



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

**MAGISTRAT DR.
EDWINA GRIMA**

Seduta tat-28 ta' Settembru, 2011

Numru. 682/2010

**Il-Pulizija
(Spettur Priscilla Caruana)**

Vs

**Pierre Cassar ta' 36 sena, bin John u Mary Rose nee'
Bugeja, imwieled Pieta' fit-12 ta' Marzu 1975 li
joqghod 11, Marjohn, Triq il-Labour, Marsaxlokk u
detentur tal-karta ta'l-identita' numru 163875(M)**

Il-Qorti,

Rat l-imputazzjoni migjuba kontra l-imputat Pierre Cassar li permezz taghha huwa gie akkuzat talli fis-7 ta' Gunju 2010 ghal habta tal-16:40hrs gewwa Triq il-Patrijiet Terezjani, Marsaxlokk:

1. Ikkometta serq ta' lap-top tal-ghamla Acer kif ukoll oggetti ohra minn ventura tal-ghamla Alfa Spider bin-numru ta' registrazzjoni DAH941 ghad-dannu ta' Godwin

Kopja Informali ta' Sentenza

Vella u/jew persuni ohra liema serq huwa aggravat bil-mezz, bil-valur li jiswa iktar minn mitejn u tnejn u tletin ewro u erbgha u disghin centezmu (€232.94) izda ma jaqbix elfejn tliet mija u disgha u ghoxrin ewro u sebgha u tletin centezmu (€2329.37) u bix-xorta tal-haga misruqa.

2. U aktar talli fl-istess data, lok, hin u cirkostanzi, volontarjament hassar, ghamel hsara, jew gharraq hwejjeg haddiehor, mobbli jew immobbli u cioe' hsarat fil-vettura bin-numru ta' registrazzjoni DAH941, liema ammont ta' hsara jiskorri l-elf mija u erbgha u sittin ewro u disgha u sittin centezmu (€1164.69) ghad-dannu ta' Godwin Vella.

3. Ukoll talli irrenda ruhu recediv ai termini ta'l-artikoli 49 u 50 tal-Kapitolu 9 tal-Ligijiet ta' Malta b'sentenza ta' din il-Qorti liema sentenza saret definitiva u ma tistax tinbidel.

Rat id-dokumenti.

Rat il-kunsens ta'l-Avukat Generali tad-09 ta' Lulju 2010 sabiex dana il-kaz jigi trattat u deciz bil-procedura sommarja minn dina l-Qorti.

Semghet il-provi,

Semghet trattazzjoni.

Rat l-atti kollha processwali.

Ikkunsidrat,

Illi l-imputat jinsab akkuzat li ikkometta serq ta' lap top u diversi oggetti ohra minn vettura tal-parti leza Godwin Vella li fl-mument ta'l-allegat kummissjoni ta' dana ir-reat kienet ipparkeggjata fid-drive-way tar-residenza tieghu gewwa Marsaxlokk. Illi il-pulizija in sostenn ta'l-akkuzi tressaq *footage* mehud mic-CCTV *camera* fir-residenza tal-parti leza minn liema *footage* l-ufficjali nvestigattivi

jiddikjaraw li gharrfu lil malvivent li jidher fil-filmat bhala l-imputat.

Illi r-regoli illi tfasslu f'kawza R vs Turnbull fl-Ingilterra, ghalkemm ma jikkostitwixxu l-ebda regola taht il-ligi Maltija, madanakollu huma linji gwida fil-kaz ta'l-identifikazzjoni tal-persuna akkuzata. Illi dana gie ukoll sottolinjat f'sentenza moghtija mill-Qorti ta'l-Appelli Kriminali fl-ismijiet Il-Pulizija vs Stephen Zammit (deciza 16 ta' Lulju 1998) fejn il-Qorti tat esposizzjoni tar-regoli Turnbull fid-decizjoni taghha:

“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 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”.

Illi il-Qorti kellha okkazzjoni tara l-footage ta-CCTV li gie esebit minn Godwin Vella. L-imagini li jidhru fuq il-filmata ma humiex cari. Illi il-vettura ta' Vella tidher in parti biss fil-filmata peress illi din hija ostakolata b'tinda li tahta hija ipparkeggjata l-istess vettura. Illi fil-bidu tal-filmata tidher persuna diehla gewwa *drive way*, riesqa lejn vettura u tieqaf ghal xi hin vicin din il-vettura u taghmel xi haga vicin il-vettura. Xi ffit minuti wara imbaghad dina il-persuna tidher qed igorr xi affarijiet tarmi xi haga go skip u titlaq minn fuq il-post. Il-persuna tidher li hija liebsa berritta, folk ahmar u qalziet twil. Illi ghalkemm il-Qorti kellha okkazzjoni tara lill-imputat fid-diversi seduti li deher quddiemha fil-kors tal-kawza, madanakollu bl-ebda sforz ta'l-imaginazzjoni, dina l-Qorti ma tista' tasal ghal konkluzjoni illi l-persuna li tidher fil-filmata huwa l-imputat. L-ufficjali tal-pulizija li investigaw dana l-incident, u cioe' il-PS1227 Malcolm Pace u il-PC550 George Zammit jikkontendu illi huma gharrfu lill-imputat principalment mill-mixja tieghu. Isostnu illi ilhom jafu lill-imputat ghal fuq

minn ghaxar snin ghax joqghod Marsaxlokk u jafuh bhala persuna li spiss jixref dufrejgh mal-gustizzja minhabba l-vizzju tieghu tad-droga. Is-surgent Pace ighid: **“mill-filmata l-istatura tal-persuna tidher qisha ta’ Pierre Cassar u anke mill-mixja tieghu. Mill-mixja tieghu taqbel ma’ ta’ Pierre.”**¹ Il-kuntistabbli Zammit imbaghad ghall-ewwel isostni illi huwa gharaf wicc l-imputat ghalkemm fil-filmata wiccu jidher “faint” cioe’ jidher ftit. ² Illi bir-rispett kollu mill-filmata wicc il-persuna li tidher fih ma jidhirx u dana peress illi id-dehra tieghu hija piuttost offuskata u di piu’ din il-persuna tidher libsa berritta. Ghaldaqstant l-Qorti certament ma tista’ qatt tistrieħ fuq prova daqshekk fjakka.

Illi fil-fatt l-investigazzjonijiet kollha f’dina il-kawza huma piuttost fjakki. Illi dawn iz-zewg ufficjali tal-pulizija dehrilhom illi l-persuna li kienet tidher fuq il-filmata kien l-imputat u l-investigazzjonijiet waqqfu hemmhekk. Ibda biex l-*footage* ta-CCTV gie esebit mill-parti leza ghalkemm jidher illi gie elevat mill-pulizija sabiex jarawh. Dana qatt ma gie mghoddi lill-ufficjali tal-forensika sabiex inizzlu anke xi ritratti mill-istess u ma sarux investigazzjonijiet ulterjuri fuqu. Impronti digitali minn fuq il-vettura ma ittiehdux u ghalkemm il-persuna fuq il-filmata tidher qed tarmi xi haga fl-iskip ma jidhirx illi saru xi tfittxijiet fl-istess sabiex jigi accertat jekk ntremiex xi oggett appartenenti lil parti leza u sabiex jekk dana kien il-kaz jigu elevati xi impronti digitali mill-istess. Illi ukoll ghalkemm l-ufficjal prosekutor tikkontendi illi saru xi tfittxijiet fir-residenza ta’l-imputat li irrizultaw fin-negattiv madanakollu l-ufficjali tal-pulizija li jixhdu f’dina il-kawza ma isemmux illi saru dawn it-tfittxijiet.

Illi ghalhekk l-uniku prova li ghandha dina il-Qorti hija filmata ta’ CCTV li fih ghalkemm tidher persuna, dina ma tingharafx u x-xhieda ta’ zewg ufficjali tal-pulizija li jikkontendu illi qed igharrfu lill-imputat minn dana il-filmata. Illi l-Qorti abbazi tal-linja gwida magħmul fid-decizjoni Turnbull hija xettika dwar dana ghas-segwentu ragunijiet:

¹ Ara xhieda tal-PS1227 Malcolm Pace a fol.22

² Ara xhieda tal-PC550 George Zammit a fol.48

Kopja Informali ta' Sentenza

1. Illi jidher illi xi jiem qabel kienu saru xi rapporti minn xi nies illi kienu qed josservaw lill-imputat idur gewwa Marsaxlokk josserva xi vetturi. Kwindi il-pulizija setghu kienu influwenzati minn dawn ir-rapporti meta ighidu li igharrfu lill-imputat.

2. Illi l-persuna li tidher il-filmat liebsa berritta. Dana il-fatt ma jissemmiex minn dawn l-ufficjali tal-pulizija li jibqghu isostnu illi gharrfu lill-imputat u anke gharrfu wiccu meta dana anqas biss jidher.

3. Illi l-istes pulizija ghidu illi igharrfu ukoll lill-imputat mill-istatura u mill-mixja ghaliex jafuh sew, izda dawn iz-zewg fatturi wahidhom ma humiex bizzejjed sabiex jippruvaw lil hinn minn kull dubbju dettat mir-raguni illi kien l-imputat li ikkometta dana ir-reat.

Illi ghalhekk wiehed jistaqsi dina l-prova wahedha hija sufficjenti sabiex wiehed jikkonkludi illi l-imputat kien il-malvivent involut fil-kummissjon ta' dana ir-reat? Illi huwa principju rassodat illi l-provi fil-kamp kriminali jistghu ikunu kemm diretti kif ukoll indizjali, izda dawn ta'l-ahhar iridu ikunu univoci, iwasslu ghal konkluzjoni wahda u iridu ikunu sufficjenti tali biex inisslu konvinciment morali f'mohh il-gudikant lil hinn minn kull dubbju ragjonevoli mir-reita' ta'l-imputat.

Min-naha tieghu l-imputat la jixhed f'dina il-kawza u ma iwiegeb ghall-ebda mistoqsija lill maghmula fl-istqarrja rilaxxjata minnu lill-pulizija kwazi xahar wara li sehh dana l-incident.

Illi di piu il-Qorti tosserva ukoll li hemm diversi diskrepanzi bejn id-dettalji tad-data u il-post tal-incident kif indikati fl-akkuza u dak li jirrizulta mill-provi akkwiziti f'dana il-process.

1. Rigward id-data tal-kummissjoni ta' dana l-allegat reat, jinghad illi minn qari ta'l-akkuza jidher illi l-imputat qed jigi akkuzat illi ikkometta dina s-serqa fil-gurnata tas-7 ta' Gunju 2010 li kienet il-gurnata tat-Tnejn. Illi meta

jixhed, l-parti leza ighid illi huwa ghamel rapport lill-pulizija fil-gurnata tat-Tnejn u li is-serqa sehhet fil-gurnata tal-Hadd, allura 6 ta' Gunju u mhux 7 ta' Gunju. Illi fil-fatt minn dokument li jezebixxi l-parti leza Godwin Vella rilaxxjat mill-assikurazzjoni tieghu GasanMamo Insurance (Dokument GV3³) jidher Ili hawnhekk qed issir referenza illi l-incident sehhet fis-6 ta' Gunju 2010. Illi l-Qorti osservat madanakollu illi d-data li tidher fuq il-filmati ta-CCTV hija indikata bhala is-07 ta' Gunju ghalkemm is-surgent Pace fix-xhieda tieghu ighid illi mill-filmati jidher car illi kien is-06 ta' Gunju!⁴

2. Illi l-istess inesatezzi jirrizulta fir-rigward tal-post fejn sehhet dana l-allegat reat. Ghalkemm fl-akkuza hemm ndikat illi dina is-serqa sehhet gewwa Triq il-Patrijiet Terezjani, madanakollu kemm fir-rapport tal-pulizija kif ukoll mix-xhieda taghhom u mix-xhieda ta'l-istess parti leza Godwin Vella jirrizulta illi is-serqa sehhet minn gewwa Triq tas-Silg, Marsaxlokk.

Illi l-prosekuzzjoni fl-ebda hin matul il-kors ta' dina il-kawza ma tallbet korrezzjoni la fir-rigward tad-data tas-serqa u lanqas f'dak li ghandu x'jaqsam mal-post u kwindi il-Qorti hija issa rinfaccajata ukoll bid-dubbju ghar-rigward ta' dawn iz-zewg elementi importanti fl-akkuza.

Ghaldaqstant ghal motivi kollha hawn fuq migjuba dina l-Qorti ma tistax hlief tillibera lill-imputat minn kull akkuza migjuba fil-konfront tieghu fuq nuqqas ta' provi.

< Sentenza Finali >

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³ Fol.43 tal-process

⁴ A fol. 22