

Qorti tal-Magistrati (Malta)
Bhala Qorti ta' Gudikatura Kriminali
Magistrat Dr. Claire L. Stafrace Zammit B.A. LL.D.

Il-Pulizija
[Spettur Jurgen Vella]
vs
Pierre Cremona

Kumpilazzjoni Numru: 717/2013

Illum, 4 ta' Ottubru, 2021

Il-Qorti;

Rat l-akkuzi migjuba kontra Pierre Cremona detentur tal-karta tal-identita' numru 286273M

Akkuzat talli nhar il-15 ta' Lulju 2013 u xhur precedenti gewwa 77, Triq il-Knisja, Hal Tarxien u f'dawn il-gzejjer xjentement laqa ghandu jew xtara hwejjeg misruqa, mehuda b'qerq, jew akkwistati

b'reat, sew jekk dan sar f'Malta jew barra minn Malta, jew, xjentement, b'kull mod li jkun, indahal biex ibieghhom jew imexxihom liema oggetti huma zewg LED TV's li l-valur tieghu huwa ma jeccedix l-elfejn u tlett mija u disgha u ghoxrin Euro u sebgha u tletin centezmu (€2,329.37) ghal detriment ta' Joseph James Vella Zarb u/jew persuni ohra.

B'hekk irrenda ruhu ricediv ai termini tal-artikoli 49, 50 u 289 tal-Kap 9 tal-ligijiet ta' Malta wara li huwa ga gie misjub hati permezz ta' diversi sentenzi moghtija mill-Qrati ta' Malta, liema sentenzi saru definittivi u ma jistghux jigu mibdula.

Ukoll talli naqas milli jhares xi wahda, w/jew iktar minn wahda, mill-kondizzjonijiet imposti fuqu mill-Qorti Kriminali (Malta, mill-Imhallef, Dr. Joseph G. Galea Debono LL.D, b'digriet datat 21 t'Awwissu 2009, li permezz tieghu huwa nghata il-helsien mill-arrest taht diversi kundizzjonijiet, fosthom li ma jikkommettix delitt iehor ta' natura volontarja;

Il-Qorti giet mitluba sabiex f'kaz ta' htija, flimkien mal-piena applikabbli ghar-reati msemmija, tirrevoka 'contrario imperio' d-

digriet tal-helsien mill-arrest datat u tordna l-arrest mill-gdid ta' Pierre Cremona. Kif ukoll, li tordna li s-somma ta' depozitati fir-registru ta' din il-Qorti, ohra bhala garanzija personali, li gew imposti fuqu sabiex jaghmel tajjeb ghall-beneficcju tal-helsien mill-arrest, jghaddu favur il-Gvern ta' Malta, kif stipulat fl-Artikolu 579(3) tal-Kapitolu 9 tal-Ligijiet ta' Malta.

Rat l-atti u d-dokumenti eseblti inkluz in-nota tal-Avukat Generali datata tletin (30) ta' Lulju 2013 li biha ta l-kunsens sabiex dawn il-proceduri jinstemghu b'mod sommarju;

Rat l-ezami tal-imputat li wiegeb mhux hati tal-akkuzi kif dedotti kontrih;

Semghet ix-xhieda kollha prodotti u s-sottomissjonijiet tal-partijiet;

Ikkunsidrat:

Illi din il-kawza tittratta fuq allegat reat ta' ricettazzjoni mill-imputat ta' zewg (2) televixins nhar il-15 ta' Lulju 2013 u fix-xhur precedenti.

Ikkunsidrat:

Illi mix-xhieda tal-Ispettur Jurgen Vella hareg illi wara dan ir-rapport minghand persuna li fil-25 ta' Dicembru 2012 sehhet serqa fi Vjal Sir Paul Boffa, Rahal il-Gdid minn go hanut tal-elettronika jismu Toshiba minn fejn insterqu zewg televixins tal-istess ditta wiehed *55 inch* u l-iehor *40 inch* fejn imbaghad is-sid ta' dan il-hanut kien gab stima ta' dawn it-televixins li kienu jammontaw ghas-somma ta' elf sitt mija u disghin ewro (€1,690) il-kbir u tliet mija u disgha u tmenin ewro (€389) iz-zghir.

Sussegwentement u wara diversi xhur dahlet informazzjoni illi dawn it-televixins setghu kienu fil-pussess tal-imputat u wara tfittxija li saret instabu zewg televixins tal-istess tip u daqs gewwa d-dar ta' missier l-imputat pero' dawn bl-ebda mod ma kienu mohbija. Illi sar ezercizzju sabiex dawn it-televixins jigu

kkomparati permezz tas-*seriel numbers* ta' dawk misruqa u qablu perfettament. (Dok. JV2).

Illi l-imputat gie mitkellem mill-pulizija fejn huwa stqarr li dawn it-televixins kien xtrahom minghand certu wiehed jghidulu s-*Sebghin* u li jismu Grazio Calleja u l-imputat kien xtrahom minhabba li kellu jaghtih xi flus u bhala parti minn dawn il-flus kien qallu jekk kienx imhajjar li jiehu dawn it-televixins. Huwa qal illi kien xtrahom ghas-somma ta' elf u erba' mitt ewro (€1,400) it-tnejn.

L-Ispettur kompli jghid illi dan Grazio Calleja kellu xi precedenti kriminali fuq droga u meta dan gie mitkellem cahad li qatt kellu xi televixins u wisq anqas li kien bieghhom lill-imputat.

Jghid ukoll illi fuq il-post tar-reat ma nstabu l-ebda mpronti digitali tajbin sabiex jigu kkomparati.

Xehed il-parte civile Joseph Vella Zarb fejn ikkonferma illi hu l-propjetarju tal-hanut Tip Top f'Rahal il-Gdid u kkonferma wkoll illi gie sgassat il-hanut u huwa nduna peress illi l-*alarm* bdiet iddoqq

u din taghmillu sinjal fuq it–telefon cellulari. Huwa jghid illi lllum il–gurnata dawn it–televixins gew ritornati lilu wara li kienu arrestaw lill–imputat.

Xehed ukoll **Grezzju Calleja** u wara li nghata d–debita twissija huwa stqarr illi lil Pierre Cremona kien jafu ghaliex kienu trabbew flimkien. Huwa jghid illi dak iz–zmien meta kien kellmu l–ufficjal investigattiv kien innega kollox ghaliex kien jiehu l–pirmlu u peress li kien qed jibza’ mill–habs. Huwa jghid illi kien mar ghandu certu Pawlu Zammit mill–Marsa lllum mejjet il–monti ta’ Bormla u bieghelu zewg televixins *second hand* ghal xi disa’ mitt ewro (€900) u mbaghad dawn bieghhom lill–imputat. Huwa jghid illi dawn bieghhomlu bil–patt li mhumiex misruqin pero’ dawn gew mibjuha lilu minghajr kaxxa u minghajr *remote*. Jghid ukoll illi fuq dawn tal–ahhar Pawlu Zammit kien wieghdu li kien ser igiblu dawn il–kaxxa u r–*remote* izda qatt ma gabhomlu.

Rat illi la sentenzi inkwantu l–addebitu tar–recidiva u l–anqas il–kundizzjonijiet tal–helsien mill–arrest ma gew ipprezentati u wisq anqas ikkonfermati mill–prosekuzzjoni.

Semghet is-sottomissjonijiet tal-partijiet;

Ikkunsidrat:

Illi d-definizzjoni legali tar-reat ta' ricettazzjoni tinsab fil-Kodici Kriminali fl-Artikolu 334 li jghid hekk:

*“Kull min f'Malta xjentement jilqa' għandu jew jixtri
ħwejjeg 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, jeħel, meta jinsab ħati -*

*(a) jekk il-ħaga tkun gejjja minn serq, bil-pieni tas-serq,
skont il-valur tal-ħaga;*

*(b) jekk il-ħaga tkun gejjja minn wieħed mir-reati dwar
ħwejjeg akkwistati jew mizmuma kontra l-ligi, bil-piena li
hemm għal min hekk jakkwista jew iżomm;*

*(c) jekk tkun gejjja minn frodi, bil-pieni li hemm għal dik
ix-xorta ta' frodi li minnha l-ħaga tkun gejjja:”.*

Ikkunsidrat:

Illi l-principji tar-reat ta' ricettazzjoni huma ben stabbiliti fil-gurisprudenza taghna. Skond il-Qorti tal-Appell Kriminali fil-kawza bl-ismijiet Il-Pulizija vs Darren Debono deciza fil-15 ta' Jannar 2009 intqal is-segwent:

"... .. sabiex persuna tinstab hatja ta' ricettazzjoni hu mehtieg li jikkonkorru is-segwent li tliet rekwiziti u cioe':

1. il-provenjenza lilegittima tal-oggett in kwistjoni ossia li jkun insteraq, jew gie mehud b' qerq jew akkwistat b' reat iehor;

2. l-akkuzat irid ikun laqa' ghandu jew xtara tali oggett li ghandu provenjenza lilegittima; w

3. fil-mument tal-akkwist, l-akkuzat kien jaf bil-provenjenza lilegittima tal-oggett in kwistjoni (ara App. Krim "Il-Pulizija vs. Bugelli" [24.1.1942]; "Il-Pulizija vs. Giovanni Grima" [25.10.2002])

Illi l-element formali ta' dan ir-reat hu li l-akkuzat kien konsapevoli tal-provenjenza illecita' tal-oggett suggett tar-ricettazzjoni. Dan ir-rekwizit jista' jigi ppruvat kemm minn provi diretti kif ukoll minn provi ndizjarji. L-istess fl-Appell Kriminali Il-Pulizija vs. John Briguglio deciza fl-24 ta' Gunju 1961 (per Harding J.) kien gie ritenut li:-

"Min jakkwista oggett taht cirkostanzi li fihom imissu jissuspetta li dak l-oggett kellu provenjenza illegittima, u ntant ma jaghmel xejn biex jikkontrolla dik il-provenjenza, u jaghalaq ghajnejh, huwa hati ta' din in-negligenza u kwindi ta' ricettazzjoni."

Gie ukoll ritenut li dan l-element formali tar-reat in dizamina ikun jissussisti anki jekk l-akkuzat ikun irceva jew xtara l-oggett fil-waqt li jkollu jew inkella imissu kellu suspett li l-persuna li taghtu dak l-oggett setghet giet f'pussess ta' dak l-oggett b' mod illecitu w b' dana kollu xorta jilqa' ghandu jew jixtri tali oggett minghajr ma' jaghmel xejn biex jiverifika u jaccerta ruhu li l-pussess ta' dik il-persuna l-ohra kien wiehed legittimu u mhux kif kien qed jissusspetta hu. (ara App. Krim. Il-Pulizija vs. J. Briguglio)

[24.6.1961]; Il-Pulizija vs. John Dimech [24.6.1961]; Il-Pulizija vs. George Tabone [24.6.1961] u Il-Pulizija vs. Tancred Borg [26.10.1998]).

In linja ma' kif jghid l-awturi Kenny:

"The knowledge: The prisoner must have received the stolen goods with knowledge then of their having been stolen. Such knowledge may be presumed prima facie if he knew of circumstances so suspicious as to convince any reasonable man that the goods had been stolen – e.g. ...when an unlikely vendor offers them for an unlikely price ... His subsequent conduct may be evidence of such knowledge – e.g. .. selling them surreptitiously ... or making no written entry of having bought them."

Illi l-awtur Ingliz Archbold fil-ktieb **Criminal Pleading, Evidence and Practice**, (1997, paras. 21–125, 21–126) qal hekk:-

"In R. v. Smythe, 72 Cr. App. R. & C.A., the court stressed that it is a misconception to think that recent possession

is a material consideration only in cases of handling: it adopted the following passage from Cross on Evidence, 5th. ed., p.49 (now 8th. ed., p.35): "if someone is found in possession of goods soon after they have been missed, and he fails to give a credible explanation of the manner in which he came by them, the jury are justified in inferring that he was either the thief or else guilty of dishonestly handling the goods, knowing or believing them to have been stolen....The absence of an explanation is equally significant whether the case is being considered as one of theft or handling, but it has come into particular prominence in connection with the latter because persons found in possession of stolen goods are apt to say that they acquired them innocently from someone else. Where the only evidence is that the defendant on a charge of handling was in possession of stolen goods, a jury may infer guilty knowledge or belief (a) if he offers no explanation to account for his possession, or (b) if the jury is satisfied that the explanation he does offer is untrue."

Every case depends on its own facts.It would be impossible to compile a definitive list of circumstances which might be relevant. They will include, however, the time and place of the theft, the type of property stolen, the likelihood of it being sold on quickly, the circumstances of the defendant, whether he has any connection with the victim or with the place where the theft occurred, anything said by the defendant and how that fits in or does not fit in with the other available evidence.”

Ikkunsidrat:

Illi fil-kaz odjern jirrizulta illi l-imputat mill-ewwel fazi tal-investigazzjoni ta' spjegazzjoni ta' minn fejn u minghand min xtara dawn it-telivixins li hija spjegazzjoni li ma tistax tghidilha fantazjuza izda li tista' tkun facilment veritjiera.

Illi ghalkemm meta giet mitkellma dik il-persuna li minghandha allegatament inxtraw dawn it-televixins u cioe' Grezzju Calleja nnegat fl-ewwel stadju, meta ttella' mill-prosekuzzjoni bhala xhud taghha quddiem il-Qorti diversament presjeduta, dan ikkonferma

Li hu kien bieghlu dawn it-televixins u ta spjegazzjoni ghaliex kien innega fl-ewwel stadju.

Illi di piu' huwa kien ta' spjegazzjoni minghand min hu kien xtara dawn it-televixins u jaghti isem u jghid illi llum il-gurnata din il-persuna kienet mejta.

Illi jrid jinghad ukoll illi dawn it-televixins gew ritornati lura lil sidhom.

Illi a rigward in-nuqqas tal-prosekuzzjoni li tipprezenta l-kundizzjonijiet tal-helsien mill-arrest u s-sentenzi tar-recidiva jinghad illi kellhom bizzejjed zmien biex dawn jigu pprezentati anke qabel ma' dahlet din il-Qorti kif presjeduta izda dawn qatt ma gew ipprezentati.

Illi ghal dawn il-motivi l-ebda wahda mir-rekwiziti tar-reat ta' ricettazzjoni ma gew ippruvati ghaliex il-verzjonijiet moghtija sija mill-imputat u anke sa certu punt minn Grezzju Calleja ghandhom jitqiesu bhala veritjieri u dan anke in vista tal-fatt illi ma gewx esebiti provi ohra cirkostanzjali kontra.

Ghal dawn il-motivi ma ssibx lill-imputat Pierre Cremona hati tal-akkuzi kif dedotti kontrih u tilliberah minnhom.

Ft./Dr. Claire L. Stafrace Zammit B.A. LL.D.

Magistrat

Benjamina Mifsud

Deputat Registratur