



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

**MAGISTRAT DR.  
EDWINA GRIMA**

Seduta ta' l-10 ta' April, 2013

Numru. 879/2009

**Il-Pulizija  
(Supretendent Carmelo Magri)**

**Vs**

**Alston Abdilla ta' 28 sena, bin Paul u Mary nee'  
Aquilina mwieled fil-Pieta' fit-23 ta' Ottubru 1984 u li  
joqghod fil-fond bl-isem "Ryan", 44 Triq il-Qalb  
Mqaddsa B'Kara, u detentur tal-karta ta'l-identita'  
numru 527384(M)**

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputat Alston Abdilla akkuzat talli fit-28 ta' Dicembru 2008 u fix-xhur ta' wara din id-data, 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

Kopja Informali ta' Sentenza

xjentement b'kull mod li jkun, indahal biex ibieghom jew imexxihom

Fl-istess zmien u cirkostanzi, kiser il-kundizzjonijiet tal-Artikolu 22 tal-Kap.446 tal-Ligijiet ta' Malta li gew impost fuqu b'sentenza datata 14 ta' April 2008, moghtija mill-Qorti tal-Magistrati (Malta) Magistrat Dott. Saviour Demicoli LL.D.

Fl-istess zmien u cirkostanzi sar recidiv ai termini ta' l-artikoli 49, 50 u 289(1) tal-Kap.9 tal-Ligijiet ta' Malta.

Rat il-kunsens ta' l-Avukat Generali tas-27 ta' Awwissu 2009 sabiex dana l-kaz jigi trattat u deciz bil-procedura sommarja minn dina l-Qorti.

Rat id-dokumenti esebieti.

Semghet il-provi.

Semghet trattazzjoni.

Ikkunsidrat,

Illi l-imputat jinsab akkuzat bir-reat ta' ricettazzjoni in konnessjoni ma' *mobile phone* li allegatament insteraq f'serqa li sehhet fit-28 ta' Dicembru 2008 minn gewwa l-fond Arnica, Flat 1, Triq il-Ballija, Msida fejn kienu jirrisjedi certu Mark Paul Buttigieg flimkien mat-tfajla tieghu, Denise Camilleri. Illi fost l-oggetti li insterqu Buttigieg ighid fix-xhieda tieghu li insteraq il-*mobile phone* tieghu li kellu IMEI bin-numru 355661000510065 tal-ghamla Nokia<sup>1</sup>. Illi in konnessjoni ma' dina s-serqa kienet saret inkjesta magisterjali.<sup>2</sup> Illi l-Qorti tosserva illi ghalkemm l-parti leza jikkontendi illi f'dina is-serqa insteraqlu il-*mobile phone* mertu ta' dina l-kawza, madanakollu kemm fir-rappot li isir

---

<sup>1</sup> Ara xhieda ta' Mark Buttigieg a fol.53 et. seq.

<sup>2</sup> Ara Dokument JM a fol.9 tal-process

mal-pulizija minnu *a tempo vergine*<sup>3</sup> kif ukoll fl-inkjesta magisterjali dana il-*mobile phone* ma jissemma imkien.<sup>4</sup>

Illi in konnessjoni ma' dina s-serqa kien tressaq l-Qorti certu Matthew Grima, li xehed f'dawn il-proceduri billi l-kawza tieghu ghaddiet in gudikat. Dana Grima jikkontendi fix-xhieda tieghu, illi huwa kien ghadha telefon cellulari lill-imputat u infurmah illi dana kien misruq. Ighid illi dana it-telefon huwa kien serqu minn gewwa appartament fis-Swatar. Ikompli ighid illi l-imputat ma kien hallsu xejn ghal dana it-telefon billi huwa kellu jaghtih xi flus in konnessjoni ma' xi droga. Isostni kemm il-darba fil-kors tax-xhieda tieghu illi meta ghadha dana il-*mobile phone* tal-ghamla Nokia lill-imputat huwa kien qallu illi dana kien gej mis-serq.<sup>5</sup>

Illi minn investigazzjonijiet ulterjuri li saru mill-pulizija, jirrizulta illi in-numru IMEI tat-telefon ta' Buttigieg intuza min-numru 99223030 li kien irregistrat fuq Svetlana Abdilla li tigi oht l-imputat. Fil-fatt wara tfittxja li ghamlu il-pulizija, dana il-*mobile phone* instab fil-pussess ta' dina Svetlana Abdilla. Minn informazzjoni ulterjuri li l-pulizija kisbu minn ghand is-*service providers*, irrizulta illi dana it-telefon cellulari kien intuza ukoll minn numri 79980418, 99991984 u 99834787. Illi n-numru 99991984 kien irregistrat fuq isem Sarah Marie Zammit, izda l-*billing address* ta' dana in-numru huwa fuq l-imputat.<sup>6</sup>

Illi l-imputat jirrilaxxa stqarrija fejn huwa jinnega illi kien involut f'dina s-serqa, izda ighid illi l-*mobile phone* in kwistjoni kien gie fil-pussess tieghu meta huwa hadu minn ghand Matthew Grima, maghruf bhala il-Jigger, u dan billi dan ta'l-ahhar kellu jaghtih xi flus. Ighid illi dana il-*mobile* hadulu bl-intenzjoni li izommu sakemm dana ta'l-ahhar jaghtih xi flus dovuti lilu, izda sussegwentement peress illi baqa' ma hallsux, huwa qabad u bieghu lil terza persuna

---

<sup>3</sup> Ara rapport esebiet Dokument CM2 a fol.16 tal-process

<sup>4</sup> Ara ukoll rapport ta' Dr. Anthony Cutajar Dokument AC a fol. 12 et seq. tal-proces verbal Dokument JM

<sup>5</sup> Ara xhieda ta' Matthew Grima a fol.72 et. seq

<sup>6</sup> Ara xhieda ta' Dr. Anthony Bonnici ghan-nom tal-Go Mobile u Tamaris Agius ghan-nom tal-Vodafone u id-dokument esebiet minnhom a fols. 35 sa 45 u 57 sa 66 rispettivament.

ghal prezz ta' €50. Jikkontendi illi huwa ma kienx jaf li kien misruq u lanqas jaf kif dana il-*mobile phone* gie fil-pussess ta' ohtu Svetlana Abdilla<sup>7</sup>.

Illi meta imbaghad jaghti ix-xhieda tieghu l-imputat ibiddel il-verzjoni u ighid illi dana il-*mobile phone* kien xtrah minn ghand il-Jigger ghal prezz ta' bejn €100 u €120. Ighid illi dana it-telefon kien sofistikat hafna u ma setax isib tarf kif ihaddmu u ghalhekk bieghu lil terza persuna. Jikkontendi illi meta xtara dana it-telefon huwa ma kienx jaf li kien misruq. Lanqas jista' ighid kif dana il-*mobile phone* spicca fil-pussess ta' ohtu.<sup>8</sup>

Ikkunsidrat,

Illi mill-provi miksuba fl-atti, jirrizultaw is-segwenti fatti:

1. Illi sehhet serqa mill-fond Arnica Flats, Flat 1 Triq il-Balliju Guttemberg, Msida fit-28 ta' Novembru 2008. F'dina is-serqa kien involut certu Matthew Grima li gie misjub hati u issentenzjat.
2. Illi ghalkemm l-prosekuzzjoni tikkontendi illi f'dina s-serqa insteraq *mobile phone* tal-ghamla Nokia, kif jikkonferma ukoll id-derubat, madanakollu kemm fir-rapport tal-pulizija kif ukoll dak tal-ufficjal investigattiv L-ispettur Carlo Ellul, u ir-rapport ta'l-espert mahtur fl-Inkjesta Magisterjali, dana t-telefon cellulari ma jissemmiex bhala parti mir-*res furtiva*.
3. Illi Matthew Grima, madanakollu jikkontendi illi huwa ghadha *mobile phone* tal-ghamla Nokia lill-imputat fejn infurmah illi dana kien provenjenti minn serq li sar gewwa appartament fis-Swatar.
4. L-imputat jammetti illi huwa akkwista dana it-telefon minn ghand Grima, izda ghalkemm fl-istqarrija tieghu jghid illi huwa hadu minn ghand Grima peress illi dana ta'l-ahhar kellu jaghtih xi flus ghal xi droga, madanakollu meta

---

<sup>7</sup> Ara stqarrija Dokument CM3 a fol.21

<sup>8</sup> Ara xhieda ta'l-imputat

imbaghad jixhed fil-qorti huwa ighid illi xtrah minn ghandu ghal prezz ta' €120.

5. Jirrizulta mix-xhieda tas-*service providers* illi f'xi zmien wara s-serqa dana il-*mobile phone* intuza mill-imputat, kif ukoll minn ohtu Svetlana Abdilla.

6. Illi l-imputat ma jafx kif dana l-istess *mobile phone* gie fil-pussess ta' ohtu u dana ghaliex ighid illi ftit wara li akkwistah huwa bieghu lil terza persuna li ma jndikax izda min hu.

7. Oht l-imputat taghzel li ma tixhidx.

Illi minn dawn il-provi ghalhekk jirrizulta illi l-*mobile phone* gie fil-pussess ta' l-imputat ftit taz-zmien wara li sehhet is-serqa. Illi fit-teorija elaborata minn guriprudenza u awturi Inglizi dwar "***the unlawful possession of recently stolen goods.***" jew 'l hekk imsejjha "***theory of recent possession***", liema teorija giet applikata anke minn guriprudenza taghna, jinghad f'diversi sentenzi illi din it-teorija mhi 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 l-provi migjuba mill-prosekuzzjoni fil-fatt jindikaw biss illi l-oggett misruq, mertu ta' din il-kawza kien fil-pussess ta' l-imputat u dana peress illi jidher car illi ma hemmx prova wahda li tindika illi l-imputat kien involut fis-serq. Fil-fatt l-imputat huwa akkuzat biss bir-reat tar-ricettazzjoni.

Illi f'sentenza moghtija mill-Qorti ta' l-Appelli Kriminali (per.Imhallel Vincent Degaetano) deciza fis-26 ta' Awissu 1998, il-Qorti studjat fil-fond din it-teorija fejn gew ikkwotati diversi awturi inglizi u saret referenza ghal guriprudenza ingliza:

**"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,(sottolinjar tal-Qorti), 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.” (Archibold: Criminal Pleading, Evidence and Practice, 1997 paras.21-125, 21-126).”***

Ikkunsidrat,

Illi huwa fatt mhux ikkontestat illi it-telefon cellulari misruq kien fil-pussess ta'l-imputat. Dana l-imputat stess jammettieh oltre ghal fatt illi l-persuna li wettaq ir-reat jammetti li kien ghaddieh lill-imputat u gharrfu bil-fatt illi dan kien misruq. Illi b'applikazzjoni tat-teorija hawn fuq indikata u fid-dawl tal-provi prodotti l-Qorti hija tel-fehma illi ghalkemm dana it-telefon cellulari ma jigix indikat la mill-pulizija u lanqas mid-derubat *a tempo vergine*, madanakollu ma hemmx dubbju illi l-imputat gie fil-pussess tat-telefon cellulari in kwistjoni ftit taz-zmien wara li seh ir-reat u kien ben konsapevoli tal-fatt illi dan kien misruq, tant illi meta gie arrestat u interrogat huwa jaghti verzjoni, li imbaghad ibiddel meta jixhed quddiem il-Qorti dwar kif il-Jigger u cioe' Matthew Grima ghaddielu dana it-telefon. Inoltre l-Qoti lanqas ma temmen il-verzjoni moghtija mill-imputat dwar kif l-istess telefon **b'kumbinazzjoni** wasal

fil-pussess ta' ohtu *ad insaputa* tieghu u dana wara li kienu bieghu lil terza persuna li baqghet ma gietx identifikata. Il-Qorti temmen illi Matthew Grima ghadda dana it-telefon cellulari lill-imputat ftit taz-zmien wara li kienet sehhet is-serqa u li dana it-telefon intuza kemm mill-imputat kif ukoll minn ohtu. Fil-fatt fl-atti hemm provi illi dana it-telefon ghal xi zmien intuza anke minn hu l-imputat. Illi l-Qorti temmen dak li ighid Matthew Grima fix-xhieda tieghu illi huwa kien informa lill-imputat illi dana it-telefon huwa kien serqu. L-imputat, minn naha tieghu, ma iressaq l-ebda prova li tista' tindika xi raguni 'il ghala Grima kellu jigdeb dwar dana il-fatt.

Illi meta tigi biex tqies il-piena li ghandha tinghata fil-konfront ta'l-imputat il-Qorti tistqarr li ma tistax tkun klementi mieghu meta huwa car illi huwa gideb b'mod lampanti. Inltre l-fedina penali tieghu hija wahda piuttost ikkulurita. Fil-fatt jirrizulta mill-atti illi l-imputat huwa recidiv u dana b'diversi sentenzi moghtija fil-konfront tieghu mill-Qorti. Inltre billi dana ir-reat gie mwettaq fil-perijodu ta' liberta kundizzjonata imposta fuq l-imputat b'sentenza ta' dina l-Qorti kif diversament ippresjeduta, l-Qorti ser tghaddi sabiex tapplika id-disposizzjonijiet ta'l-artikolu 23 tal-Kapitolu 446 tal-Ligijiet ta' Malta fil-konfront tieghu.

Ghaldaqstant l-Qorti wara li rat l-artikolu 334(a) u 279(a), 49, 50 u 289(1) tal-Kapitolu 9 tal-Ligijiet ta' Malta, issib lill-imputat hati ta'l-akkuzi migjuba fil-konfront tieghu u tikkundannah ghal perijodu ta' seba xhur prigunerija. Finalment wara li rat l-artikolu 23(1)(a) tal-Kapitolu 446 tal-Ligijiet ta'Malta, iggib fis-sehh is-sentenza moghtija minn dina l-Qorti (presjeduta mill-Magistrat Saviour Demicoli) fl-14 ta' April 2008 u wara li rat l-artikoli 338(dd), 339(1)(d) u 221(1) tal-Kapitolu 9 tal-Ligijiet ta' Malta tikkundanna lill-imputat multa ta' hames mitt ewro (€500).

**< Sentenza Finali >**

-----TMIEM-----