MALTA

QORTI TAL-MAGISTRATI (GHAWDEX) BHALA QORTI TA' GUDIKATURA KRIMINALI

**MAGISTRAT DR.
EDWINA GRIMA**

Seduta tat-12 ta' Mejju, 2011

Numru. 94/2009

**Il-Pulizija
(Spettur Josric Mifsud)**

Vs

Marvic Mercieca ta' 25 sena, bin l' Eucharistico u Rita nee' Cassar, imwieled Rabat (Ghawdex), nhar id-9 ta' Jannar, 1984, residenti fil-fond numru 7, Triq l-Ispiera, Xaghra u detentur tal-karta ta' l-identita' numru 7284(G);

Il-Qorti,

Rat l-imputazzjoni migjuba kontra l-imputat Marvic Mercieca akkuzat talli fil-lejl ta' bejn id-09 u l-10 ta' Novembru, 2009, minn gewwa razzett propjeta' ta'

George Attard, minn gewwa Wied l-Ghasri, Ghasri, Ghawdex;

a) Seraq tlett iklieb ghad-detriment ta’ George Attard, liema serq huwa aggravat bil-valur, mezz, bin-natura tal-haga misruqa, bil-lok, bil-hin u bil-persuna;

Rat id-dokumenti esebiti.

Semghet il-provi.

Rat il-kunsens tal-Avukat Generali tat-30 ta’ Novembru 2009 sabiex dana l-kaz jigi trattat u deciz bil-procedura sommarja minn dina l-Qorti.

Semghet trattazzjoni.

Ikkunsidrat;

Illi l-akkuza migjuba fil-konfront tal-imputat hija wahda ta’ serq aggravat. Illi l-imputat jinsab akkuzat li seraq tlett iklieb appartenenti lil certu George Attard. Dana Attard kien izomm dawn il-klieb gewwa kamra fl-eghlieqi maghrufa bhala Wied l-Ghasri. Il-proprjeta ta’ Attard konsisenti f’xi kmamar ghall-klieb u bitha kienet imdawra b’hajt fuq liema hajt jidher illi kien hemm xi wiring. Jidher illi l-kancell u l-kmamar fejn kienu jinzammu l-klieb misruqa kienu jinghalqu b’firroll u ma kenux jigu msakkra. Jidher illi fil-lejl li gew misruqa dawn it-tlett iklieb tar-razza Whippet, Attard kien jinsab arrestat u ghalhekk talab lil ohtu Josianne Camilleri u lil certu Alexander Debono sabiex jehdulu hsieb dawn il-klieb sakemm jirritorna. Debono kien mar jitma lil dawn il-klieb fost ohrajn il-lejl ta’ qabel u cioe’ fid-9 ta’ Novembru 2009, izda meta huwa rega mar l-ghada fil-ghodu dawn il-klieb kienu neqsin. Ghalhekk hu u Camilleri iddecidew jaghmlu rapport lill-pulizija. Xi hin wara jidher illi Camilleri irceviet xi telefonata fejn giet infurmata illi dawn il-klieb kienu ntlemhu gewwa Shaft Street, ix-Xaghra u kienu ghad l-imputat. Fil-fatt hi flimkien ma’ Debono u s-Surgent 1040 Grima accedew fuq il-post fejn sabu tnejn minn dawn il-klieb jiggerrew fit-

triq u rnexxielhom jaqbduhom. Jidher illi fl-istess hin certu Georgia Mercieca li tigi z-zija tar-rispett tal-imputat kienet ghamlet rapport lill-pulizija illi xi persuni mhux maghrufa kienu hallew tlett iklieb gewwa l-garaxx taghha. Ghalhekk kien acceda l-kuntistabbli 242 gewwa dana l-garaxx fejn kien ra lil dawn il-klieb izda dawn kienu qabzu xi cint u harbu. Fil-fatt tnejn minn dawn il-klieb sussegwentement kienu nstabu jiggerrew fit-triq u Debono kien irnexxielu jaqbadhom. It-tielet wiehed kien instab minn membri tal-SPCA jiggerra fit-toroq gewwa r-Rabat. Sussegwentement dan kien ingabar ukoll minn Debono, sabiex ghalhekk it-tlett iklieb tar-razza Whippet kollha gew ritornati lil sidhom.

Illi l-imputat gie arrestat u mitkellem fuq dana l-kaz. Illi ghall-ewwel jidher illi huwa cahad l-involviment tieghu u jghid li dahhalhom ghandu d-dar meta Georgia Mercieca bdiet tilmenta minn dawn il-klieb li sabet fil-garaxx taghha u huwa ghalhekk accetta li jdahhalhom gewwa daru, izda jghid illi l-klieb bdew ihammgulu u ma riedhomx u rega hadhom lura fil-garaxx taghha. Meta mbaghad irrilaxxja l-istqarrija tieghu lill-pulizija, l-imputat ammetta illi kien hu li seraq dawn it-tlett iklieb minn ghand George Attard. Hu ighid hekk: “Nghid li jiena mort fir-razzett ta’ Kampnari, wahdi, peress li naf li dan qieghed il-habs. Minn hemm jiena hadt tliet iklieb, ta’ kulur griz. Dawn kienu fil-maqjen ta’ fuq, u il-bieba tal-bitha kienet maghluqa biss b’firoll. Dawn il-klieb jiena hadthom fil-maqjen ta’ Giorgia, jigifieri ma genb tieghi, fejn il-bierah jiena urejt lil Pulizija fejn kienu dawn il-klieb.” Illi id-difiza tikkontendi illi meta l-imputat irrilaxxja dina l-istqarrija huwa kien ma jiflahx. Fil-fatt jirrizulta minn dak li xehdu l-pulizija nvoluti fl-investigazzjoni ta’ dana l-kaz fosthom l-Ufficjal Prosekutur u s-Surgent 1040 Grima, illi qabel irrilaxxja l-istqarrija, l-imputat kien ittiehed id-Detox sabiex jiehu l-methadone peress illi huwa ghandu l-vizzju tad-droga. Jidher ukoll illi wara li gie rilaxxjat mill-arrest wara l-interrogazzjoni s-Surgent Grima jghid illi l-imputat hassu ma jiflahx.

Illi ghalkemm huwa minnu ghalhekk illi l-imputat kien fizikament qed ihossu mhux f’sikktu x’aktarx b’konsegwenza tal-vizzju tieghu, madanakollu ma jidhirx illi huwa ma kienx jaf x’qieghed ighid. Fil-fatt fl-istqarrija

tieghu huwa jaghti dettalji ta' fejn kienu l-klieb u kif seraq l-istess kif jidher mill-paragrafu mill-istqarrija tieghu hawn fuq iccitata. Illi fil-kamp penali dejjem gie ritenut li l-konfessjoni – popolarment maghrufa bhala l-istqarrija tal-imputat jew l-akkuzat – hija l-prova regina li tista' tressaq il-prosekuzzjoni biex tipprova l-htija tal-persuna akkuzata, dment li din tkun saret volontarjament u ma gietx imgieghla, jew mehuda b'theddid jew b'biza', jew b'weghdiet jew twebbil ta' vantaggi (artikolu 658 tal-Kodici Kriminali). Issa ma ngiebet l-ebda prova li l-istqarrija ma kenitx wahda volontarja jew inkella li sehh xi wahda jew aktar mill-kawzi imsemmija mil-ligi li jirrenduha inammissibli. Fil-fatt l-imputat lanqas jixhed f'dawn il-proceduri sabiex jikkontradixxi dik l-istqarrija jew inkella sabiex ighid illi huwa ma kienx f'sikktu meta rrilaxxja l-istess. Di piuil-provi cirkostanzjali prodotti mill-prosekuzzjoni jissostanjzaw dak mistqarr mill-imputat fl-istqarrija tieghu.

Illi fl-ewwel lok ma hemmx dubbju illi dakinhar stess li sehhet is-serqa dawn it-tlett iklieb kienu jinstabu fil-pussess tal-imputat. Dana gie kkonfermat mis-Surgent 1464 Portelli u mill-kuntistabbli 759 Emanuel Zammit. Jidher illi dawn proprju l-ghada tas-serqa kienu marru fir-residenza tal-imputat sabiex jaghmlu tfittxija fuq investigazzjoni ohra dwar drogi. Huma ma kienu jafu b'xejn dwar dana l-incident tal-klieb, izda jghidu illi hekk kif dahlu ghand l-imputat osservaw dawn it-tlett iklieb. Meta staqsew lill-imputat rigward dawn il-klieb huwa wegibhom u qalilhom illi kien qed izommhom ghal xi hadd.

Illi l-Qorti ser taghmel referenza, ghalhekk, ghat-teorija elaborata minn gurisprudenza u awturi Nglizi dwar "the unlawful possession of recently stolen goods" jew 'l hekk imsejha "theory of recent possession". Din it-teorija giet applikata anke minn gurisprudenza taghna u dana peress illi kif inghad f'diversi sentenzi din it-teorija m'hi xejn ghajr l-applikazzjoni tal-"buon sens" ghac-cirkostanzi partikolari li jkunu jirrizultaw pruvati; fis-sens li meta jigu ppruvati certi fatti dawn jistghu wahedhom iwasslu ragjonevolment ghal konkluzzjoni li persuna partikolari tkun hatja tar-reat

ta' serq tal-oggetti misjuba ghandha jew, skond ic-cirkostanzi, tar-reat ta' ricettazzjoni ta' dawk l-oggetti.

Illi f'sentenza moghtija mill-Qorti tal-Appelli Kriminali (per Imhallef Vincent Degaetano) deciza fis-26 ta' Awissu 1998, il-Qorti studjat fil-fond din it-teorija fejn gew ikkwotati diversi awturi Nglizi u saret referenza ghal gurisprudenza Ngliza:
"Din il-Qorti wkoll ser tikkwota mill-ahhar edizzjoni ta' Archbold peress li hi tal-fehma li l-bran li gej jitratta bl-iktar mod konciz u preciz il-kwistjoni kollha marbuta ma' din it-teorija:
There appears to have been widespread misunderstanding 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 stolen property, it is open to the jury to convict him of burglary, and the jury should be so directed: see R. v. Loughlin, 35 Cr.App.; R. v. Seymour, 38 Cr. App. R.68. This of course applies equally to thefts other than in the course of a burglary, whether a pickpocketing or an armed robbery. In R.V.Symthe, 72 Cr.App R 8 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. (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 be 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 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 it fits in or does not fit in with the other available evidence." (archbold: Criminal Pleading, Evidence and Practice, 1997 paras.21-125, 21-126)."

Illi maghmula dina l-esposizzjoni legali ta' dina t-teorija, l-Qorti ghalhekk tistqarr illi dina t-teorija abbinata mal-provi fl-atti ma jistghux hlief iwasslu ghal sejbien ta' htija fl-imputat. Dan qed jinghad fid-dawl tal-provi segwenti:

1. L-istqarrija tal-imputat fejn hemm ammissjoni shiha u inkondizzjonata.[1]
2. Il-fatt illi l-ghada stess dawn il-klieb instabu fil-pusess tal-imputat minn ufficjali tal-pulizija li kienu qed jinvestigawh fuq kaz ta' drogi.[2]
3. Il-fatt illi l-imputat kien jaf lil vittma ta' dana r-reat, gieli mar fil-post u kien konxju tal-fatt illi f'dawk il-granet dina l-persuna kienet tinsab arrestata.[3]
4. L-ispjegazzjoni li l-imputat jaghti lis-Surgent Grima dwar kif sab lill-klieb u l-ispjegazzjoni li huwa jaghti lis-

[1] Ara stqarrija Dokument B a fol.12
[2] Ara xhieda tal-PS1464 u PC792 a fols.26 u 38 rispettivament
[3] Ara xhieda ta' George Attard a fol.28 u 29

Surgent 1464 fejn stqarr illi kien qed izomm il-klieb ghal habib tieghu, liema spjegazzjonijiet huma ghal kollox differenti minn xulxin.[4]

5. Ix-xhieda ta’ Giorgia Mercieca li tispjega kif sabet dawn il-klieb fil-proprjeta taghha, liema proprjeta tinsab biswit ir-residenza tal-imputat, minn fejn jirrizulta illi l-klieb gew imqieghda fil-garaxx taghha billi sar sgass minn xi persuni mhux maghrufa. Dawn jittiehdu mill-imputat meta hija tilmenta mieghu dwarhom, izda huwa rega iqieghdhom hemmhekk meta jirrealizza illi l-pulizija qeghdin ifittxu dawn il-klieb.[5]

6. Illi mix-xhieda ta’ George Attard, Alexander Debono u s-Surgent 1040 li jaghtu deskrizzjoni tal-post fejn kienu jinzammu dawn il-klieb jirrizulta illi l-klieb ma setghux harbu mill-post tal-kustodja taghhom u ghalhekk bil-fors illi dawn kienu gew mehuda minn xi hadd. Il-post kien recintat, kellu hajt gholi madwar tmien filati, kellu xi wiring fuq il-hajt u l-post kien maghluq b’kancell.

Dana kollu ghalhekk iwassal lil dina l-Qorti ghal konvinzjoni morali illi kien l-imputat li seraq il-klieb proprjeta ta’ George Attard.

Illi l-akkuza tas-serq migjuba kontra l-imputat hija aggravata bil-valur, bil-mezz, bix-xorta tal-haga misruqa, bil-lok u bil-hin. Illi l-aggravju tal-valur gie ppruvat billi George Attard jistqarr fix-xhieda tieghu illi dawn il-klieb huwa akkwistahom ghal prezz ta’ €1000. Illi madanakollu l-aggravju tal-mezz ma giex ippruvat billi jirrizulta illi l-proprjeta ta’ Attard kienet tinghalaq permezz ta’ firroll biss u ghalhekk ma hemm l-ebda prova illi kien hemm xi sgass, ksur, skalar fost affarijiet ohra kif indikat fl-artikoli 264(1), 265 jew 266 tal-Kapitolu 9. Illi l-istess jista’ jinghad dwar l-aggravju tal-lok u dana billi ma jirrizultax illi s-serq sar f’xi wiehed mill-postijiet imsemmi fl-artikolu 269. Illi l-aggravju l-iehor dwar ix-xorta tal-haga misruqa tirrizulta ppruvata u dana a tenur tal-artikolu 271(c) u fl-ahharnett dwar l-aggravju tal-hin dina tirrizulta ppruvata billi mix-xhieda ta’ Alexander Debono jidher illi s-serqa sehhet

[4] Ara xheda tas-surgent Grima a fol.20 u ix-xhieda tal-PS1464 a fol.26
[5] Ara xhieda ta’ Giorgia Mercieca a fol.48

matul il-lejl ta’ bejn id-9 u l-10 ta’ Novembru. Ix-xhud ighid illi huwa kien mar ighalef il-klieb fil-ghaxija u l-ghada fil-ghodu qabel ma mar ghax-xoghol rega’ mar jittawwlilhom u ma sabhomx hemm.

Illi meta tigi biex tqis il-piena li ghandha tigi nflitta l-Qorti ser tiehu in konsiderazzjoni l-fatt illi l-imputat ghandu problema serja ta’ droga u fil-fatt bhal issa qed isegwi programm ta’ riabilitazzjoni mill-vizzju tad-droga gewwa l-Komunita ta’ Santa Marija.

Ghaldaqstant il-Qorti wara li rat l-artikoli 261(c)(g)(f), 267, 270, 271, 279(a), 280(1), issib lill-imputat hati tal-akkuza migjuba fil-konfront tieghu, izda fid-dawl tal-konsiderazzjonijiet hawn fuq maghmula u b’applikazzjoni tal-artikolu 7 tal-Kapitolu 446 tal-Ligijiet ta’ Malta, l-Qorti tordna illi l-hati jtqieghed taht ordni ta’ Probation ghal zmien tlett snin mil-lum bil-kundizzjoni illi huwa jibqa jsegwi l-programm ta’ rijabilitazzjoni mill-vizzju tad-droga.

Il-Qorti twissi lil hati bil-konsegwenzi skond il-ligi jekk huwa jikkometti reat iehor matul dana l-perijodu ta’ tlett snin jew jekk huwa ma jobdix l-ordni mposta fuqu illum.

< Sentenza Finali >

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