna drabi huma aktar importanti mill-provi diretti, pero' hu veru wkoll li provi ndizzjarji jridu jigu ezaminati b'aktar attenzjoni sabiex il-gudikant jaccerta ruhu li **huma univoci**.

Fil-fatt il-Qorti hawnhekk taghmel referenza ghall-sentenza moghtija mill-Qorti tal-Appell Kriminali fil-hmistax (15) ta' Gunju, 1998 fil-kawza fl-ismijiet ‘**Il-Pulizija vs Joseph Lee Borg**’, fejn kien gie ritenut li **provi jew indizzji cirkostanzjali ghandhom ikunu univoci, cioe' mhux ambigwi. Ghandhom ikunu ndizzji evidenti li jorbtu lill-akkuzat**

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<sup>60</sup> Per Onor. Magistrat Aaron M. Bugeja; Deciza 16 ta' Dicembru, 2015

<sup>61</sup> Per Onor. Magistrat Consuelo Scerri Herrera; Deciza 19.05.2014; **Il-Pulizija vs Abdallah Berrad, Youness Berrad**.

**mar-reat u hadd iktar, anzi l-akkuzat biss, li hu l-hati u l-provi li jigu mressqa, ikunu kompatibbli mal-presunzjoni tal-innocenza tieghu.**

Illi ghalhekk huwa mportanti fl-isfond ta' dan il-kaz li jigi ppruvat li **kien l-imputat biss li ghamel dak li gie akkuzat bih** u ghalhekk il-Qorti sejra tikkonsidra **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 fissitta (6) ta' Mejju, 1961 fil-kawza fl-ismijiet '**Il-Pulizija vs Carmelo Busutti**', "Il-prova ndizzjarja ta' spiss hija l-ahjar prova talvolta hija tali li tipprova fatt bi precizjoni matematika."

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

**Archbold** fil-ktieb tieghu **Criminal Practice** (1997 edition para 10-3) b'referenza ghal dak li qal **Lord Normand** fil-kaz **Teper vs R** (1952) jghid:

"Circumstantial evidence is receivable in Criminal as well as in Civil cases; and indeed, the necessity of admitting such evidence is more obvious in the former than in the latter; for in criminal cases, the possibility of proving the matter charged by the direct and positive testimony of eye witnesses or by conclusive documents much more than in civil cases; and where such testimony is not available. The Jury is permitted to infer the facts proved other facts necessary to complete the elements of guilt or establish innocence. It must always be narrowly examined, if only because evidence of this kind may be fabricated to cast suspicion on another... It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there is no other co-existing circumstance which would weaken or destroy the inference."

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

Din il-Qorti thoss u tghid li provi cirkostanzjali huma bhal katina li tintrabat minn tarf ghal tarf, b'sensiela ta' ghoqiedi li jaqblu ma' xulxin u li flimkien iwasslu fl-istess direzzjoni. Il-Qorti hija rinfaccjata b'zewg versjonijiet ta' kif sehhet il-grajja.....

.....<sup>62</sup>

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<sup>62</sup> [Ghalhekk m'hemmx dubju li l-Qorti hija rinfaccjata b'zewg versjonijiet dijametrikament opposti ghal xulxin ghalkemm inghad sa minn dan l-istadju bikri tas-sentenza jidher li l-imputati li gew investigati a tempo vegine tal-investigazzjoni baqghu konsistenti fil-verzjoni tal-fatti taghhom sa meta xehdu l-Qorti viva voce minn jeddhom hames snin wara l-incident.

Illi ghalhekk m'hemmx dubju li kollox jiddependi fuq il-kredibilita` tax-xhieda u dan billi bhala gudikant il-Qorti ghandha tqies l-impiegba, il-kondotta u l-karattru tax-xhieda, tal-fatt jekk ix-xhieda ghandhiex mis-sewwa jew hiex kostanti u ta' fatturi ohra tax-xhieda

Thus in order for a Court of Criminal Jurisdiction to be able to secure a conviction on the basis of circumstantial evidence:-

(a) it has to assess this evidence with a high degree of circumspection and attention (*if only because evidence of this kind may be fabricated to cast suspicion on another*);

(b) it has to be sure that a direct link is established between the alleged perpetrator and the offence itself – and no other person apart from the accused;

(c) it has to be univocal and not equivocal or ambiguous (*It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there is no other co-existing circumstance which would weaken or destroy the inference*);

(d) it has to ensure the continuity of the chain of evidence;

(e) it has to be such that it leads the Court to conclude, solely on its basis that the accused committed the crime beyond a reasonable doubt.

Now in this case the clear evidence that shows the accused rummaging among the personal property of the Zammit family is taken from an incident that took place on the 20th June 2014 and not the 23rd May 2014. Can this piece of evidence lead to a presumption of fact in the sense that once the accused was seen rummaging on the 20th June 2014 then it was automatically and solely she who did the same and stole the €2000 on the 23rd May 2014? According to law, it is possible for a presumption of fact to arise from circumstantial evidence. According to Blackstone's **Criminal Practice**,<sup>63</sup> Lord Simon in **DPP v Kilbourne**<sup>64</sup> stated the following : -

The Lord Justice-General (Lord Clyde) started his judgment: 'The question in the present case belongs to the department of circumstantial evidence. This consideration is vital to the whole matter ...'

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tieghu u jekk ix-xhieda hiex imsahha minn xhieda ohra u tac-cirkostanzi kollha tal-kaz u dan ai termini tal-Artikolu 637 tal-Kap. 9 tal-Ligijiet ta' Malta....

Huwa minnu, kif gie allegat mid-difiza, li jekk il-Qorti hija rinfaccjata b'zewg verzjonijiet konflingenti ghandha tillibera, stante li tali konflitt ghandu jmur a beneficciu tal-imputat, pero' huwa veru wkoll kif gie deciz mill-Qorti tal-Appell Kriminali fid-dsatax ta' Mejju, 1997 fil-kawza fl-ismijiet '**Il-Pulizija vs Graham Charles Ducker**':

"It is true that conflicting evidence per se does not necessarily mean that whoever has to judge may not come to a conclusion of guilt. Whoever has to judge may, after consideration of all circumstances of the case, dismiss one version and accept as true the opposing one." Huwa l-oneru tal-Prosekuzzjoni li tressaq l-ahjar provi sabieħ tikkonvinci lill-Qorti li l-akkuzi addebitati lill-imputat huma veri u dan ghaliex kif jghid il-**Manzini** fil-ktieb tieghu **Diritto Penale** Vol III Kap IV pagna 234, Edizione 1890:-

"Il cosi` detto onero della prova, cioe` il carico di fornire, spetta a chi accusa – onus probandi incumbit qui osservit".]

<sup>63</sup> 2013, F1.18 to F1.27

<sup>64</sup> [1973] 1 All ER 440 at 462; [1973] AC 729 at 758.

Circumstantial evidence is evidence of facts from which, taken with all the other evidence, a reasonable inference is a fact directly in issue. It works by cumulatively, in geometrical progression, eliminating other possibilities.<sup>65</sup>

On the otherhand, according to Mr Justice Joseph Galea Debono in **Il-Pulizija vs James Abela**,<sup>66</sup> a presumption of fact :-

“tqum fejn meta il-“fatti pruvati jkunu fihom infushom tant elokwenti li l-interpretazzjoni logika u naturali taghhom necessarjament u ragjonevolment twassal ghall-prova fi grad sodisfacenti ta’ certu fatti.” .....  
[emfazi tal-Qorti]

Issir riferenza wkoll ghas-sentenza **Il-Pulizija vs Michael Attard**:<sup>67</sup>

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’.*

U fl-edizzjoni ta’ l-2001 ta’ **Archbold** jinghad hekk dwar presunzjonijiet ta’ fatt: *‘A presumption arises where from the proof of some fact the existence of another fact may naturally be inferred without further proof from the mere probability of its having occurred. The fact thus inferred to have occurred is said to be presumed, i. e. is taken for granted until the contrary is proved by the opposite party...And it is presumed the more readily, in proportion to the difficulty of proving the fact by positive evidence, and to the facility of disproving it or of proving facts inconsistent with it, if it really never occurred.’ [Il-Pulizija vs Louis Gauci Borda App Krim – 24/04/2002].’*

Iggwidata ghalhekk b’dawn il-principji ta’ dritt probatorju fil-kamp penali din il-Qorti allura tqies illi d-diskrezzjoni ezercitata mill-Ewwel Qorti kienet wahda gusta u li allura dik il-qorti setghet ragjonevolment u legalment tasal ghal konkluzjoni li wasslet ghalha. Dan ghaliex il-provi jistabbilxxu l-presunzjoni ta’ fatt li kien l-appellanti u hadd iktar qieghed isuq vettura taht l-influenza tax-xorb, liema provi qatt ma gew kontradetti minnu.

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<sup>65</sup> Ara wkoll **Exall (1866)** 4 F&F 922 at 929 per Pollock CB.

<sup>66</sup> Qorti tal-Appell Kriminali; Deciza 11 ta’ Lulju, 2002.

<sup>67</sup> Qorti tal-Appell Kriminali; Per Onor. Imhalled Dr. Edwina Grima LL.D.; Deciza 22 ta’ Settembru, 2016; Appell Nru: 127/2016

Imbghad il-Qorti tal-Appell Kriminali fid-decizjoni taghha fl-ismijiet *Ir-Repubblika ta' Malta vs George Spiteri* <sup>68</sup> ddecidiet:

L-prova indizzjarja trid tkun wahda assolutament univoka, li tippona biss minghair dubju dettat mir-raguni lejn fatt jew konkluzzjoni wahda ..... biex prova ndizzjarja tigi ammessa bhala prova valida fis-sens li wiehed jista' ragjonevolment jasal ghall konkluzzjoni tieghu ta' htija in bazi taghha bla ebda dubju dettat mir-raguni, irid ikun moralment konvint minn dan ir-rekwizit ta' l-univocita' taghha, cioe' li dik il-prova tfisser biss u xejn aktar li l-akkuzat huwa hati ta' dak addebitat lilu w, allura, kull dubju ragjonevoli fir-rigward ghandu jmur favur l-akkuzat skond il-ligi. [sottolinejar tal-Qorti]<sup>69</sup>

Fuq dan l-insenjament u fid-dawl tar-rizultanzi processwali ma jistax jinghad li l-provi indizzjarji huma univoci tant li jwasslu lil din il-Qorti ghal dik ic-certezza morali li l-imputat u l-imputat biss kien l-awtur jew komplici fit-tentattiv tas-serqa addebitata lilu.

Diffikulta` ohra ghall-kaz tal-prosekuzzjoni, li ghandu jinghad li ghamlet l-almu taghha biex tipprezenta l-ahjar provi li kellha, hu li mill-*footage* (u l-*stills* relattivi) jidhru zewg persuni li bla ebda sforz tal-immaginazzjoni ma jista' jinghad li xi wiehed minnhom hu, sal-grad tal-konvinciment morali, jigi identifikat bhala l-imputat.

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<sup>68</sup> Per Onor Imhallfin Noel Arrigo, Joseph A. Filletti u Patrick Vella; Deciza 5 ta' Lulju, 2002.

<sup>69</sup> Vide ukoll mill-istess Qorti per Onor. Profs. H. Harding, Onor. Imhallef Joseph A. Herrera u Onor. Imhallef Carmel A. Agius, **Ir-Repubblika ta' Malta v Angel sive Angelo Bajada; Deciza 15 ta' Mejju, 1990: L-assjem tal-provi kien tali li a bazi tieghu l-gurati setghu ragjonevolment u b'konvinciment morali trankwill ghall-ahhar jaslu ghall-konkluzzjoni la ma jemmnux dak li qed isostni l-appellant u jsibu li l-provi jwasslu inekwivokabbilment ghall-htija tieghu. L-indizji, biex jaghmlu prova, jehtieg li jkun univoci.**

Issir riferenza għas-sentenza tal-Qorti tal-Magistrati (Malta), **The Police vs Craig Anthony Brotherston** li ezaminat *funditus* il-forza probatorja ta' *cctv footage u recordings* oħra:<sup>70</sup>

Consequently the only evidence found in the court records relating to the incident is the CCTV footage together with the stills and the corroborative evidence as may be inferred from the accused's silence when interrogated by the Prosecuting officer after having been duly cautioned and after having consulted his lawyer. The Court therefore has to establish a priori whether the evidence found in the footage is safe and satisfactory to determine whether the charge brought against the accused is legally founded.

Considers,

The rules laid down in **R vs Turnbull**, although not laying down specific rules under Maltese legislation, however have served as a guidelines in Maltese jurisprudence in cases involving the identification of the person of the accused. This was emphasized in the case **The Police vs Stephen Zammit** (Court of Criminal Appeal judgment delivered on the 16th July 1998) wherein The Court gave a detailed exposition of the Turnbull rules:

**"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 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.**

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<sup>70</sup> Per Onor. Magistrat Edwina Grima, Deciza 30 t'Ottubru, 2013; Kump. Nru. 1239/2012



**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.**

As already pointed out earlier on the only evidence the Prosecution has brought forward regarding the identification of the accused as the person involved in the damage to the parking barrier is a CCTV footage of the parking area depicting the incident from beginning to end. ....

[In] his book, **On Evidence** (6th edition) **Cross** gives a definition of what constitutes so-called **real evidence**, in criminal proceedings:

**'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 passes on to give various examples of what is "real evidence" and amongst these examples includes automatic recordings wherein he states:

**'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, videotape 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'.**

**Murphy**, then in his book **'A Practical Approach to Evidence'** (3rd Ed) gives this definition of '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 ...'.

However he continues:

'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'.

In the case *Taylor vs Chief Constable of Cheshire (1986)*, Ralph Gibson LJ states:

'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'".<sup>71</sup>

Ikkunsidrat,

Kif gja` sar accenn aktar il-fuq, wara li din il-Qorti ezaminat bir-reqqa l-*stills* li nharrgu mill-film, tikkonferma dak li xehed l-ispettur Mercieca u cioe` li l-imputat jibqa` ma jigix identifikabbli ghalkemm il-persuna li tidher issuq il-vettura u terhila bil-girja ghal gol-fond sgassat, hi ta' struttura li tixbah dik tal-imputat. Ghalhekk tezisti l-impossibilita` li jigi definittivament, u sal-grad rikjest, determinat li xi wahda miz-zewg persuni li jidhru fil-film, li bla ebda dubbju huma l-malviventi, hi l-akkuzat.

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<sup>71</sup> Vide wkoll **Il-Pulizija vs Dustin Bugeja**. Per Onor.Imhalled Dr. Edwina Grima; Deciza 25.02.2016; Appell Nru: 493/2013. Wara li ghamlet riferenza ghall-esposizzjoni tar-regoli **Turnbull** ziedet:

Dan ghaliex l-identifikazzjoni jew ir-rikonoxximent maghmul mix-xhud jibqa` dejjem suxxettibbli ghall-imperfezzjonijiet tal-osservazzjonijiet umani u ghall-possibilitajiet kollha ta' zball genwin illi ifisser allura illi min hu imsejjah biex jiggudika irid japplika dik il-kawtela specjali qabel ma jasal ghal kundanna ibbazata fuq dik l-identifikazzjoni. [emfazi tal-Qorti].

Ghaldaqstant fid-dawl ta' dawn ir-risultanzi processwali l-Qorti ma tistax hliet  
tillibera lill-imputat mill-akkuzi migjuba.

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