



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

**MAGISTRAT DR.
EDWINA GRIMA**

Seduta tat-12 ta' Settembru, 2013

Numru 80/2008

Il-Pulizija

(Spettur Frank A. Tabone)

VS

Anthony Said ta' 39 sena, bin Peter u Carmela nee' Vella, imwieled Rabat, Ghawdex nhar it-22 ta' Marzu 1974, residenti fil-fond Tony & Theresa, Triq Ullisse, Marsalforn, limiti taz-Zebbug, Ghawdex, detentur tal-karta ta'l-identita numru 8474(G)

Il-Qorti,

Rat l-imputazzjoni migjuba kontra l-imputat Anthony Said:
1. akkuzat talli fil-lejl ta' bejn it-30 ta' Gunju 2008 u l-1 ta' Lulju 2008, ghal habta tan-nofsiegha ta' fil-ghodu (00:30hrs), gewwa r-Rabat (Ghawdex) ikkometta serq ta'

zewg laptops u TFT monitor, liema serq hu aggravat bil-mezz, bil-hin u bil-valur li huwa aktar minn mitejn u tnejn u tletin euro u erbgha u disghin centezmu (232.94) izda mhux aktar minn elfejn tliet mija u disghin u ghoxrin euro u sebgha u tletin centezmu (2329.37) u li sar ghad-detriment ta' Emmanuel Grech;

2. U aktar talli fl-istess data, hin, lok u cirkostanzi, volontarjament hassar jew gharraq hwejjeg haddiehor, mobbli jew immobbli liema hsara hija izjed minn mija u sittax-il euro u sebgha u erbghin centezmu (116.47) u li sar ghad-detriment ta' Emmanuel Grech;

3. U aktar talli fl-istess data, hin, lok u cirkostanzi, 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 xjentement b'kull mod li jkun indahal biex ibieghhom jew imexxihom;

4. U aktar talli huwa sar recidiv ai termini ta'l-artikolu 49,50 u 289 tal-Kap 9 tal-Ligijiet ta' Malta, b'diversi sentenzi tal-Qorti tal-Magistrati (Malta) u tal-Qorti tal-Magistrati (Ghawdex) liema sentenzi saru definittivi u ma jistghux jigu mibdula.

Rat id-dokumenti esebieti u l-atti kollha ta' dan il-procediment.

Rat il-kunsens ta'l-Avukat Generali tal-05 ta' Jannar 2009 sabiex dana il-kaz jigi trattat u deciz bil-procedura sommarja minn dina l-Qorti.

Semghet il-provi.

Semghet trattazzjoni

Ikkunsidrat,

Illi l-imputat jinsab akkuzat bir-reat ta' serq u ricettazzjoni, kif ukoll tal-hsara volontraja in konnessjoni mal-kommissjoni ta' dawn ir-reati. Mill-provi akkwiziti jirrizulta illi fil-lejl ta' bejn it-30 ta' Gunju 2008 u l-1 ta' Lulju 2008 sehhet serqa minn gewwa hanut maghruf bhala *Island Tech* fi Triq il-Municipju Ruman, ir-Rabat, Ghawdex. Il-pulizija gewwa allertati b'dina is-serqa peress illi beda

idoqq l-allarm ta' dana il-hanut. Meta l-pulizija accedew minnufih fuq il-post gie innutat illi xi persuna jew persuni mhux maghrufa kienu kisbu access ghal dana il-hanut billi kissru hgiega in-naha ta' isfel tal-lemin tal-bieb principali. Il-bicca in-nieqsa ma instabitx fuq il-post. Illi minn indagini li saru mill-pulizija irrizulta illi insterqu zewg laptops wiehed tal-marka ASUS u l-iehor tal-marka ACER u TFT monitor, il-valur komplessiv tagghom kien ta' madwar €2500. Illi infethet inkjesta magisterjali fejn gew mahtura il-PC 1371 Alfred Grech bhala espert tal-impronti digitali u Max Xuereb bhala espert tal-fotografija. Illi ghalkemm il-pulizija komplew bl-istharrig tagghom, madanakollu kien biss madwar sitt xhur wara u cioe' fil-21 ta' Dicembru 2008 illi l-PC 1279 David Theuma Xerri irceva informazzjoni anonima illi wiehed mill-laptops li kien misruq seta kien fil-pussess ta' certu Emanuel Fenech residenti fil-fond 33, Triq Pompei, Rabat. Emanuel Fenech gie arrestat u interrogat fejn huwa ammetta mal-ewwel illi l-laptop tal-marka ASUS kien fil-pussess tieghu u ghalhekk ghaddieh minnufih lill-pulizija. Illi Fenech jisvela lill-pulizija illi huwa kien akkwista dana il-laptop minn ghand l-imputat xi xhur qabel ghal prezz ta' Lm270. Minn hawn ghalhekk l-pulizija wasslu ghal persuna tal-imputat li gie arrestat u interrogat fit-22 ta' Dicembru 2008. Il-pulizija effetwaw tfittxija fir-residenza ta'l-imputat fejn minn hemmhekk fost affarijiet ohra gie elevat TFT monitor. L-imputat jigi interrogat fit-22 ta' Dicembru fil-hamsa ta' wara nofs in-nhar fejn huwa jispjega fid-dettall kif kien wettaq is-serqa taz-zewg laptops u TFT monitor mill-hanut *Island Tech*. Jispjega illi huwa kien waqaf bil-karozza quddiem dana il-hanut ghal habta tal-bidu ta' Lulju tard fil-ghaxija. Kien waqaf ihares lejn l-armatura tal-hanut fejn f'hin minnhom lemah gebla zghira fl-art u iddecieda ikisser il-hiega tal-bieb biex jikseb access ghall-hanut. Ighid illi meta kisser il-hgiega, huwa kien gabar il-bicciet kollha tal-hgieg imkisser u poggiehom go kaxxa li sab fil-genb tal-hanut. Imbaghad huwa seraq iz-zewg laptops u it-TFT monitor. Ighid illi kif kien hierreg mil-hanut beda idoqq l-allarm u ghalhekk telaq jigri 'il barra rikeb fil-karozza u saq minn fuq il-post. Fl-istqarrija tieghu, l-imputat jammetti illi huwa kien biegh iz-zewg laptops, wiehed lil certu Emanuel Fenech u l-iehor lil certu Saviour Grech. Minn dak li

ighidilhom l-imputat, l-pulizija ghalhekk jirnexxielhom jirrintraccaw il-laptop l-iehor. Fil-fatt Saviour Grech ukoll jigi mitkellem fejn jammetti mal-ewwel illi huwa kien xtara laptop tal-marka ACER minn ghand l-imputat ghal prezz ta' Lm150. Il-pulizija fil-fatt jelevaw dana il-laptop mill-pussess ta' Grech.

Ikkunsidrat,

Illi l-oggetti misruqa kollha gew esebieti in atti u gew identifikati mid-derubat Emanuel Grech bhala l-istess oggetti li gew nieqsa mill-hanut tieghu Island Tech dak in-nhar tas-serqa. Jezebixxi ukoll sett ricevuti li jindikaw il-valur ta' dawn it-tlett oggetti.¹

Illi l-Qorti semghet ukoll ix-xhieda ta' Emanuel Fenech u Saviour Grech li jikkonfermaw illi kienu xtraw il-laptops ACER u ASUS minn ghand l-imputat u anke identifikaw dawn il-laptops bhala dawk esebieti in atti. Jikkonfermaw illi dawn il-laptops huma ghaddewhom lill-pulizija.² Illi in kwantu ghat-TFT monitor jirrizulta illi dana gie elevat mir-residenza ta' l-imputat mill-pulizija PC138 u PC1384. Dana kien mohbi taht saqqu.³

Illi fl-istqarrija rilaxxjata minnu lill-pulizija, ghalkemm dina ma gietx iffirmata minnu, l-imputat, kif diga inghad iktar 'il fuq jammetti illi kien seraq dawn it-tlett oggetti u jaghti deskrizzjoni dettaljata ta' dak illi ghamel sabiex kiseb access ghall-hanut *Island Tech* u kif seraq dawn iz-zewg laptops u monitor. L-imputat ma jixhidx f'dawn il-proceduri u ma iressaqx provi.

Illi fid-dawl tal-provi migjuba quddiemha, il-Qorti tirrileva illi anke jekk wiehed kellu jiskarta l-istqarrija ta' l-imputat, il-provi kollha l-ohra kemm diretti kif ukoll cirkostanzjali jippuntaw subghajhom lejn l-imputat. Dana qed jinghad mhux biss ghaliex wiehed mill-oggetti instab fil-pussess tieghu, izda ukoll ghaliex iz-zewg oggetti l-ohra li instabu

¹ Ara xhieda ta' Emanuel Grech a fol. 71 u ricevuti Dokumenti EG1 sa EG4 minn fol.73 sa 76.

² Ara xhieda ta' Emanuel Fenech a fol.78 u ta' Saviour Grech a fol.79

³ Ara xhieda ta' PC138 Joseph Portelli

fil-pussess ta' terzi ukoll kienu fil-pussess ta' l-imputat xi zmien wara is-serqa u li kien hu stess li ghaddehom lilhom. Il-Qorti ghalhekk qiegħda tinvoka t-teorija elaborata minn guriprudenza u awturi inglizi dwar “*the unlawful possession of recently stolen goods.*” jew ‘l hekk imsejjha “*theory of recent possession*”. Din it-teorija giet applikata anke minn guriprudenza tagħna u dana peress illi kif ingħad f’diversi sentenzi din it-teorija mhi xejn ghajr l-applikazzjoni tal-“*buon sens*” għac-cirkostanzi partikolari li jkunu jirrizultaw pruvati; fis-sens li meta jigu ppruvati certi fatti dawn jistghu wahedhom iwasslu ragjonevolment għall-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 f’sentenza mogħtija 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 għal 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." (Archbold: Criminal Pleading, Evidence and Practice, 1997 paras.21-125, 21-126)."

Illli f'dana il-kaz ma hemmx dubbju ghalhekk illi l-imputat kien fil-pussess ta'l-oggetti misruqa fiz-zmien meta sehhet

is-serqa. Illi hemm xhieda skjaccanti illi tindika dan u tindika ukoll illi l-imputat biegh dawn l-istess oggetti lil terzi. Dawn il-fatturi abbinati ma'l-istqarrija tieghu fejn huwa jammetti l-involvement tieghu fis-serqa ihallu lil dina l-Qorti minghajr l-icken dubbju dwar ir-reita' ta'l-imputat. Dana ghaliex l-fatti li l-imputat jafferma fl-istqarrija tieghu jikkombaccjaw mal-provi l-ohra kemm diretti kif ukoll cirkostanzjali. Dana ghaliex;

1. L-oggetti kollha esebieti in atti bhala *ir-res furtiva*, gew identifikati mid-derbuat bhala dawk li insterqulu fis-serqa mertu tal-kawza.
2. Il-hgieg il-miksuri ma jinstabx fuq ix-xena u l-imputat jispjega illi dawn gabarhom f'kaxxa u hadhom mieghu d-dar.
3. il-monitor TFT jinsab fil-pussess tieghu mill-pulizija.
4. Wiehed mill-laptops jinsab ghand Emanuel Fenech li jammetti illi dan kien xtrah minn ghand l-imputat minghajr charger u wire tad-dawl.
5. rigward il-laptop l-iehor, huwa l-imputat stess li jindika lill-pulizija il-persuna lil min kien ghaddieh u fil-fatt meta il-pulizija jaghmlu l-istharrig taghhom abbazi ta' dina d-dikjarazzjoni, huma isibu dana it-tieni laptop ghand Saviour Grech kif kien stqarr l-imputat stess.
6. Saviour Grech jammetti illi dana il-laptop kien xtrah minn ghand l-imputat minghajr charger u battery u l-imputat kien ipprovdieu dawn iktar tard u hallsu ghalihom.

Illi ghalhekk l-imputat ser jinsab hati tal-akkuza tas-serq kif aggravat, kif ukoll tal-hsara volontarja li ghmel fuq il-bieb tal-hanut *Island Tech* meta huwa kisser hgiega mill-bieb sabiex jikseb access ghal dan il-hanut. Billi l-akkuza dwar ir-ricettazzjoni hija kap alternattiv ghall-akkuza dwar is-serq, l-Qorti ser tastjeni milli tiehu konjizzjoni ta' dina l-akkuza.

Illi finalment l-imputat jinsab akkzuat ukoll illi huwa recidiv u dana a tenur ta'l-artikolu 49, 50 u 289. Illi dina l-akkuza giet ampjament ippruvata u dana bis-sentenza esebieta in atti moghtija minn dina l-Qorti kif diversament ippresjeduta tas-07 ta' Marzu 2008.

Kopja Informali ta' Sentenza

Ghaldaqstant il-Qorti wara li rat l-artikoli 261(b)(c)(f), 263(a), 264, 267, 270, 278(1)(3), 279, 280(2), 325(1)(c), 17(h), 31, 49, 50 u 289, filwaqt li tastjeni milli tiehu konjizzjoni tat-tielet akkuza, billi dina hija alternattiva ghall-ewwel wahda, issibu hati tal-kumplament ta'l-akkuzi u tikkundannah ghal perijodu ta' sena prigunerija.

Il-Qorti tordna ir-rilaxx tal-oggetti esebieti bhala Dokumenti FT4 u FT5 konsistenti f'zewg laptops u TFT monitor a favur ta' Emanuel Grech.

Finalment wara li rat l-artikolu 533 tal-Kapitolu 9 tal-Ligijiet ta' Malta tikkundanna lil hati ihallas lir-Registaur tal-Qorti is-somma ta' €70 in konnessjoni ma' spejjez peritali.

< Sentenza Finali >

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