



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

**MAGISTRAT DR.  
EDWINA GRIMA**

Seduta tat-13 ta' Gunju, 2013

Numru 62/2009

**Il-Pulizija  
(Spettur Frank Anthony Tabone)**

**Vs**

**Joseph Agius ta' 40 sena iben Joseph u Judith nee'  
Debono, imwieled ir-Rabat Ghawdex nhar it-13 ta'  
Lulju 1972, residenti fil-fond Saint Joseph, Flat 1, Triq  
Wiehed u Tletin ta' Marzu 1979, Rabat, Ghawdex u  
detentur tal-karta ta'l-identita' numru 17172(G)**

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputat Joseph Agius akkuzat talli f'dawn il-Gzejjer f'Dicembru 2008 u fix-xhur ta' qabel din id-data gewwa Marsalforn, Ghawdex u f'postijiet ohra gewwa dawn il-gzejjer:

Kopja Informali ta' Sentenza

1. ikkometta serq ta' mobile phone tal-marka Samsung, liema serq huwa aggravat bil-lok ghad-detriment ta' Eleonora Cauchi (ID No. 12985G).

2. U aktar talli fl-istess data, hin, lok u cirkustanzi, xjentement laqa' ghandu jew xtara hwejjeg misruqa, mehuda b'qerq, jew akkwistat b'reat, sew jekk dan sar f'Malta jew barra minn Malta u cioe' mobile tal-marka Samsung.

Rat il-kunsens ta'l-Avukat Generali tat-28 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 mill-provi akkwiziti jirrizulta illi fl-20 ta' Dicembru 2008 kienet sehhet serqa mill-appartament fejn tirrisjedi il-parti leza Eleonora Cauchi. Hija kienet ghamlet rapport mal-pulizija izda dak in-nhar jidher illi ma ndunatx illi kien insterqilha ukoll xi *mobile phone*. Jidher izda illi xi jiem wara hija marret tfittex dana it-telefon cellulari u ma sabitux fil-kaxxa tieghu fejn kienet refghetu. Ghall-ewwel hija tghid illi hassbet illi kienet tilfitu jew poggietu f'xi post iehor izda wara ftit huha kien ghaddielha informazzjoni illi habib tieghu kien ra dana il-*mobile phone* ghand l-imputat. Jidher illi bhala *wallpaper* din Cauchi kienet ghamlet ritratt ta' ghajn u tghid illi meta huha ghaddielha dina l-informazzjoni kien staqsieha jekk kellhiex ritratt ta' ghajn fuq il-*mobile phone* taghha. Il-pulizija abbazi ta' din l-informazzjoni li ghadditielhom Cauchi ghamlu tfittxija fir-residenza ta'l-imputat fejn l-imputat minn jeddu ghaddielhom dana il-*mobile phone*. L-imputat gie arrestat u interrogat mill-pulizija fejn huwa ighid illi kien akkwista dana il-*mobile phone* minn ghand ragel Ingliz madwar xahrejn qabel u cioe' ghal habta ta' Ottubru 2008 meta

kien id-Di-Ve Bar gewwa Marsalforn. Ighid illi dan l-Ingiliz bl-isem ta' Dan kien ser jitlaq minn Malta u staqsieh jekk xtaqx jixtri dana it-telefon ghal prezz ta Lm20. L-imputat igħid illi huwa rah prezz tajjeb u għalkemm l-Ingiliz kien wissieh illi dana it-telefon cellulari seta kien misruq meta qallu il-kliem: "*remember it is a bit dodgy*", huwa xorta wahda accetta li jixtrih. Il-*mobile phone* kien tal-ghamla Samsung, kulur roza li kellu numru tal-IME 357172017022555.

Illi id-difiza ma tikkontestax il-fatt illi l-*mobile phone* esebiet fl-atti u li gie elevat mill-pussess ta'l-imputat għandu l-istess numru serjali bħal dak li tidher fuq il-kaxxa tal-*mobile phone* li l-parti leza tikkontendi illi hija il-kaxxa tat-telefon cellulari misruq u kwindi ma tikkontestax il-fatt illi it-telefon cellulari misjub għand l-imputat huwa proprjeta ta' Eleonora Cauchi.

L-imputat jagħzel li jixhed u jikkonferma dak kollu li jistqarr fl-istqarrija tiegħu. Ighid illi huwa accetta li jixtri dana it-telefon cellulari għax ra li kien prezz tajjeb u li l-Ingiliz kien ser jitlaq minn Malta fejn qallu illi hu ma kellux bzonn għaliex meta jasal l-Ingilterra kienu jagħtuh wiehed b'xejn hekk kif jiffirma kuntratt mas-*service providers*.

Ikkunsidrat,

Illi f'dina l-kawza l-Qorti thoss li għandha tinvoka t-teorija elaborata minn giurisprudenza u awturi inglizi dwar "*the unlawful possession of recently stolen goods*." jew 'l hekk imsejja "*theory of recent possession*". Din it-teorija giet applikata anke minn giurisprudenza tagħna u dana peress illi kif ingħad f'diversi sentenzi din it-teorija mhi xejn għajr l-applikazzjoni tal-"*buon sens*" għac-cirkostanzi partikolari li jkunu jirrizultaw pruvati; fis-sens li meta jigu ppruvati certi fatti dawn jistgħu wahedhom iwasslu ragjonevolment għal konkluzzjoni li persuna partikolari tkun hatja tar-reat ta' serq tal-oggetti misjuba għandha 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 seta kien involut f'xi serqa. 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 giurisprudenza 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.” (Archbold: Criminal Pleading, Evidence and Practice, 1997 paras.21-125, 21-126).”*

Ikkunsidrat,

Illi huwa fatt mhux ikkontestat illi t-telefon cellulari misruq kien fil-pussess ta'l-imputat u instab fil-pussess tieghu ftit taz-zmien wara li kienet sehhet serqa minn gewwa l-appartament tal-parti leza. Dana huwa ikkonfermat mill-imputat stess fejn huwa mhux biss jikkonferma illi l-*mobile phone* kien ghandu, izda ighid li kien qed jigi uzat mit-tfajla tieghu.

Illi dawn il-fatti inkonfutabbli meta imqabbla mal-verzjoni li jaghti l-imputat dwar kif gie fil-pussess ta' dana it-telefon iwasslu lil dina l-Qorti ghal konkluzjoni illi l-imputat jekk mhux kien involut fis-serqa ta' dana it-telefon certament

gie fil-pussess tieghu ffit taz-zmien wara konsapevoli li l-istess kien misruq. Dana qed jinghad ghaliex jekk kif jikkontendi l-imputat huwa xtrah minn ghand wiehed ragel Ingliz bl-isem ta' Dan ghal prezz irrizorju ta' Lm20 minghajr kaxxa, huwa certament kien induna illi dana l-oggett kien provenjenti mis-serq. Ighid ukoll illi dan l-Ingliz kien irrimarkalu meta bieghlu dan il-*mobile phone* illi dana ma kienx akkwistat bis-sewwa meta qallu il-kliem "*Remember this is a bit dodgy.*" L-imputat stess fil-fatt juza il-kliem "**jiena ghamejt**" u xtrah xorta wahda ghax dehrlu li kien prezz irhis u allura kien jaqbillu jakkwistah. Fil-fatt fl-istqarrija tieghu huwa jammetti illi meta akkwista dana it-telefon cellulari huwa kellu suspett illi dan kien misruq.

Ghaldaqstant l-Qorti tistqarr minghajr tlaqliq illi b'dak kollu li ighid l-imputat abbinat mal-applikazzjoni tat-teorija hawn fuq citata, il-Qorti tasal ghal konkluzjoni minghajr dubbju ragjonevoli illi l-imputat kien ben konsapevoli tal-fatt illi dan it-telefon cellulari kien misruq, meta akkwistah. Madanakollu ma hemmx l-icken prova fl-atti li tista' torbot lill-imputat mas-serq ta'l-istess mobile phone u kwindi l-imputat ser jigi illiberat mill-akkuza tas-serq.

Ghaldaqstant l-Qorti wara li rat l-artikolu 334(a) u 279(a) tal-Kapitolu 9 tal-Ligijiet ta' Malta, filwaqt li tillibera lill-imputat mill-ewwel akkuza, issibu hati tat-tieni akkuza, tikkundannah ghal perijodu ta' sitt xhur prigunerija li b'applikazzjoni ta'l-artikolu 28A tal-Kapitolu 9 tal-Ligijiet ta' Malta dana il-perijodu ta'prigunerija qed jigi sospiz ghal zmien sena mil-lum.

Il-Qorti twissi il hati bil-konsegwenzi skond il-ligi jekk huwa jikkometti reat iehor matul il-perijodu operattiv ta' dina s-sentenza.

Il-Qorti tordna illi d-Dokumenti JG1 u FT1 ghandhom jigu rilaxxjati favur il-parti leza Eleonora Cauchi.

Kopja Informali ta' Sentenza

**< Sentenza Finali >**

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