MALTA

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

**MAGISTRAT DR.**
**JACQUELINE PADOVANI**

Seduta tas-26 ta' Jannar, 2011

Numru. 835/2005

**PULIZIJA**
**SPETTUR ANTHONY CASSAR**
**VS**
**CARMELO PORTELLI**
**ANTOINE BARUN**

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputat, Carmelo Portelli, ta’ 20 sena, iben John u Carmen nee’ Tabone, imwieled Pieta’ fil-11 ta’ Settembru, 1985, residenti Block 1, Door B, Flat 17, Triq il-Mithna, Gudja u detentur tal-Karta ta’ l-Identita’ bin-numru 464185(M). Antoine Barun ta’ 28 sena, iben Joseph u Maria Assunta nee’ Formosa, imwieled tal-Pieta’ fit-2 ta’ Ottubru 1976, residenti fl-indirizz ‘J’Adore’, Flat 2b, Triq Santa Domenica, Haz-

Zabbar u detentur tal-Karta ta' l-Identita' bin-numru 500576(M);

Illi Carmelo Portelli wahdu huwa akkuzati talli:

Minn zewg garaxxijiet minghajr numru, fi Triq Angel Dennis, Marsaskala, fil-perijodu ta' bejn it-28 ta' Awissu u t-2 ta' Settembru 2005, f'diversi hinijiet tal-gurnata:

1. Ikkommetta sgass u serq ta' hames mija u sitta u sebghin (576) par zarbun tal-marka 'By Pass' li l-ammont taghhom huwa ta' madwar Lm1296, ghad-detriment ta' John Brownrigg minn Hal Ghaxaq, liema serq huwa kkwalifikat bil-mezz, bil-valur, kif ukoll bil-hin;
2. Volontarjament hassar, ghamel hsara, jew gharraq hwejjeg haddiehor, mobbli jew imobbli, u cioe ghamel hsara fil-bibien tal-imsemmija garaxxijiet ghad-dannu ta' l-istess John Brownrigg, liema hsara ma tiskorrix hamsin lira, izda hija aktar minn ghaxar liri;
3. Sar ricediv wara li gie kkundannat precedentement ghal serq b'sentenzi moghtija lilu mill-Qrati ta' Malta, li saru definittivi u ma jistghux aktar jigu mibdula jew imhassra;
4. Ikkommetta reat fil-perijodu iperattiv ta' sentenza sospiza moghtija mill-Qorti tal-Magistrati ta' Malta;

Lil Carmelo Portelli u lil Antoine Barun flimkien:

5. Xjentement laqghu ghandhom hwejjgu misruq, mehuda b'qerq, jew akkwistati b'reat, jew xjentement b'kull mod li jkun, indahlu sabiex ibieghuhom jew imexxuhom;

Semghet ix-xhieda bil-gurament;

Rat id-dokumenti esebiti, l-atti kollha tal-kaz;

Rat l-Artikoli elenkati mill-Avukat Generali (a fol.109 u fol.110) taht liema Artikoli din il-Qorti tista' ssib htija fl-imputati;

Rat il-verbal (a fol.102) fejn l-imputati ma kellhomx oggezzjoni li jigu gudikati minn din il-Qorti;

Semghet trattazzjoni tal-partijiet;

Ikkunsidrat:

Mix-xhieda ta' l-Ufficjal Prosekutur, Spettur Anthony Cassar (a fol.21 et seq.) jirrizulta illi fid-data citata fl-akkuza, John Brownrigg irraporta li fil-bidu ta' Settembru kienu nsterqu mill-imhazen tieghu, erbgha u ghoxrin (24)-il kaxxa kbira li fihom kienu jikkontjenu 576-il par zarbun (ta' l-ghamla '*By Pass')*, b'valur ta' elf, mitejn sitta u disghin Lira Maltin (Lm1296). Il-Pulizija giet infurmata li certu George Debono kien qed ibiegh zraben simili fuq il-Monti ta' Birkirkara. Spettur Cassar xehed illi rrizultalu li l-imputat Antoine Barun, prezenti fl-awla, li kien jahdem bhala *hawker* fuq il-Monti, kellu fil-pussess tieghu hamsin (50) par zarbun (ta' l-istess ghamla).

L-imputat Barun gie investigat mill-pulizija u ikkonferma li huwa kien xtara dawn iz-zraben minn Birkirkara u kien gie assigurat illi l-provenjenza kienet wahda lecita. Ma kellux ircevuti ghal dawn iz-zraben fil- pussess tieghu. L-istqarrija ta' l-imputat Barun giet ezebita bhala Dok.AC (a fol.24).

Mill-investigazzjoni ulterjuri tal-Pulizija, jirrizulta li l-imputat Carmel Portelli kien biegh dawn iz-zraben lill-imputat Barun. L-imputat Portelli gie arrestat u rrilaxxa stqarrija, fejn ikkonferma li huwa biegh dawn iz-zraben lil ko-imputat: ***"u li kien sab dawn iz-zraben mitluqin go sqaq sitwat bejn iz-Zejtun u Marsaxlokk"*** (a fol.21A) Portelli kkonferma li kien dipendenti fuq id-drogi.

John Brownrigg gharaf iz-zraben bhala dawk li gew misruqa mill-imhazen tieghu.

In kontro ezami, Spettur Cassar ikkonferma li certu Louis Xerri kien il-persuna li laqqa’ lill-imputat Antoine Barun ma’ l-imputat Portelli u dana il-ghaliex Barun kien *hawker* fuq il-Monti (ara xhieda a fol.22B).

Louis Xerri (a fol.30) ikkonferma li kien iltaqa’ ma’ l-imputat Portelli, f’hanut tat-te’, li qallu li kellu xi krakar ghal bejgh. Xerri informa lil pulizija li l-imputat Portelli saqsieh jekk kienx jaf lil xi hadd li kien jarma fuq il-Monti biz-zraben u Xerri informah b’ l- imputat Barun. Louis Xerri xehed li ma kien jaf xejn fuq in-negozju, izda jaf biss illi ra xi erba’ zraben go bagoll, f’karozza. A fol.33 huwa kkonferma li kien ra tlett kaxex kbar (f’kull wahda kienu joqghodu madwar ghoxrin par zarbun) ghand Portelli.

A fol.34, John Brownrigg, ikkonferma li huwa kien ghamel rapport l-Ghassa ta’ Birkirkara il-ghaliex kienu nsterqu erbgha u ghoxrin (24) kaxxa kbira, kontenenti krakar tas-sajf li kienu jiswew ‘il fuq minn elf u mitejn Lira Maltin (Lm1200). Ftit wara, Brownrigg xehed li dawn iz-zraben kienu spiccaw fuq il-Monti ta’ Birkirkara il-ghaliex socju fin-negozju, (George Debono), kien mar jaghmel l-indagni u ghaldaqstant ghadda din l-informazzjoni lill- Pulizija.

WPS 156 Sonia Parascandolo kkonfermat ir-rapport ta’ serqa ta’ Brownrigg (a fol.37), u ezebiet Dok.WPS (a fol.39 et seq.).

Trevor Calafato ezebixxa Dok.TC, *pre-sentencing report*.

PS 508 Frances Bezzina (a fol.77) ikkonferma li fis-16 ta’ Settembru kien ghamel rapport George Debono, socju ta’

John Brownrigg, illi kien gharaf iz-zraben misruqa mill-imhazen taghhom, jinbieghu fuq il-Monti mill-imputat Antoine Barun u Bezzina ezebixxa Dok.PS (a fol.79).

PC 604 Emanuel Agius ikkonferma illi huwa wettaq tfittxija f'garaxx ta' l-imputat Barun, fejn gew elevati zraben tal-marka '*By Pass*'.

Spettur Anthony Cassar (a fol.84) ezebixxa Dok.ACX, fedina penali ta' l-imputat Barun.

Malcolm Spiteri (a fol.92) ezebixxa Dok.MS, sentenza fil-konfront ta' Carmel Portelli u identifika l-istess.

George Debono (a fol.99) ikkonferma li kien biegh *lot* ta' zraben (krakar) tas-sajf lill-kwerelant Brownrigg, li wara ftit infurmah li dawn kienu nsterqulu mill-imhazen tieghu. Peress li joqghod Birkirkara, membri tal-familja tieghu stess, gibdulu l-attenzjoni li dawn il-krakar kienu qed jinbieghu fuq il-Monti ta' Birkirkara. Debono xehed li dawn il-krakar ma jinbieghux f'Malta il-ghaliex kienu *stock* minn *overproduction* ta' kumpanija estera. **George Debono xehed li dawn iz-zraben jimpurtahom hu biss mic-Cina.**

Spettur Anthony Cassar ezebixxa l-ezebit X, kampjun miz-zraben elevati minn fuq il-Monti ta' Birkirkara minghand l-imputat Barun.

Fit-tieni xhieda tieghu (a fol.104), George Debono kkonferma li ta din l-informazzjoni lil Pulizija, imbaghad l-istess Pulizija gabulu kampjun minn dawn iz-zraben u hu kien gharafhom. George Debono, muri kampjun minn dawn iz-zraben ezebit fl- atti tal- kawza u immarkat bhala l-ezebit X, identifikahom.

Fit-tielet xhieda tieghu, George Debono (a fol.107), rega identifika l-ezebit X. Ikkonferma wkoll illi l-fabbrika fic-Cina, li kienet timmanifattura z-zraben *'By Pass',* kienet timmanifattura dan il-prodott ghas-suq tal-Brazil.

Ray Grech ikkonferma li l-imputat Carmelo Portelli kien segwa Programm Residenzjali ta' Rijabilitazzjoni Kontra d-Droga u kien mar tajjeb hafna u baqa f'kuntatt kontinwu mis-sena 2005.

L-imputat Antoine Barun ikkonferma l-istqarrija tieghu. Barun stqarr li kien xtara dawn iz-zraben in buona fede, tant huwa hekk, illi huwa kien klijent ta' Brownrigg (il-kwerelant) u jixtri minghandu ta' spiss, tant li, in segwietu tal-kawza, il-kwerelant kien qallu: *"Li kieku ghidtli, kont inbieghhomlok jiena, z-zraben."* Huwa kkonferma li kien xtara dawn iz- zraben minghand l-imputat Carmelo Portelli, ghal- habta tal-festa tar-rahal u kien naqra xurban, li kien xtara tnejn u tletin (32) par zraben minghandu ghal prezz ta' zewg Liri Maltin u hamsin centezmu (Lm2.50c) u li dan il-bejgh kien sar b'intromissjoni ta' terza persuna, cioe Louis Xerri, li huwa kien jaf. L-imputat Barun ikkonferma li huwa ma kienx jaf lill-imputat Carmelo Portelli kellu xi kawzi l-Qorti u li l-prezz ta' dawn il-krakar ma kienx wiehed baxx, anzi ghal kuntrarju, il-ghaliex kien jixtri krakar simili mill-Italia bi prezz ta' bejn Euro u hamsin il-centezmu ta' Euro (€ 1.50) u zewg Euro (€ 2). Illi, di piu', wara li xtara dawn iz-zraben, sab li hafna minnhom kellhom il-hsara.

Victoria Scicluna, fis-seduta ta' l-24 ta' Novembru 2009, ikkonfermat li l-imputat Portelli ghadu jzomm kuntatt regolari mas-Sedqa u ghadu jaghti kampjuni ta' l-awrina b'mod regolari, ta' kull gimgha u li dawn dejjem kienu *clean*. Ikkonfermat illi llum il-gurnata ghandu mpjieg regolari u ghandu tifel ta' erba' (4) snin u li kienet kuntenta hafna bil-progress ta' l-imputat Portelli.

Ikkonsidrat:

Mill-assiem tal-provi jirrizulta, b'mod evidenti, li l-imputat, fi zmien indikat fl-akkuza, kien kompletament mahkum mill-vizzju tad-droga. Jirrizulta mill-provi illi fi zmien ta' inqas minn gimghatejn mis-serqa ta' l-imhazen tal-kwerelant Brownrigg, huwa kellu fil-pussess tieghu kwantita' konsiderevoli ta' krakar/zraben, li huwa biegh lil ko-imputat Barun.

Illi dawn il-fatturi jinkombu fuq il-Qorti biex tezamina l-applikazzjoni o meno tal-kuncett ta' *recent possession* ghal kaz in ezami. Dan il-kuncett gie pjenament assorbit fil-gurisprudenza taghna. In fatti, fl-Appell Kriminali per Imhallef Onor. Vincent De Gaetano LL.D. fl-ismijiet **Pulizija vs. Emanuel Seisun u Puis sive Pio Micallef** jinghad:

*"There appears to have been widespread misundestanding of the so-called doctrine of recent possession. The "rule" (for it is no more than the application of common sense) is, it is submitted, that where it is proved that premises have been entered and property stolen therefrom and that very soon after the entry the defendant was found in possession of the property, it is open to the jury to convict him of burglary, and the jury should be aso directed: see **R. vs Loughlin,** 35 Cr. App.R.65; **R. vs Seymour**, 38 Cr.App.R.68. This of course applies equally to thefts other then in the course of a burglary, whether a pickpocketing or an armed robbery.*

*In **R. vs Smythe**, 72.Cr.App.R.8C.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* <u>*Cross on Evidence*</u>*,* 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 are satisfied that the explanation he does offer is untrue.*

*Every case depends on its own facts. There is no magic in any given length of time. However, it is submitted that in many cases where the only evidence is that of recent possession, it will be impossible to exclude the possibility that the defendant was merely a receiver of the stolen property; in such cases a count of burglary ought not to be left to the jury. However, that applies where recent possession is literally the only evidence. The reality is, that in the great majority of cases there are other pieces of evidence which tend to point the case one way or the other. 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 other available evidence" (Archbold: Criminal Pleading, Evidence and Practice, 1997, paras. 21-125, 21-126);*

*U aktar 'il quddiem jinghad:*

*What constitues "recent possession" depends upon the nature of the property and the circumstances of the particular case...In* ***R vs. Smythe****…Kliner Brown J., giving the Court of Appeal's judgement said: "Nearly every reported case is a decision of fact as an example of what is no more than a rule of evidence." (para.21-320)"*

Il-Qorti fliet bir-reqqa l-istqarrija ta’ Carmelo Portelli u ma tista’ bl-ebda mod takkolha bhala wahda kredibbli; l-iskuza ta’ Portelli u cioe li sab din il-kwantita’ ta’ zraben fil-kaxex originali taghhom, mitluqin go sqaq la ghandha mis-sewwa u wisq anqas hija verosimili. Fuq l-iskorta tas-sentenzi citati aktar ‘il fuq, din il-Qorti taghraf illi l-imputat Portelli kien il-persuna illi seraqhom.

Illi l-imputat Carmelo Portelli gie mixli wkoll bi hsara volontarja, b’recidiva u bi ksur ta’ sentenza sospiza. Illi mill-provi, ghalkemm jirrizulta li l-imhazen ta’ Brownrigg kienu zgassati, l-istess Brownrigg ma pproduciex stima tal-hsarat u ghaldaqstant il-Qorti, tista’ ssib htija biss ghal-hsara minima ai termini ta’ l-Artikolu 325(1)(d) Kap 9 tal-Ligijiet ta’ Malta.

Illi, di piu’, mix-xhieda ta’ Spettur Malcolm Spiteri, s-sentenza minnu ezebita u bl-identifikazzjoni ta’ l-imputat Carmelo Portelli, jirrizultaw provati, bla dubbju dettat mir-raguni, it-tielet (3) u r-raba (4) akkuza kontra l-istess imputat.

**L-imputat Antoine Barun** gie mixli b’ricettazzjoni ai termini ta’ l-Artikolu 334 tal-Kap.9 tal-Ligijiet ta’ Malta.

Illi mix-xhieda fuq prodotta, il-Qorti hi tal-fehema li l-Prosekuzzjoni ma pprovatx minghajr dubbju dettat mir-raguni, illi Antoine Barun kellu xjenza proprja li l-oggetti kellhom provenjenza llecita.

Jirrizulta b’mod car illi dan in-negozju sar fid-dawl tax-xemx u l-prezz ta’ dawn il-krakar ma kienx wiehed irrizorju jew baxx izzejjed, anzi deher illi dawn il-krakar kienu aktar gholjin milli Barun soltu jixtri mill-Italja. Il- Qorti taghraf illi l-Prosekuzzjoni ma gabet l-ebda prova kontrarja ghar-rigward il- prezz ta’ dawn il- krakar.

Illi ghal dawn il-motivi, l-Qorti ssib lill-imputat **Carmelo Portelli** hati skond l-akkuza, bit-tieni (2) akkuza li ma tiskorrix tlieta u ghoxrin Euro (€23) u wara li rat Artikoli 261(b)(c)(f), 263, 264, 265, 266, 267, 270, 278, 279, 280, 281, 325, 49, 50, 28A sa 28H tal-Kap.9 tal-Ligijiet ta' Malta, Artikolu 7 tal-Kap.446 tal-Ligijiet ta' Malta, **tqieghed lill-imputat Carmelo Portelli taht Ordni ta' Probation ghal perijodu ta' tlett (3) snin u testendi s-sentenza sospiza ndikata fir-raba' (4) akkuza ghal perijodu ta' erba' (4) snin li ghandhom jibdew mil-lum.**

In oltre', il-Qorti ssib lill-imputat Antoine Barun, mhux hati u tilliebrah.

Din il-piena qed tigi akkordata in vista tal-fatt illi l-imputat Carmelo Portelli, ghadu ta' eta' giovanili, irnexxielu jibda' u jikkompleta programm residenzjali ta' riabilitazzjoni kontra d- droga, li din il-Qorti segwiet b'reqqa kbira u illum il-gurnata ghandu mpjieg fiss, ghandu relazzjoni stabbli u ghandu tifel.

Il- Qorti tordna li kopja ta' din is-sentenza tintbaghat lid-Direttur tal-Probation Services

**< Sentenza Finali >**

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