FIL-QORTI TAL-MAGISTRATI (MALTA)

BHALA QORTI TA' GUDIKATURA KRIMINALI

MAGISTRAT DR. ELAINE MERCIECA B.A., LL.D.

Illum, 3 ta' Awwissu 2022

IL-PULIZIJA

vs

JOSEPH ZAMMIT

Il-Qorti;

Rat l-akkuzi migjuba fil-konfront ta' **Joseph Zammit** bin Saviour u Catherine nee' Schembri imwieled Pieta' fit-30 ta' Gunju 1973 u residenti 6, Pjazza Darnin, Sqaq Nru. 1, Naxxar u detentur tal-karta tal-identita' numru 378173M, akkuzat talli:

1. Fl-20 ta' Marzu 2020 ghall-habta ta' 16.45hrs waqt li kien qieghed fl-inhawi tan-Naxxar u fil-Gzejjer Maltin, waqt stagun maghluq ghal kacca tal-ghasafar ikkacja jew ipprova jikkaccja, ha jew ipprova jiehu xi ghasfur li huwa protett taht ir-regolamenti dwar il-konservazzjoni tal-ghasafar selvaggi, mhux skont dawn ir-regolamenti u mhux skont il-kondizzjonijiet ta' kull licenzja moghtija tahthom (reg. 4(1) ta' l-a.l. 79 ta' l-2006 hekk kif emendat – ls 549.42)
2. Fl-istess data, hin, lok u cirkostanzi waqt stagun maghluq ghal kacca ta' l-ghasafar min fuq l-art ikkaccja jew ipprova jikkaccja xi ghasfur jew garr munizzjoni jew arma tan-nar barra l-ghata taghha (reg. 18(1)(a) ta' l-a.l 79/2006, hekk kif emendat – sl 549.42)
3. Fl-istess data, hin, lok u cirkostanzi, f'xi fond jew fil-pussess tieghu, taht il-kontroll tieghu jew garr barra minn xi fond jew fid-dintorni tieghu xi

arma tan-nar jew munizzjoni elenkati fl-Iskeda II minghajr ma jkollu licenzja ghal dik l-arma taht l-Att dwar l-armi u da bi ksur tal-Artikolu 5(1) tal-Kap. 480 tal-Ligijiet ta' Malta.

4. Fl-istess data, lok, hin u cirkostanzi kellu fil-pussess tieghu arma tan-nar u/jew munizzjon barra mill-fond imsemmi fil-licenzja mahruga mill-Kummissarju tal-Pulizija u dan bi ksur tal-Kap. 480, Art 5(3).

Il-Qorti giet mitluba li f'kaz ta' htija barra li taghti l-piena skont il-ligi, tordna l-konfiska tal-oggetti esebiti.

Semghet ix-xhieda;

Rat id-dokument kollha esebieti;

Semghet is-sottomissjonijiet tal-partijiet;

IKKUNSIDRAT:

Illi l-kaz odjern jirrisali lura ghat-20 ta' Marzu tas-sena 2021 meta rapprezentant tal-Committee Against Bird Slaughter (CABS) – Fiona Burrows osservat persuna maskili gewwa dura b'arma f'idejh fil-limiti tan-Naxxar. Dakinhar l-istagun tal-kacca ghall-ghasafar kien maghluq. Burrows gibdet filmat ta' kaccatur gewwa dura b'senter f'idejh kif ukoll filmat tal-vettura li allegatament kien qed juza l-imputat. Hija nfurmat lill-pulizija tal-ghassa tan-Naxxar. L-ufficjali tal-pulizija marru fuq il-post izda ma sabu lil hadd fuq il-post. Burrows ghaddiet il-pulizija l-filmat migbud minnha ghall-izjed investigazzjonijiet. Il-pulizija identifikat sid il-vettura indikata, cemplulu u dan infurmahom li l-istess vettura kienet qed tintuza minn Joseph Zammit – il-qua imputat. Il-pulizija ghamlu kuntatt ma Zammit talbuh imur l-ghassa. Malli mar l-ghassa l-pulizija identifikaw lil Zammit bhala l-kaccatur fil-filmat. L-ufficjali tal-pulizija xehdu li meta mar l-ghassa Zammit kien libes flok identiku ghal dak li kien bih fil-filmat. L-imputat inghata d-drittijiet kollha tieghu inkluz id-dritt ghall-assistenza legali. Huwa rrifjuta d-dritt ghall-assistenza legali izda ghazel li ma jiffirmax dikjarazzjoni f'dan is-sens. Zammit innega li dak il-persuna fil-filmat kien hu. Erbat ijiem wara l-ispettur ordnat lill-pulizija jmorru jigbru l-arma uzata. Dawn marru ghand l-imputat li min-naha tieghu kkoopera u taghhom l-arma bl-iscope in kwistjoni. Mill-provi mressqa jirrizulta li l-qua imputat kellu licenzja generali ghall-insib tal-kacca ghall-ghasafar u ghall-fenek. Mill-provi mressqa mid-difiza jirrizulta li l-arma in kwistjoni hija 'single shot' u ma kienx kapaci jidentifika dik l-arma ezaminata jekk hiex l-istess arma li tidher fil-filmat.

<u>Kunsiderazzjonijiet dwar htija</u>

Illi din il-Qorti analizzat ix-xhieda ta' Burrows kif ukoll ir-ritratti u l-filmat esebiti minnha. Mill-istess jirrizulta kjarament li l-kaccatur li jidher fil-filmat kien qed jikkaccja ghall-ghasafar fi stagun maghluq ghall-kacca. Dan anke jekk wiehed jara d-direzzjoni li fiha kienet qed tinzamm l-arma u l-post fejn kienet qed issir il-kacca huwa car li l-kacca kienet ghall-ghasafar u mhux ghall-fniek.

Stabbilit dan il-kontestazzjoni principali tad-difiza hija l-identifikazzjoni tal-imputat.

Fl-ewwel lok jibda biex jinghad li rigward l-identifikazzjoni tal-imputat, fl-affidavits taghhom l-ufficjali tal-pulizija rrapurtaw fid-dettal x'ghamlu biex wasslu ghall-imputat. Madanakollu l-prosekuzzjoni ma ressqitx dawn il-provi fl-atti processwali odjerni. Fil-fatt fl-ebda istanza ma tressaq rapprezentant ta' Transport Malta sabiex jixhed dwar ir-registrazzjoni tal-vettura. Lanqas ma tressaq sabiex jixhed sid il-vettura bil-ghan li jindika min kien qed juza l-vettura dakinhar. Bir-rispett kollu dak kollu li xehdu l-ufficjali tal-pulizija huwa kollu detto del detto ghall-fatti hekk kif jirrizultaw u ghaldaqstant kien impellenti fuq il-prosekuzzjoni li tressaq provi diretti f'dan ir-rigward. Fin-nuqqas ta' dan din il-Qorti ma tistax tistrieh fuq il-vettura ghall-identifikazzjoni tal-imputat.

Jinghad ukoll li din il-Qorti ma hijiex ser taghmel referenza ghall-arma ghall-identifikazzjoni tal-imputat u dana l-ghaliex l-arma giet mghotija volontarjament mill-imputat minghajr ma saret tfittxija skond il-ligi u dan anke fin-nuqqas ta' mandat ghall-istess tfittxija. Di piu', fin-nuqqas ta' tfittxija a tempo vergine, ma jistgha qatt jirrizulta pruvat li l-arma li tidher fil-filmat hija l-istess arma elevata u dan state li n-numru tas-serje tal-istess arma fil-filmat, ovvjament, ma jidhirx.

Fin-nuqqas ta' din il-prova, jifdal l-identifikazzjoni ta' Fiona Burrows waqt ix-xhieda taghha, fejn hija identifikat lill-qua imputat bhala l-persuna li hija rat fid-dura jikkaccja. Dwar *dock identification* l-Archbold jghid:

> *Dock identifications are not inadmissible but when considering whether to exercise its discretion to admit such evidence the court should consider whether there is a good reason why an identification procedure did not take place—there being procedures which can take place where the suspect is not willing to participate in a formal identification parade. Where such evidence is admitted the court should remember the dangers of relying on such evidence, that (if the defendant was denied the advantage of participating in an identification procedure) the defendant has been disadvantaged by not participating in an identification procedure and that an*

identification witness may assume that the person in the dock is the person who committed the offence.[1]

F'diversi sentenzi il-Qrati Maltin rritenew li meta l-Qorti tigi biex tgharbel dik l-evidenza marbuta mal-identifikazzjoni tal-awtur ta' reat, dan ghandu jsir b'kawtela u cirkospezzjoni. Il-Qrati Maltin b'mod kostanti segwew bhala linji gwida r-regoli stipulati mill-Qori tal-Appell Ingliza fil-kaz R vs. Turnbull[2].

"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. 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

[1] Archbold Magistrates' Courts Criminal Practice 2018 Pg 654

[2] Court of appeal 1977 – QB244

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."

Il-Qorti rat il-filmat esebiet u mill-filmat jirrizulta li l-qua imputat ma kellu assolutament xejn li b'xi mod setgha jaghti lill-wiccu u di piu' ghal diversi mumenti kien qed ihares dirett lejn il-camera. Ghaldaqstant dina l-Qorti ma ghandiex ghalxiex tiddubita minn dak li stqarret Burrows fix-xhieda taghha meta gharfet lill-imputat bhala l-kaccatur fil-filmat.

Hekk kif intqal fil-paragrafu precedenti, din il-Qorti rat il-filmat esebiet, u bhal pulizija li nvestigaw ir-reat, jirrizultalha li l-kaccatur f'dak il-filmat jidher b'mod car b'tali mod li jistghu jigu identifikati sew il-fattizji ta' wiccu. Ghalkemm kien fid-dura huwa kien qed ihares dritt lejn il-camera minghajr ma kellu xejn jaghti lil wiccu. Konsegwentament din il-Qorti jirrizultalha pruvat li l-qua imputat kien effettivament il-kaccatur li jidher fil-filmat u dana anke wara li rat lill-imputat fl-awla ghal diversi seduti u anke ir-ritratt tieghu fuq id-dokument t'identifikazzjoni.

Stabbilit dan din il-Qorti hija tal-fehma li l-prosekuzzjoni rnexxielha tipprova sal-grad rikjest mill-ligi l-ewwel u t-tieni imputazzjoni migjuba fil-konfront tal-qua imputat.

Ghal dak li jirrigwarda t-tielet u r-raba' imputazzjoni din l-Qorti hija sprovista minn kwalunkwe prova dwar il-licenzja tal-imputat ai termini tal-Kap. 480 tal-Ligijiet ta' Malta jew in-nuqqas taghha u konsegwentament ma tista' qatt isib htija fuq it-tielet u r-raba' imputazzjoni migjuba fil-konfront tieghu.

Decide:

Ghal dawn il-mottivi, dina l-Qorti, wara li rat ir-regolamenti 4(1)(a); 18(1)(a) u 27 tal-Avviz Legali 79 tas-sena 2006, **qed tillibera lill-qua imputat, Joseph Zammit mit-tielet u r-raba' imputazzjoni filwaqt li qed issib lill-istess Zammit hati tal-ewwel u t-tieni imputazzjonijiet migjuba fil-konfront tieghu u konsegwentament qed tikkundanah ghall-piena ta' multa ta' elfejn Ewro (Eur. 2,000).**

A tenur tal-artikolu 533 tal-Kodici Kriminali dina l-Qorti qeghda tordna lill-hati Joseph Zammit ihallas l-ispejjez fl-ammont ta' Eur. 71.58 konnessi mal-hatra ta' l-esperti fil-proceduri odjerni fi zmien xahar millum.

Il-Qorti, fit termini tar-regolament 27 tal-Avviz Legali 79 tas-sena 2006, qed tordna ukoll s-sospensjoni tal-licenzja jew permess rilevanti mahrug taht ir-regolamenti tal-2006 dwar il-konservazzjoni tal-Ghasafar Selvaggi u taht it-Taqsima XV tal-Kodici tal-Ligijiet ta' Pulizija ghall-perjodu ta' sentejn millum.

MAGISTRAT DR. ELAINE MERCIECA B.A., LL.D.

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Deputat Registratur