Fil-Qorti tal-Maġistrati (Malta)
Bħala Qorti ta' Ġudikatura Kriminali

Magistrat Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)

Illum: 18 ta' Frar, 2019,

Il-Pulizija
(Spettur Anne Marie Xuereb)

-vs-

David Paris, detentur ta' Karta tal-Identita` Maltija bin-numru 547157M

Kumpilazzjoni Nru.662/2016

Il-Qorti,

Rat l-akkużi miġjuba fil-konfront tal-imputat David Paris, u cioe`, talli:

> F'dawn il-Gzejjer, fix-xahar t'April, 2016, u fix-xhur u snin ta' qabel, b'diversi atti maghmulin minnu, ukoll jekk fi zminijiet differenti, izda li jiksru l-istess disposizzjonijiet tal-ligi u li gew maghmula b'rizoluzzjoni wahda:
>
> Bi hsieb li jwettaq frodi b'eghmil qarrieqi, wera dan il-hsieb b'atti esterni, u ta bidu ghall-ezekuzzjoni tar-reat ta' frodi b'eghmil qarrieqi, fejn b'mezzi kontra l-ligi, jew billi ghamel uzu ta' ismijiet foloz, jew ta' kwalifiki foloz, jew billi nqeda b'qerq iehor, ingann, jew billi wera haga b'ohra sabiex igieghel titwemmen l-ezistenza t'intraprizi foloz, jew ta' hila, setgha fuq haddiehor, jew ta' krediti immaginarji, sabiex iqanqal tama jew biza' dwar xi grajja kimerika, ipprova jaghmel qliegh bi hsara ta' haddiehor, ta' aktar hamest mitt Euro (€500) izda

mhux iktar minn hamest elef Euro (€5000) liema reat ma sehhx minhabba xi haga accidentali u indipendenti mill-volonta tieghu;

Ghamel, ghadda, ipprovda jew offra li jipprovdi xi oggett meta kien jaf li dak l-oggett huwa intiz jew adattat biex jintuza fit-twettiq ta' jew f'konnessjoni ma frodi, bl-intenzjoni li jintuza biex tittwettaq frodi jew jassisti fl-eghmil ta' frodi;

Ikommetta reat/delitt li ghalih hemm piena ta' prigunerija, li sar matul il-perjodu operattiv tas-sentenza sospiza moghtija mill-Qorti tal-Magistrati (Malta) u datata 26 ta' Jannar, 2015;

Sar recediv ai termini tal-artikoli 49 u 50 tal-Kap 9 tal-Ligijiet ta' Malta b' sentenzi moghtija lilu mill-Qrati ta' Malta liema sentenzi gew decizi u ma jistghux jigu mibdula.

Rat il-kunsens ta' l-Avukat Generali sabiex il-kaz jigi trattat bi procedura sommarja u li l-imputat m'ghandu l-ebda oggezzjoni biex il-kaz jigi hekk trattat.

Semghet ix-xhieda.

Rat l-atti u d-dokumenti kollha.

Semghet it-trattazzjoni.

Ikkunsidrat-
Illi fuq skorta tad-decizjonijiet moghtiha mill-Qorti Kostituzzjonali fl-ismijiet **Il-Pulizija vs Aldo Pistella**[1] u **Brian Vella vs l-Avukat Generali**,[2] kif ukoll dik tal-Qorti tal-Appell Kriminali **Il-Pulizija vs Claire Farrugia**,[3] l-istqarrija rilaxxjata mill-imputat li nghatat minghajr id-dritt li jkun assistit mill-legali tieghu, ma ghandiex aktar valur probatorju.

Illi l-imputat hu akkuzat b'tentattiv ta' frodi ghad-dannu ta' diversi persuni, whud li kienu gja` ottjenu licenzja ta' pilota, *Private Pilot Licence*

[1] Per S.T.O. Prim Imhallef Joseph Azzopardi, Onor. Imhallef Noel Cuschieri u Onor Imhallef Giannino Caruana Demajo; Rikors numru: 104/2016/1 JZM; Deciza 14.12.2018
[2] 14.12.2018; Appell Kostituzzjonali Numru 90/2016/1 MCH
[3] Per Onor. Imħallef Consuelo Scerri Herrera, Deciza 20.11.2018; Appell Nru: 259/2018

(PPL), sabiex dawn ikomplu javvanzaw fil-karriera taghhom. L-imputat tahom x'jifhmu li hu kien pilota mal-Airmalta, kellu skola ghat-tahrig u li kien kapaci jaghtihom korsijiet ta' tahrig.

Illi fis-sentenza **Il-Pulizija vs Maria Xuereb et,** il-Qorti tal-Appell Kriminali ezaminat l-elementi rikjesti sabiex jissussisti r-reat ta' frodi:[4]

Izda qabel ma tonoltra ruhha f'ezami mill-gdid ta'l-atti probatorji il-Qorti tqies illi qabel xejn ghandhom jigu ezaminati l-aspetti legali u guridici li isawwru l-akkuza li qed jiffaccjaw l-appellati u cioe' dik tal-frodi u r-reat minuri tal-frodi innominat. Issa sabiex jissussti ir-reat tal-frodi jew truffa gie ritenut kostantement fil-gurisprudenza u fis-sentenzi tal-qrati taghna illi iridu jinkonkorru diversi elementi. Ibda biex irid ikun hemm ness bejn is-suggett attiv u is-suggett passiv tar-reat u cioe' bejn minn qieghed jikkometti ir-reat u il-vittma. Hemm imbaghad l-element materjali ta' dana ir-reat u cioe' l'uzu ta' ingann jew raggieri li iwasslu lil vittma sabiex isofri it-telf patrimonjali. Finalment huwa necessarju li ikun hemm l-element formali tar-reat konsistenti fid-dolo jew fl-intenzjoni tat-truffatur jew frodatur li jinganna u dana sabiex jikseb profitt jew vantagg ghalih innifsu. Jekk xi wiehed jew iktar minn dawn l-elementi huma nieqsa, allura ir-reat tat-truffa ma jistax jisussisti.

"Id-delitt tat-truffa huwa l-iprem fost il-kwalitajiet ta' serq inproprji u hu dak li fl-iskola u fil-legislazzjoni Rumana kien maghruf bhala steljolat u li jikkorrispondi ezattament ghat-truffa tal-Codice Sardo, ghal frodi tal-Kodici Toskan, ghal Engano jew Estafa fil-kodici Spanjol, ghal Bulra f'dak Portugiz, u ghal Esroquerie fil-Kodici Franciz ... Id-disposizzjonijiet tal-Kodici taghna li jikkontemplaw ir-reat ta' truffa kienu gew mehuda minn Sir Adriano Dingli mill-paragrafu 5 ta'l-artikolu 430 tal-Kodici delle Due Sicilie li hu identiku hlief ghal xi kelmiet insinjifikanti ghal Kodici Franciz (artikolu 405) avolja dan, il-Kodici delle Due Sicile, it-truffa kien sejhilha Frodi .....".

.... Hu necessarju biex ikun hemm ir-reat ta' truffa, li l-manuvri jridu jkunu ta' natura li jimpressjonaw bniedem ta' prudenza u sagacja ordinarja, li jridu jkunu frawdolenti u li hu necessarju li jkunu impjegati biex jipperswadu bl-assistenza ta' fatti li qajmu sentimenti kif hemm indikat fil-ligi. ....[22 ta' Frar 1993, AppKrim **Il-Pulizija vs Charles Zarb**]"

Dwar l-element formali tar-reati ta' truffa l-**Imhallef Guze Flores** kellu dan xi ighid:

"....Kwantu jirrigwarda l-element formali, cioe' kwantu jirrigwarda d-dolo ta' dan ir-reat ta' truffa, jinghad illi jrid jkun hemm qabel xejn l-intenzjoni tal-frodatur li jipprokura b'ingann l-konsenja tal-flus jew oggett li jkun fi profit ingust tieghu. L-ingustizzja tal-profitt tohrog mill-artikolu 308 tal-Kodici Kriminali fejn il-kliem "bi hsara ta' haddiehor" ma jhallux dubbju dwar dan. Jigifieri biex ikun hemm l-element intenzjonali tar-reat ta' truffa, hemm bzonn li s-suggett attiv tar-reat fil-mument tal-konsumazzjoni tieghu ikun konxju ta'l-ingustizzja tal-profitt u b'dan il-mod il-legittima produttivita tal-profitt hija bizzejjed biex teskludi d-dolo."

Illi f'sentenza moghtija mill-Corte di Cassazione Penale gie deciz illi element ewlieni fir-reat tal-frodi huwa ***"l'elemento del'danno patrimoniale"*** Biex imbaghad jissusti dana it-tip ta' reat huwa necessarju illi jezistu "***I tre momenti di cui si compone il reato e' cioe' la produzione dell'artificio, nella***

[4] Per Onor. Imhallef Edwina Grima, Deciza 22.09.2016; App. Krim. Nru.131/2015

successive induzione in errore e nella conseguenziale produzione dell'ingiusto profitto per l'agente." (Cassazione penale sez.II 3 ottobre 2006 n.34179)
"L'agente ... deve volere non solo la sua azione, ma anche l'inganno della vittima, come conseguenza dell'azione stessa, la disposizione patrimoniale, come conseguenza dell'inganno e, infine, la realizzazione di quell profitto che costituisce l'ultima fase del processo esecutivo del delitto. Naturalmente occorre che la volonta sia accompagnata dalla consapevolezza del carattere frodatorio del mezzo usato, dell'ingiustizzia del profitto avuto in mira e del danno che ne deriva all'ingannato [**Francesco Antolisei**, ikkwotat f'sentenza ohra moghtija mill-Qorti ta'l-Appelli Kriminali (**Il-Pulizija vs Patrick Spiteri** deciza 22/10/2004)***."***

Illi l-artikolu 309 tal-Kapitolu 9, imbaghad jikkontempla ir-reat minuri tal-frodi innominat. Illi ghar-rigward ta' dana ir-reat, ghalkemm l-element tar-"raggiri" jew l-"artifzji", huwa nieqes u allura anke gidba semplici hija bizzejjed ghal kummissjoni ta' dana ir-reat, izda dana irid bil-fors iwassal sabiex il-vittma u cioe' is-suggett passiv ta' dana ir-reat isofri xi telf patrimonjali. Illi kif gie deciz fis-sentenza **Il-Pulizija vs Carmela German** (Appelli Kriminali Inferjuri 30/12/2004): ***"Kwantu ghal kwistjoni jekk il-gidba semplici – a differenza ta'l-artifizji u raggiri – tistax tammonta ossia twassal ghar-reat ta' frodi innominata, ir-risposta hija certament fl-affermattiv, basta li tali gidba tkun effettivament tammonta ghal qerq, cioe' intiza jew preordinata sabiex il-persuna l-ohra (il-vittma) taghmel jew tonoqs milli taghmel xi haga li ggibilha telf patrimonjali bil-konsegwenti arrikkiment ghal min jghid dik il-gidba u basta, s'intendi li tkun effettivament waslet ghal dana it-telf min-naha u arrikkiment min-naha l-ohra."*** 16

Affermati dawn il-principji gurisprudenzjali u legali ghandu jirrizulta illi huwa necessarju illi jigi ippruvat l-element ta'l-ingann fil-frodatur u dan fil-mument illi huwa ikun qieghed jaghmel il-maniggi tieghu sabiex jinganna lill-vittma…..

Dan ghaliex, kif inghad, biex jissussiti ir-reat tal-frodi jehtieg necessarjament illi s-suggett attiv jadopera mezzi sabiex igieghel lil vittma tieghu jaghmel xi haga li solitament ma kienx jaghmel, jew bil-maqlub illi igieghel lill-vittma tieghu ma jaghmilx xi haga li solitament huwa jaghmel. L-vittma irid ikun gie ingannat b'xi haga illi jaghmel il-frodatur li igieghlu jemmen realta' li fil-verita' ma tezistiex.

Illi l-istess Qorti fis-sentenza **Il-Pulizija vs Aaron Mizzi,** ddecidiet:[5]

Illi abbazi ta' Artiklu 308 tal-Kapitlu 9 tal-Ligijiet ta' Malta, sabiex jissussisti r-reat ta' frodi jew truffa, jehtieg li jikkonkorru s-segwenti elementi: (i) in-ness bejn is-suggett attiv u s-suggett passiv tar-reat, (ii) l-element materjali konsistenti fl-uzu ta' ingann jew raggiri, (iii) l-elementi formali li jikkonsisti f'dolo jew fl-intenzjoni tat-truffar u (iv) l-element ta' dannu patrimonjali. Min-naha l-ohra, fir-rigward tar-reat ta' frodi nnominata kkontemplat fl-Artikolu 309 tal-Kapitlu 9 tal-Ligijiet ta' Malta, semplice gidba hija bizzejjed biex twassal ghall-kummissjoni ta' dan ir-reat u l-messa in scena mhiex necessarja. Madanakollu, il-gidba trid tkun tali li twassal ghat-telf patrimonjali tal-vittma hekk kif rikjest mil-ligi.

….. Ghaldaqstant, in-ness li trid il-ligi ai fini ta' Artikolu 308 u Artikolu 309 tal-Kapitlu 9 tal-Ligijiet ta' Malta bejn dak li jikkometti r-reat u l-vittma, jezisti.

Illi fir-rigward tal-element materjali tar-reat ta' truffa, skont il-gurisprudenza kostanti tal-Qrati Maltin, il-manuvri frawdolenti adoperati mill-frodist iridu jkunu akkumpanjati minn xi forma ta' atti esterni jew

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[5] Per Onor. Imhallef Michael Mallia, Deciza 15.01.2015; Appell Kriminali Nru.225/2014

messa in scena li jsahhu l-kelma tal-frodist u li jikkonvincu lill-persuna ta' prudenza u sagacja ordinarja bl-ezistenza ta' dawk il-fatti li jqajmu s-sentimenti kkontemplati mid-dicitura tal-ligi:

308. Kull min, b'mezzi kontra l-liāi, jew billi jagħmel uzu ta' ismijiet foloz, jew ta' kwalifiki foloz, jew billi jinqeda b'qerq ieħor, ingann, jew billi juri ħaga b'oħra sabiex ighiegħel titwemmen l-ezistenza ta' intraprizi foloz, jew ta' ħila, setgħa fuq ħaddieħor, jew ta' krediti immaginarji, jew sabiex iqanqal tama jew biza' dwar xi grajja kimerika, jagħmel qligħ bi ħsara ta' ħaddieħor, jeħel, meta jinsab ħati, il-piena ta' prigunerija minn seba' xhur sa sentejn. (enfasi tal-esponent)

Illi dan il-principju gie spjegat b'mod car fis-sentenza tal-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali fl-ismijiet **Il-Pulizija vs. Simon Spiteri** datata sebgha (7) ta' Mejju tas-sena elfejn u tlettax (2013) fejn inghad is-segwenti:

Dwar l-artifizzi ntqal mill-Qorti illi *''hemm bzonn biex ikun reat taht l-artikolu 308 illi l-kliem jkun akkumpanjat minn apparat estern li jsahhah il-kelma stess fil-menti ta' l-iffrodat." (*enfasi tal-esponent)

Illi f'Il-Pulizija vs Anthony Fountain u Stephen k/a Steve Abela, il-Qorti tal-Magistrati (Malta) elenkat l-elementi rikjesti sabiex jissussisti dan ir-reat:[6]

Fil-Ligi taghna biex ikun hemm it-truffa jew il-frodi innominata irid ikun gie perpetrat mill-agent xi forma ta' ingann jew qerq, liema ingann jew qerq ikun wassal lill-vittma sabiex taghmel jew tonqos milli taghmel xi haga li ggibilha telf patrimonjali bil-konsegwenti qligh ghall-agent ... jekk l-ingann jew qerq ikun jikkonsisti f'raggiri jew artifizi - dak li fid-dottrina jissejjah ukoll mis en scene - ikun hemm it-truffa; jekk le ikun hemm hemm ir-reat minuri ta' frodi innominata (jew lukru frawdolenti innominat).[7]

Illi x'jikostitwixxi r-raggiri u l-artifizji gie kunsidrat f'diversi sentenzi fosthom dik I**l-Pulizija vs Charles Abela** fejn il-Qorti ghamet ezami *funditus* fuq ir-reat ta' frodi u dak tal-approprijazzjoni idebita:[8]

Fi kliem Antolisei[9]

artifizio e' ogni studiata trasfigurazione del vero, ogni camuffamento della realta effetuato sia simulando cio che non esiste, sia dissimulando ... cioe che esiste. Il raggiro d'altra parte e un avvolgimento ingenioso di parole, destinate a convincere: piu precisamente una menzogna corredata da ragionamenti idonei a farla scambiare per verita. .... E certo che l'espressione del codice di per se' richiama l' idea di una certa astuzia o di un sottile accorgimento nel porre l'inganno in opera.

Antolisei jkompli jghid pero li

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[6] Per Onor. Magistrat Dr. Doreen Clarke, Deciza 15.12.2011
[7] **Pulizija vs Carmela German**; Qorti tal-Appell Kriminali; Deciza 30.12.2004 u l-gurisprudenza hemm kwotata
[8] Per Onor. Magistrat Dr. Josette Demicoli; Deciza 06.07.2016
[9] Manuale Di Diritto Penale (Giuffre) pagna 356

nell'applicazione pratica della legge questa idea e' andata sempre piu affievolendosi, fin quasi a scomparire del tutto. Per tal modo si e' finito con l'ammettere che anche la semplice menzogna puo bastare per dare vita alla truffa.[10].

Illi f'dan is-sens anke l-Qorti ta' l-Appell Kriminali qalet hekk dwar il-messa in xena:

Il-Ligi taghna ma tirrikjediex li l-messa in xena, cioe dawk l-artifizji jew raggiri, ikunu xi haga kkumplikata jew arkittetta b'hafna pjanijiet.[11]

Imbaghad fis-sentenza fl-ismijiet **Il-Pulizija vs Marjanu Zahra:**[12]

Biex jissussti ir-reat tal-frodi jew truffa gie ritenut kostantement fil-gurisprudenza u fis-sentenzi tal-qrati taghna illi iridu jinkonkorru diversi elementi. Ibda biex irid ikun hemm ness bejn is-suggett attiv u is-suggett passiv tar-reat u cioe' bejn minn qieghed jikkometti ir-reat u il-vittma. Hemm imbaghad l-element materjali ta' dana ir-reat u cioe' l'uzu ta' ingann jew raggieri li iwasslu lil vittma sabiex isofri it-telf patrimonjali. Finalment huwa necessarju li ikun hemm l-element formali tar-reat konsistenti fid-dolo jew fl-intenzjoni tat-truffatur jew frodatur li jinganna u dana sabiex jikseb profitt jew vantagg ghalih innifsu. Jekk xi wiehed jew iktar minn dawn l-elementi huma nieqsa, allura ir-reat tat-truffa ma jistax jissussisti

…….

Skond gurisprudenza kostanti, l-ingredjenti ta'l-element materjali ta' dan id-delitt ta' truffa, huma dawn li gejjin.

Fl-ewwel lok bhala suggett attiv ta' dan id-delitt jista' ikun kulhadd.

Fit-tieni lok il-Legislatur, aktar mill-interess socjali tal-fiducja reciproka fir-rapport patrimonjali individwali, hawn qed jittutela l-interess pubbliku li jimpedixxi l-uzu ta'l-ingann u tar-raggieri li jinducu bniedem jiddisponi minn gid li fil-kors normali tan-negozju ma kienx jaghmel.

Fit-tielet lok hemm l-element materjali tat-truffa u jikkometti d-delitt tat-truffa kull min:
a. b'mezzi kontra l-ligi, jew
b. billi jaghmel uzu minn ismijiet foloz jew
c. ta' kwalifiki foloz jew
d. billi jinqeda b'qerq iehor u
e. ingann jew
f. billi juri haga b'ohra sabiex igieghel titwemmen l-ezistenza ta' intraprizi foloz,
g. jew ta' hila
h. setgha fuq haddiehor jew
i. ta' krediti immaginarji jew
j. sabiex iqanqal tama jew biza dwar xi grajja kimerika, jaghmel qliegh bi hsara ta' haddiehor.

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[10] Op. cit. pagna 357
[11] **Pulizija vs Emanuel Ellul;** Deciza 20.06.1997
[12] Per Onor. Magistrat Dr. Edwina Grima; Deciza fit-2.03.2011

…. Hu necessarju biex ikun hemm ir-reat ta' truffa, li l-manuvri jridu jkunu ta' natura li jimpressjonaw bniedem ta' prudenza u sagacja ordinarja, li jridu jkunu frawdolenti u li hu necessarju li jkunu impjegati biex jipperswadu bl-assistenza ta' fatti li qajmu sentimenti kif hemm indikat fil-ligi. ….."

*Dwar l-artifizzji intqal mill-Qorti illi **"hemm bzonn biex ikun reat taht l-artikolu 308 illi l-kliem jkun akkumpanjat minn apparat estern li jsahhah il-kelma stess fil-menti ta' l-iffrodat. Din it-tezi hija dik accettata fil-gurisprudenza ta' din il-Qorti anke kolleggjalment komposta fil-kawza "Reg vs Francesco Cachia e Charles Bech (03.01.1896 – Kollez.XV.350) li fiha intqal illi "quell' articolo non richiede solamente una asserzione mensioniera e falza, ma richiede inoltre che siano state impiegate, inganno, raggiro o simulazione, ed e' necessario quindi che la falza asseriva sia accompagnata da qualche atto diretto a darla fede."***

*Ghar-reati ta' truffa komtemplat fl-artikolu 308 tal-Kodici kriminali, il-Qorti iccitata lill-Imhallef Guze Flores fejn qal illi **"kif jidher mid-dicitura partikolari deskrittiva adoperata, hemm bzonn li tirrizulta materjalita' specifika li sservi ta' supstrat ghall-verosimiljanza tal-falsita prospettata bhala vera u b'hekk bhala mezz ta' qerq. Ma huwiex bizzejjed ghal finijiet ta' dak l-artikolu affermazzjonijiet, luzingi, promessi, minghajr l-uzu ta' apparat estern li jirrivesti bi kredibilita' l-affermazzjonijiet menzjonjieri tal-frodatur. Il-ligi taghti protezzjoni specjali kontra l-ingann li jkun jirrivesti dik il-forma tipika, kwazi tejatrali, li tissupera il-kawtela ordinarja kontra s-semplici u luzingi, u li taghti li dawk l-esterjorita ta' verita kif tirrendi l-idea l-espressjoni felici fid-dritt Franciz mise-en-scene."***

Illi mill-provi prodotti jirrizulta li t-telf patrimonjali soffrieh esklussivament Philip Attard li ghadda flejjes lill-imputat, cheque ta' €500, li kellu jkun l-ewwel pagament sabiex jirregistra ghall-ezamijiet ma Transport Malta. Studenti ohra li tressqu qatt ma tkellmu dwar skambjar ta' flus izda dwar kif kienu jiffrekwentaw id-dar tal-imputat fejn kellu *simulator* sabiex jiehdu t-tahrig fuqu. Ghalhekk huwa fil-konfront ta' Philip Attard biss li jista' javvera ruhu ir-reat ta' truffa, dak ta' frodi innominat (reat kompriz u involut f'dak ta' truffa[13]), jew it-tentattativ taghhom hekk kif imputat lilu bl-ewwel akkuza.

Illi irid jigi kkunsidrat dak li gieghel lil Attard jghaddi dak ic-cheque lill-imputat. Kien hemm xi ingann, xi artifizji, xi gideb wzati mill-imputat li wasslu lil Attard jghaddilu dawk il-flejjes?

Illi apparti ghax-xhieda tal-parte leza Philip Attard, huma c-*chats* esebiti w awtentikati mill-istess Attard,[14] li joffru stampa cjara ta' dak li Paris ha hsieb ipitter ghal Attard. Bi kliemu, Paris wassal lil Attard jemmen li hu

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[13] Ir-reat ikkontemplat fl-artikolu 309 huwa kompriz u nvolut fl-artikolu 308; Vide *inter alia* **I1- Pulizija versus George Manicolo,** Qorti ta' l-Appell Kriminali, Deciza 31 ta' Lulju, 1998 Per Onor. Imhallef Patrick Vella, u **Il-Pulizija vs Anthony Scicluna** Deciza 30.11.2009, Per Onor. Imhallef Michael Mallia

[14] Fol.130

kien pilota li jharreg studenti. Wasal biex jaccettah bhala student u indikalu l-kors kif kien ser jitqassam, ghaddielu *handouts* u tah dokumenti biex jirregistrah wara li gie mghoddi cheque ta' €500.

Illi l-**Ispettur Anne Marie Xuereb** spjegat kif id-Direttur Generali tas-Civil Aviation nforma lill-pulizija li certu David Paris kien qed jallega illi huwa Kaptan tal-Airmalta u fosthom kellhom xi ritratti illi kienu *uploaded* mill-*facebook page* tas-Sinjur David Paris liebes uniformi ta' kaptan; fil-fatt dan ir-ritratt gie esebit u fih jidher l-imputat b'uniformi b'*epaulets* ta' kaptan u bil-*pilot wings* li jintlibsu fuq il-*breast pocket* tax-xellug tal-uniformi.[15] Transport Malta infurmaw lill-pulizija li studenti kkuntatjawhom jistaqsu dwar il-kwalifiki ta' Paris biex jaghti *training* sabiex jottjenu l-Private Pilot License (PPL).[16] Giet preservata b'mod immedjat l-*facebook page* tal-imputat.[17] Konsegwentement saret laqgha ma Nigel Dunkerley, Flight Inspector, gol-qasam tal-avjazzjoni ma' Trasport Malta li spjega kif ex student minn tieghu, Philip Attard li kellu l-PPL, staqsieh dwar il-kwalifiki ta' Paris kif ukoll dwar jekk *simulator* li dan kellu kienx registrat ma' Transport Malta. Dunkerley spjega kif gie deciz li jsir rapport mal-Pulizija meta rrizultalhom li David Paris kien qed joffri *tuition* lil studenti biex jottjenu l-pilot license. Dunkerley kien emfassizza li biex *simulator* jintuza ghat-tahrig dan ried ikun approvat minn Transport Malta izda sakemm ikun ghal *personal use* dan ma jkollux bzonn approvazzjoni. Fil-frattemp lill-pulizija rrizultalha li Paris qatt ma kien assocjat ma' xi *flight academy*.[18] Konsegwentement sar kuntatt ma persuni li kienu rrikorrew ghand Transport Malta minn fejn irrizulta li kien biss Philip Attard, li gja kellu l-PPL, li lahaq ghadda flus lill-imputat u dan bl-intendiment li l-imputat jaghtih tahrig biex jaghmel kors li jwasslu biex igib l-ATPL, l- Air Transport Pilot Licence.

Attard kien gie mitkellem mill-pulizija u tahom kopja tac-*chat history*[19] li kellu mal-imputat. Jidher li sab *friend request* fuq *facebook* minn naha tal-imputat, li qallu li kien ha jiftah *hanger* bil-*flight simulators*. Wara diskussjonijiet li kellu ma' Paris, dan accetta li joffrilu l-kors ghall-ATPLu meta Attard ghadda cheque ta' €500 lil Paris, dan tah xi *handouts*

[15] **Dok.AMX1** a fol. 27
[16] **Dok.AMX-AMX3** a fol. 25 et seq.
[17] Fol.19
[18] **Dok. AMX12** a fol. 106 et seq.
[19] Fol.20. Attard jikkonfermaha din id-dokumentazzjoni bil-gurament tieghu meta jixhed a fol.130; *chat history* mmarkata **Dok. AMX5** a fol.45 et seq.

biex jibda l-kors. Kien minn dawn il-*handouts* li nibtu dubbji dwar il-kapacita`u l-kwalifiki tal-imputat u ghalhekk rrikorra ghand l-i*nstructor* precedenti, Nigel Dunkerley, u staqsieh jekk kienx minnu li kienx pilota mal-Airmalta u jekk kienx licenzjat biex jaghti *tuition*. Malli rrejalizza li ma kien xejn milli qallu ghamel *stop payment* ta' dak ic-cheque.[20] Gie mitkellem ukoll Stephen Borg, indikat ukoll minn Transport Malta minn fejn irrizulta li kien hu li kkuntatja lil David Paris li minn naha tieghu qallu li kien impjegat mal-Airmalta u kien gieli hadem ukoll l-Indonesja. Qallu wkoll li ghandu skola li fiha 3 *simulators* u li kienet ser tibda tintuza fil-vicin. Meta mar id-dar ta' Paris u ra s-*simulator*, induna mill-ewwel li s-*simulator* ma kienx approvat u li David Paris fil-fatt ma kienx il-pilot li kien qed jghid li hu; ghalkemm talab lil Paris jurih ic-certifikati li kellu tas-*simulator* u tieghu ta' pilota, Paris kien iweghdu li ha jibghathomlu izda dan qatt ma sehh.[21] Tkellmu ma' student iehor, Kyle Sciberras, li qal li meta ghamel kuntatt ma Paris dan introduca lilu nnifsu mieghu bhala pilota mal-Airmalta u kien offrielu kemm il-darba sabiex imur jipprattika fuq is-*simulator* li kellu d-dar. Dan ukoll irrejalizza mall-ewwel li s-*simulator* ma kienx certifikat ghax ma kellux il-*hydraulic systems*.[22] Wara li Paris gie nterrogat kien ghalaq il-*facebook page* tieghu izda din regghet bdiet tintuza u rega' beda jtella' fuqha ritratti simili ghal dawk li kellu precedentement. In kontro-ezami l-Ispettur kkonfermat li hadd mill-istudenti ma ghamel rapport fil-konfront ta' Paris izda kien is-*Civil Aviation Directorate* li ghamel rapport.[23] Tkompli li ma rrizulta l-ebda tentattiv da parti tal-imputat sabiex issarraf ic-cheque li kien naghatlu minn Attard xi 10 ijiem qabel mal-istess Attard ghamel *stop payment* fuqu.[24] Ikkonfermat li kien biss Attard li ghadda flejjes lill-imputat ghalkemm kien jaghti *tuition* lill-persuni ohra.[25]

Illi l-*facebook profile* tal-imputat li gie *downloaded* mill-pulizija mis-Cybercrime Unit,[26] turi l-fissazzjoni tal-imputat fuq l-avjazzjoni; ritratti tal-imputat huma abbundanti fosthom ritratt tieghu liebes beritta bil-

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[20] Fol.20
[21] Fol.21
[22] Fol.21
[23] Fol.297
[24] Fol.301
[25] Fol.303
[26] Fol. 232 **Dok.MS**. Xhieda PC1275 Matthew Sacco

logo tal-Airmalta[27], ritratti ta, u go, *cockpits* u *simulator,*[28] kif ukoll numru kbir ta' ritratti ohra konnessi mal-qasam tal-avjazzjoni.

Illi **PC724 Marco Pisani** xehed kif saret tfittxija fid-dar tal-imputat u sabu kamra li kienet giet maghmula bhala *flight simulator, "qisek dhalt litteralment go cockpit";*[29] din gie ffotografata minnu.[30]

Illi **Joseph Saliba,** in rapprezentanza tal-Jobsplus, esebixxa l-employment history tal-imputat li minn imkien ma jirrizulta li qatt hadem jew serva bhala xi *instructor* jew pilota.[31] **Jonathan Abdilla**, *security manager* fi hdan l-Airmalta xehed li l-imputat qatt ma hadem mal-Airmalta.[32]

Illi **PC1275 Matthew Sacco**[33] spjega kif minn informazzjoni li l-pulizija rcevew minghand Facebook, rrizulta li l-*IP address* li l-*facebook page* ta' Paris kienet tigi accessata minnu kien registrat mal-Melita plc. f'isem certu Heru Susanto fuq l-indirizz Prince of Peace, 22 Ix-Xnejn Abjad, Marsascala. Apparti li dan l-indirizz hu <u>l-indirizz tal-imputat</u> kif jidher mill-akkuza, hu wkoll l-indirizz li fic-chat ma Philip Attard, Paris jindikah bhala dak tal-apartment tieghu fejn kellu s-*simulator: "...the sim is at my apart, Prince of Peace Triq ix-Xnejn abjad...infront of Cerviola Hotel there is a road go up...".*[34] **Emily Abela**, rapprezentanta tal-Melita plc.,[35] ikkonfermat dak l-indirizz bhala dak li fuqu kien registrat l-*IP address* li kien qed jigi nvestigat mill-pulizija u cioe` 92.251.66.128.[36] L-imputat ukoll kkonferma li Heru Susanto kien jghix mieghu.[37]

Illi fic-*chat history* mghoddija lill-pulizija minn Attard,[38] jispikka t-titlu li Attard kontinwament jindirizza lill-imputat bih: ***"Capt.".*** [39] **Mhux talli**

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[27] Fol.245-246
[28] Fol.261 et seq. Vide 263, 270
[29] Fol.201
[30] **Dok. AMX10** a fol.104
[31] **Dok.JS** a fol.153-154
[32] Fol.193
[33] Fol.203-205
[34] Fol.66
[35] Fol.289 et seq.
[36] Fol.204
[37] Verbal tat-30.10.2017 a fol. 288
[38] Fol.23
[39] **Dok. AMX5**. Fol.49-58. Vide kopja aktar legibbli tal-istess *chat* a fol.65-68

qatt ma kkoreggieh izda mistqosi minn Attard jekk kienx pilota, Paris jigdeb u **jikkonferma li hu tassew pilota**:

Attard: *"Hi, do I know you?"*
Paris: *"no, not really, but you are in my list of names, as pilot, soon we will be opening hunger (sic) with flight simulators, maybe you be interested to visit".*
Attard: ***"Are you a pilot if I may ask?***
[Paris]:Yes.".[40]

Illi Paris inganna lil Attard mhux semplicement ghall-fatt li hu ma kienx pilota u wisq anqas kaptan, izda nducieh jahseb li hu kien jaghti it-tahrig mehtieg li seta' jwasslu jottjeni l-licenzja tal-ATPL (Airline Transport Pilot License):[41]

"A:Is the sim ready?
P: I placed a clip with students...Any time you want to visit the sim, I'm free tom. ...its at one of my apartments in Marsascala".[42]

Meta Attard jistaqsi meta jista' jara s-*simulator* l-imputat jkompli jaghtih l-impressjoni li hu pilota, *"My free time is after 4.00 as we land around 3.00, 3.30...And most of the time I'm with students."*[43] Wara li Attard ra is-*simulator* jikkomunika mal-imputat *"Hi. Capt. Thanks for the excellent demonstration of your simulator I was thrilled. Please dont forget to check about the ATPL as time is important for me since I am 38."* Minn naha tieghu Paris iwiegeb *"Its no problem...I will try to put you in.....".*[44]

Fil-25 ta' Novembru, 2015, Paris jaghmel kuntatt ma Attard u wara li jghidlu li ser jaghtih aktar dettalji dwar il-licenzja tal-ATPL aktar tard, jghidlu *"..the reason for this message is to see if you are avilable ....I would like you to sit and watch a complete flight by myself, and my top student who just finished his MCC. It will give you a whole idea, what goes on"*[45] Mid-diskors ta' Attard jidher anzjuz biex jibda l-kors u jerga' jistaqsi lill-imputat dwaru *"Hi Capt. ....The sooner I start the ATPL the merrier as time is against me. Will leave in your professional hands".*

[40] Fol.46 u kopja aktar legibbli fol. 65.
[41] Fol.129
[42] Fol.47. Vide ukoll kopja aktar legibbli fol.65
[43] Fol.66
[44] Fol.66
[45] Fol.68

L-ingann orkestrat mill-imputat tizboq dak li kien sehh qabel meta jasal jibghat is-segwenti messagg lil Attard, fejn sahansitra anke jaghtih l-impressjoni li jkun jaf x'domandi ser isiru fl-ezami:

*"Hi, after some thinking, I have decided to take you in. I am very tired with students and their paper work, but i think we manage to cope. It will be slightly different story to me, as of age difference, but I am going to treat you like one of the others, were i have to upper my voice, as sometimes they don't listen, same goes for you, as i push for work to be done etc, what we need is sort out your days of attendance...most of the sections, are about 1 hour half, when teaching on computer, for simulation, we always need 3 hours. As regarding documents of every section, such as Pilot law, navigation etc, we provide those during the computer lessons on hydronic system, Fuel etc, you will be taking notes, as they will come up for exam. I ususally lead by saying...make a note of this**, knowing exams questions**. If we can make this in this coming year, we will do ATPL, instrument rating on sim, Cpl, and MCC. After this I will book you on a flight to experience the real thing. I will provide you with Transport malta Doc to fill up, and register that you have taken the course, which I will also need two photo passport size. From our side, **as expense, we will be charging 500 euros, to register you**, sections, sim, and Gover,ent fees, after six months, you will pay, 300 euros and in the end of the year another 500 euros, for the last sections of CPL, Instrument rating, MCC. I have given you the best package, since you are so determined to do this course.....let's take things step by step, **I teach in a way, that you will absorb things quicker**. I will prepare doc tomorrow, and studies, and I will contact you."*[46]

Illi **Philip Attard** wara li kkonferma c-*chat history* li ghadda lill-pulizija u li gja saret riferenza ampja ghalihom,[47] kompla jispjega dak li sehh bejnu w l-imputat: *"jiena ghandi l-licenzja, tissejjah PPL, Private Pilot License. Dak gejt ikkuntattjat minn David Paris fuq il-media socjali, fuq il-facebook fejn talabni biex nedjah bhala friend tieghu. Jiena bhalma naghmel is-soltu, saqsejtu min kien dik il-persuna biex nikkonferma li huwa persuna genwina u qalli li kont fuq il-lista tieghu ta' pilots u li ghandu simulator u xtaq li jurihuli. Jiena ftiehemt mieghu wara xi zmien nikkuntattjaw jigifieri, u mort narah dan is-simulator u nistqarr nghid illi jigifieri kien simulator li jigifieri top of the line u dan. Jigifieri qatt ma rajt bhalu. Jiena minn naha tieghi tlabtu u saqsejtu jekk kienx qed jaghti courses biex inkompli fil-karriera tieghi bhala pilot u saqsini, u* ***qalli li kellu jahsibha*** *u jghidli, itini risposta peress li kelli zmien iktar minn*

[46] Fol.67-68 (pagni huma numerati bil-kontra). **Dok.AMX5** a fol.56
[47] Fol.130

student normali. Gie lura xi jumejn wara u talabni, qalli li fil-fatt ***kien se jaccettani fl-iskola tieghu*** *u talabni l-prezz ta' elf u hames mija (€1,500). Jiena ftiehemt mieghu,* ***mort ghandu u mlejt xi formoli wkoll u qalli li kien lest li jibda jtini dan il-kors li jissejjah ATPL, Airline Transport Pilot License. Tani xi handouts.*** *Dan il-kors jikkonsisti xi erbatax (14)-il suggett u* ***tani xi handouts minn suggetti differenti.*** *Fil-fatt qisni gejt daqxejn bejn haltejn jekk kienx genwin din il-persuna wara jigifieri.....Ghax normalment bhala suggett tibda' suggett per ezempju u tlestih. Jekk se tibda onload, dan tani bicca per ezempju mill-.....bicca metereology. Fhimt? Jigifieri bicciet differenti. Cempiltlu biex nghidlu fuqhom dawn l-affarijiet u kien* ***qalli biex inhalli f'idejh.*** *Minn dak inhar l'hawn dahluli qisu xi suspetti u fil-fatt kelli habib tieghi illi dahal First Officer mar-Ryanair u kont ghidtlu biex jiccara l-affarijiet ezatt x'jinkludi dan l-ezami. U kien qalli li iva dawk huma jigifieri li tani s-sur Paris, l-affarijiet, imma qalli wkoll li normalment jigu suggetti, suggetti. Ma jigux minn suggetti differenti. Baqa' dan is-suspett qisu, kelli habib tieghi Kaptan. Kien jahdem mal-AirMalta, saqsejtu jekk kienx jaf lis-sur Paris u rrispondini fin-negattiv, illi ma kienx jaf lil xi hadd b'dak il-kunjom. Bqajt nahseb fuqha din il-bicca tax-xoghol u kellimt lil Nigel Duncanly li kien fil-fatt l-instructor tieghi wkoll u ghidtlu jekk din is-simulator kienitx approved u jekk dan ir-ragel huwiex genwin u nista' nafdah. Qalli biex nibghatlu email bl-informazzjoni kollha u minn hemm spiccajt quddiem tista' tghid l-Ispettur biex naghti l-istatement tieghi.".*[48]

Ikompli jispjega: *"[il-kors] jiswa hafna iktar minn elf u hames mija (€1,500) ...jiena approwcjajtu jigifieri biex nara jekk jaghtix dawn il-courses. Jigifieri hu ma qallix li jaghti dawn il-courses mall-ewwel.* ***Jiena approwcjajtu u ghidtlu jaghtix dawn il-courses..... Il-kors description tahuli hu. Fil-fatt ghandi r-records tieghi ghandkom li nizzilt minn fuq messenger..... hallast xi five hundred Euros (€500)....by cekk li nista' nghid li ma ssarrafx mill-ewwel.....*** *Wara li ccekjajt ma Nigel Duncanly jigifieri, ... mort fuq l-internet banking u kkancellajtu minn hemm. Jiena cempilt lis-sur Paris u ghidtlu illi l-intenzjonijiet tieghi li nkompli l-kors kienu spiccaw. Jigifieri, u waqafna hemmhekk. Jiena mbghad minn naha tieghi mort tajtu l-file li kien tani bil-handouts u spiccajna hemmhekk."*[49]

Izid li l-imputat qatt ma qallu min kellu jaghti *lectures* izda mhemmx dubbju li mid-diskors mibghut lilu mill-imputat u li gja`saret rifernza ghalih, jirrizulta bic-cjar li tah x'jifhem li kien ser ikun hu, tant li jghidlu

[48] Fol.128-129
[49] Fol.130-131

li xi kultant ikollu jgholli lehnu u li kien ser jindikalu dak li jrid ikun attent ghalih ghaliex johorgu domandi dwaru fl-ezami.[50] Jispjega li qabel ma addjah bhala *friend* ra il-profile tieghu *"Kellu ritratt, wiehed minnhom li qisu kien jindika, ma nistax nghid jigifieri bl-ezatt, qisu kien jindika li kien bil-bagalja ta' pilot go Heathrow Airport[51]....[ohrajn kienu] Ta' xi simulator minghalija u tieghu go xi ajruplan."*. Dwar is-*simulator* jghid *"Simulator sabih hafna jigifieri nista' nikkonferma u hu stess kien qalli li approved. Fil-fatt Nigel kien qalli illi mhux approved u s-sur Paris lanqas biss hu pilot jigifieri."*.[52]

Attard imbghad jispjega li wara li hallas ic-cheque lill-imputat dan tah biex jimla *"Formoli ta' Transport Malta jigifieri, biex wiehed ikun jista' japplika ghall-ezamijiet tal-ATPL. .. Kien hemm jigifieri bid-dettalji. Gia mlejt xi haga simili bhalhom jigifieri x'hin ghamilt il-courses l-ohrajn......assumejt li kellu japplika hux hekk....Japplika ghall-ezamijiet. Fil-fatt kienet xi haga illi l-ewwel trid tlesti l-istudju tieghek qabel ma tapplika ghall-ezamijiet, sa fejn naf jien.....**Kien se jdahhalhom hu.... Imlejthom fil-fatt...bid-dettalji tieghi u hallejthom ghandu.**"*.[53] Kien mar ghand l-imputat darbtejn biss u dan infurmah li *"kien se jdahhalni ma studenti ohrajn.... Darba minnhom kien hemm zewg studenti, tnejn minn nies ha naghmlu hekk li ghamlu flight flimkien jigifieri. Is-simulator kienet qed tigi kkontrollata mis-sur Paris u jiena qghadt bil-qieghda darba minnhom fuq il-jump seat biex nara s-simulation kif issir."*[54] Ikkonferma li s-simulator hu dak li ritratti tieghu huma esebiti fl-atti.[55]

Ix-xhud hu genwin ghall-ahhar tant li fejn ma ftakarx xi dettal qal daqtstant. Fil-fatt mistqosi jekk Paris kienx kkonferma mieghu li kien pilota jghid li assuma mir-ritratti li ra tieghu libes ta' kaptan, bl-epiletti ta' kaptan, filwaqt li anke minn diskorsu kien jurih li kien pilota ghax

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[50] Fol. *"I am going to treat you like one of the others, were i have to upper my voice, as sometimes they don't listen, same goes for you, as i push for work to be done etc,.... you will be taking notes, as they will come up for exam. I ususally lead by saying...make a note of this, knowing exams questions;" Vide* ***Dok.AMX5*** *a fol.56 u fol.67-68 (pagni huma numerati bil-kontra).*

[51] **Dok.AMX1** a fol.27, konfermat li dan hu r-ritratt minn Attard a fol.131

[52] Fol.131

[53] Fol.131-132

[54] Fol.133

[55] Fol.134. Vide **Dok AMX10** a fol 104

kien juza kliem tekniku hafna[56]Izda dak li nesa Attard hu li mic-*chat history* li esebixxa dik kienet l-ewwel domanda li kien ghamel lil Paris fejn Paris ikkonferma mieghu li kien pilota:

Attard: "*Are you a pilot if I may ask?*
Paris: *Yes.".*[57]

In kontro-ezami kkonferma li l-kors propju kien jiswa hafna aktar u biex tapplika ghalih kien hemm *fee* €45 li kellha tithallas lil Tranport Malta, u kull ezami kien jiswa €45 bis-somma tilhaq €2,500 kieku il-kors sar mal-akkademja jew *flying school*.[58] **In-notamenti li ghaddielu Paris kienu bicciet minn suggetti differenti, u dan sar meta tah ic-cheque ta' €500**. Dak ic-cheque baqa ma ssarrafx sad-data li ddecieda ma jkomplix mieghu u dan kien meta ghaddew bejn gimghatejn u tlett gimghat. Izid dettal iehor importanti fuq domanda tad-difiza stess: *"**qalli li kien bena xi skola** u jista' jkun assumejt li se jsiru hemmhekk, hux hekk. Qorti: X'qallek?..Li kien qed jibni xi skola u assumejt illi se ssir hemmhekk, hux hekk.".*[59] Jikkonferma li ghalkemm *"Qatt ma qalli li hu kaptan bil-licenzja u jista' jghallem. Qatt ma qalli. Jien assumejtha dik.....qalli jigifieri kienu fuq, jekk mhux sejjer zball, fuq flight tal-Airmalta u qalli l-ajruplani jigifieri tal-Airmalta bhala airbus jigifieri ma jiswa xejn hdejn il-Boeing u hafna affarijiet hekk. Jigifieri ghalhekk assumejt...Xhud: Jiena ma ntajjarx Boeing 737 jew l-airbus, jigifieri ma nistax nghid jekk hux vera jew le....Ghax fil-fatt jiena ajruplan zghir intajjar.".*[60]

Lejn tmiem tax-xhieda tieghu Attard, pilota licenzjat hu stess, jinnega dak li jigi suggerit lilu mid-difiza u cioe` li tista' tkun pilota mhux licenzjat: *"Irid ikollok il-licenzja. Anke biex issuq karozza jrid ikollok il-licenzja. Inkella tkun qed tikser il-ligi. ... Trid tkun pilot bil-licenzja u jrid ikollok licenzja specifikata ghal dak l-ajruplan li tkun qed ittajjar....[tista tkun pilot mhux licenzjat] Jekk ikollok instructor, jigifieri u l-instructor ikun licenzjat, fuq dak l-ajruplan li tkun qed ittajjar, iva tista' ttajjar ajruplan.".*[61] Ikkonferma li lill-imputat kien qallu li mhux ser ikompli bil-kors

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[56] Fol.134-135.
[57] Fol.46 u kopja aktar legibbli fol. 65.
[58] Fol.136
[59] Fol.139
[60] Fol.140
[61] Fol.141

minhabba ragunijiet personali u Paris ma giex bil-paroli izda qallu biex imur jiehu ic-cheque lura,[62] liema cheque thalla ma persuna ohra.[63]

Illi r-rilevanza ta' Stephen Borg u Kyle Sciberras hi unikament ghaliex permezz tax-xhieda taghhom johorgu dettalji li juru l-*modus operandi* tal-imputat, fejn anke jekk il-kuntatt inizjali ma kienx sar mill-imputat, ma jonqosx li jipprezenta ruhu bhala pilota u kaptan tal-Airmalta, li jaghti tahrig lill-studenti. Jigi sottolinejat mill-gdid li <u>qatt ma ssemmew flejjes</u> ma Borg u Sciberras.

Illi **Stephen Borg** jghid kif kien ghamel kuntatt mal-imputat li kien qal li ser jghinu jsib xoghol bhala pilota mar-Ryanair,[64] *"Bażikament kien qalli biex niltaqa' miegħu Marsaskala darba u biex inġib il-liċenzja tiegħi u r-riżultati li kelli tal-eżamijiet li kont għamilt u kien qalli li ħa jiffowerdjhom biex jagħtihom lil xi ħadd li jaf, ser jibgħatlu xi e-mail biex b'xi mod jgħinni nsib xogħol u jkolli interview naqra iktar malajr mis-soltu u qalli li kellu xi simulators u hekk u li kien ser jurihomli darba. <u>Qalli li kellu xi tnejn ġo xi ċertu skola</u> u mbagħad kellu wieħed home build d-dar u kien ħadni biex nara dak li hu home build id-dar. Jiġifieri kont naf li ma kienx xi simulator approved, ma kien xejn speċjali. Imma* ***qalli li għandu xi studenti oħra li ħa jipprova jgħallimhom ukoll****. Kont iltqajt ma' żewġ Libjani u wieħed Taljan u kien qisu qed jipprova jgħallimhom hu wkoll fis-simulator. Kien daħħalni miegħu darba, iktar minn darba proprja, xi erba' darbiet kont mort għandu…. kont ikkuntatjatu erġajt, staqsejtu jekk ma semgħax xi ħaġa, qalli li ma sema' xejn u kont* ***indunajt qisu li hemm xi ħaġa ħażina****. Kont <u>staqsejtu jekk m'għandux is-certificate tas-simulators qalli ser jibgħathomli. Mort infittex fuq il-website tal-EASA, li hija European Aviation u dawn iċ-ċertifikati qatt ma sibthom</u> jiġifieri dawn is-simulators ma kienux jeżistu…. qalli li għandu wieħed home build…. tnejn oħra ġo xi skola, li qal li kellu……fil-bidu kien qisu jaf x'inhu jgħid, imma mbagħad ovvjament indunajt li kien hemm xi affarijiet li ma kienux eżatt kif suppost kienu…..Lili qalli li kien jaħdem Air Malta…… Lili qalli f'wiċċi li jaħdem Air Malta…..Bhala Kaptan. Kaptan".*[65] Ix-xhud Borg kellu l-Commercal Pilot Licence (CPL) kif ukoll l-ATPL.[66]Mhemmx dubbju li bhala pilota kwalifikat seta' jiddetermina l-genwinita` o meno ta' pilota iehor; kien dan li wassal sabiex jinduna *"qisu li hemm xi ħaġa*

[62] Fol.308
[63] Fol.309
[64] Fol.156
[65] Fol.156-158
[66] Fol.159

ħażina".[67] Xoghol sab wahdu minghajr ghajnuna tal-imputat. Fiz-zmien li kien ghandu d-dar ltqata ma 3 studenti 2 minnhom Libjani.[68] In kontro-ezami jikkonferma li hu *ma kienx jinhtieg ebda tahrig* peress li kien munit bil-kwalifiki necessarji izda kien biss qed ifittiex xoghol; flus qatt ma ssemmew. Fl-ahhar tax xhieda tieghu ghall-darb'ohra jikkonferma ***"Qalli li kien pilot tal-Airmalta"***.[69]

Illi **Kyle Sciberras** semma kif kien ltaqa' mal-imputat tramite nannuh. L-imputat kien ta' ghajnuna kbira fl-istudji tieghu ghax kien juza s-simulator *"impressjonanti ħafna s-simulator jiġifieri. Emm jiena dħalt fih, emm għamilt sena u nofs, sentejn immur għand David mingħajr problemi ta' xejn jiġifieri emm jiġifieri emm għenni ħafna, tgħallimt ħafna affarijet ġodda minn fuqu għax huwa simulator ta' tip ta' ajruplan li huwa Boeing 727 li jiena qatt ma tgħallimt fuqu kont nara affarijiet fuq it-television.*[70]*… għallimni affarijiet hu, u għallimni, tgħallimt jien għax ifhimni għax is-simulator huwa ġdid għalija u tgħallimt affarijiet ġodda, però eħe għallimni hu ukoll….."*. Ikompli li ma kienx imur ghandu biex jitghallem ghax kien qed isegwi kors mal-European Pilot Academy izda kien imur biex jipprva s-*simulator*.[71] Ghalkemm kien sar jaf li ma kienx pilota ma tkellem xejn ghax beza' li kien jitwaqqaf milli jkompli juza s-*simulator*.[72] Mieghu kien ikun hemm persuni ohra u l-imputat, minbarra kien imur ghalih San Giljan kien jaghtih *sandwich, drinks* u aperitivi *"qatt ma hallast one cent"*.[73] Sahansitra fil-Milied skambjaw rigali.[74] Riprodott in kontro-ezami issemmi kif f'laqgha li kien hemm bejn il-genituri tieghu ma Jeremy Tan, tad-Diamond Aviation, kien akkumpanjahom **David Paris li pprezenta ruhu bhala "Captain tal-Airmalta"**.[75]

Illi **Nigel Dunkerly,** *flight inspector* General Aviation, fi hdan is-Civil Aviation Directorate, xehed kif kien rcieva telefonata minghand Philip Attard jistqasi jekk l-imputat kienx licenzjat biex jghallem fuq *flight simulators* jew kienx jappartjeni ma xi skola. Saru r-ricerki li rrizultaw

[67] Fol.157
[68] Fol.163-164
[69] Fol.333
[70] Fol.166
[71] Fol.167-168
[72] Fol.168
[73] Fol.169-170
[74] Fol.174
[75] Fol.326

fin-negattiv.[76] Jispjega *"peress li qeghdin l-awtorita' tal-avjazzjoni u jien inkarigat mill-iskejjel kollha ta' hawn Malta fuq approved training organisations nghidulhom, iccekkjajt li mal-iskejjel kollha, jekk huma ghandhom jew xi membru tal-istaff taghhom jew xi instructors jew anke forsi xi agenti, li ibieghu l-korsijiet hawn Malta ghal dan it-tip ta' kors u dan il-persuna s-sur David Paris huwa l-persuna koncernata. Ahna ktibna emails lill-organisations kollha u kollox irrizulta bin-negattiv. Jigifieri l-ewwel haga umbghad, dak il-hin kelli Head tassection. Ktibt lill-Head tas-section li kellna forsi problema hawn Malta li forsi xi hadd qed jaghmel jew imitazzjoni ta' kaptan, jew qed jaghmel xi servizz hazin jew qed jimmita xi haga, li forsi certu nies bhal studenti. Dawn ikunu tfal zghar, minn sbatax-il sena l'hemm ikunu taht l-impressjoni li dan il-persuna jista' jghallem jew xi kors ta' ajruplani jew affarijiet hekk. Allura konna ovvjament, kellna koncern kbir. F'dak il-kaz umbghad iccekkjajna l-ligi tal-Air Navigation biex naraw l-ewwel haga li kellna xi haga legali fejn nistghu nirraportawha ufficjalment lill-pulizija u ndunajna fl-Air Navigation Order, SL499/09 kien hemm ligi li tghid carissima. Bl-Ingliz hawnhekk jghidlek "no person shall intent to deceive, make any false representation for the purpose of procuring himself or any other person for the grant, issue, renewal or variation of such certificate, licence, approval, permission or exemption on the document".*[77] Ghalhekk gie deciz li l-kaz jigi riferut lill-pulizija.

Ikompli *"iccekkjajna s-sur David Paris min kien u ma kienx. Jekk hemm xi haga fuq is-social media u ndunajna li kien hemm hafna affarijiet fuq persuna li kien, dak il-hin ma konniex nafu mija fil-mija jekk kienx is-sur David Paris imma kien hemm David Paris liebes ta' kaptan, liebes jigifieri hwejjeg ta' bdot biex nghid hekk, li ta impressjoni li kienet bdot jew kaptan ma xi airline u bosta ritratti ohra u ndikazzjonijiet li hu kien ikkwalifikat bhala bdot. Rajt ukoll certu ritratti fejn kien ma studenti ta' kumpanija ohrajn ta' tahrig tal-bdoti u jtik l-impressjoni li kien. Ahna ccekkjajna l-ewwel haga ghax tana l-impressjoni li kien mal-Airmalta ghax kien hemm beritta tal-Airmalta. Iccekkjajna ahna mal-Airmalta biex nikkonfermaw jekk qatt kien hemm xi hadd David Paris fl-istaff tal-flying fl-imghoddi, fil-prezenti…. rcevejna ufficjalment li s-sur David Paris qatt ma kien staff, flying aircrew biex inkun iktar specifiku mal-Airmalta u qatt ma kellhom lil hadd in the aircrew department bl-isem ta' David Paris. …..ahna ktibna lill-iskejjel kollha hawn Malta biex niccekkjaw jekk kien hemm xi hadd forsi b'ommissjoni forsi ma rajniex dan l-isem David Paris. Huma kkonfermawli, mistoqsijiet semplice li ahna saqsejna jigifieri "is he involved in the company, is he in your list of air flight instructors, is he your agent" u*

[76] Fol.177

[77] Fol.178. Regolament 61C.

kollox kien fin-negattiv……meta saqsejna lill-accountable managers (CEO's tal-aviation companies) jekk kienu jafu jew forsi qatt ma raw jew semghu xi haga David Paris, ircevejna rapporti u nahseb ghandna l-evidenza li ovvjament huma kellhom l-istess xokk li kellna ahna fl-istess hin. Ghax kien hemm indikazzjonijiet li hu qed jirrapprezenta certu kumpanija jew jaghti l-impressjoni li jirrapprezenta xi kumpanija tal-avjazzjoni u qieghed jirrapprezenta lilu nnifsu bhala bdot, umbghad eventwalment meta saqsew l-istess mistoqsijiet li saqsejt jiena, indunaw li kien persuna mhux qieghed fl-avjazzjoni lokali tal-avjazzjoni.".[78]

Ix-xhud izid: *"Jista' jkun hemm forsi simulators forsi approvati mill-European Aviation Safety Agency li ma nkunux nafu ahna li qeghdin hawn Malta. Iccekkjajna u rrizulta zero…..**Iccekkjajna wkoll illi zewg simulators biss huma approvati hawn Malta. Nafuhom ukoll ghax naghmlu spezzjonijiet ahna fuqhom ukoll u m'hemmx ebda simulator hawn Malta li huwa approvat biex taghti tahrig fil-korsijiet**.".*[79] Dunkerly ikkonferma l-korrispondenza li kien ghadda lill-ispettur investigattiv.[80] Dwar risposta li rcevew minghand l-imputat fuq *email* mibghuta minnhom lill-European Pilot Academy jghid li l-*accountable manager* wiegbet li ma kienet taf bl-ebda David Paris li kellu xi konnessjoni mal-iskola taghha.[81]

Illi **Sarah Zarb**, CEO tal-European Flight Academy, kkonfermat ir-risposti li baghtu lil Transport Malta u li ghada kemm saret riferenza ghalihom. L-imputat qatt ma kien student fl-iskola taghha jew rapprezentant taghha.[82] In kontro-ezami tikkonferma kienu ilhom jafuh ghax gieli staqsa dwar c*ourses* u darba hadilhom student.[83] Qalet li Paris kien qalilha li ser jaghti s-simulator b'donazzjoni lill-iskola, pero` dan ma kienx ser jintuza ghall-*approved course* peress li kellhom iehor approvat mid-Department of Civil Aviation; qatt ma kien hemm hsieb li s-simulator ta' Paris jigi approvat mill-awtoritajiet.[84] Tghid ukoll li din

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[78] Fol.181
[79] Fol.182-183
[80] Fol. 183. Vide **Dok.AMX3** a fol.31-43
[81] Fol.185; Vide kopja tal-korrispondenza **Dok. AMX12** a fol.106 et seq.
[82] Fol.188
[83] Fol.328
[84] Fol.330

id-donazzjoni qatt ma mmaterjalizzat. Dwar Paris tghid li kienet hadet l-impressjoni li kien pilota mill-mod li bih kien jitkellem.[85]

Illi **Patrick Fenech,** li jmexxi l-Malta School of Flying, kkonferma li ma kienx jaf lill-imputat, qatt ma hadem mal-iskola tieghu u qatt ma tajjar ajruplani taghha izda kien biss ghamel *trial flight* flimkien ma *instructor*.[86]

Illi **Jeremy Tan** iddeskriva kif kien ltaqa' ma Paris meta mar ghand Diamond Aviation Flight School flimkien ma student, Kyle Sciberras, u l-genituri tieghu *"He was introduced to me as a Captain, and his parents were very proud of that fact. [Qorti: Who introduced him as Captain?]….The parents of the student."* Jghid li bhala kaptan wera r-rispett dovut izda tul l-inkontru mieghu beda jissuspetta li ma kienx minnu li kien kaptan. *"I got a little bit suspicious because in certain things that were mentioned about training because….he has a home built simulator I believe to which **he boasts that he instructs students on it**. I was already a little bit weary because most Captains they will not have a simulator they will have an aircraft or flying light aircraft, so as the discussions went on about the training he mentioned certain things which well I got a little bit suspicious, such as, it is just an example of training. It won't matter to you but the basis is like teaching a child to run before they walk…. **he gives the impression that he is an Air Malta pilot or employed by Air Malta."**.*[87]

Illi l-imputat **David Paris** ghazel li jixhed. Spjega kif minn tfulitu kien jakkupanja lill-missieru fuq il-post tax-xoghol u minn hemm nibtet l-imhabba tieghu ghall-Airmalta u ghall-qasam tal-avjazzjoni.[88] Is-*simulator* kien il-passatemp tieghu, beda jibnieh fl-2012 bl-ahhar teknologija u gie jisiweh 1.2 miljun. Peress li kien ghall-uzu personali tieghu ma rregistrahx.[89]

"Jien profit xejn m'ghamilt anzi hrigt flus ghax kelli kont biss biss ta' sena erbat elef Euro (€4,000) elettriku biex thaddmu. Is-simulator ghandek isservers, il-kompjuters ghaddejin, il-projection, ilplatform…. Qatt ma tlabt xejn lil hadd…. Anzi kien hemm student ohra li ghamlu kuntatt mieghi fuq messenger qaluli I

85 Fol.330-331
86 Fol.191
87 Fol.292-294
88 Fol.339-340
89 Fol.343

came across your simulator ovjament parlaw l-studenti gol-iskola u ghandi d-dokumenti hawnhekk li ma nafhomx jigifieri I replied back u ghidtilhom jiena qatt ma hadt flus lil hadd[90]*…. Jiena qatt m'ghallimt studenti, is-simulator. M'ghandix kwalifiki. [Qorti: M'ghandekx ghal simulator.] M'ghandix kwalifiki. M'ghandix kwalifiki. Jiena qatt ma dhalt fis-simulator*[91]*….. Jiena kulma kont naghmel peress illi is-simulator huwa vera delicate u dana jiena fl-Operation Station jghidulha biex noppera.".*[92] Mistqosi ghaliex kien qed jaghmel dan b'tant altruwizmu jwiegeb *"Il-love lejn l-avjazzjoni*[93]*…. Is-simulator kif tispicca din il-kawza dak kont ghamiltu donation jiena lil European Pilot Academy ghax rajt illi lis-studenti ghandhom bzonnu. Hemm studenti bhal kelli, kien jigi wiehed iz-zghir hawn li gie jixhed…. Kyle. Kyle ibati, hemm certu studenti li through the book ma jifhmu xejn, by touching and operating it come to their head….. It's love, because inhoss li jiena bhalma tkellimna jiena fil-bagalja tieghi hawnhekk kieku jiena ridt nidhol Kaptan jew insir Kaptan through in-nomina talpapa` tieghi kont nidhol Kaptan, kont naghmel l-ezamijiet u nidhol Kaptan u nsir. M'ghandiex ghalfejn noqghod nghid li jiena Kaptan kieku ridt hadtha."* Jinnega li qatt qal li hu kaptan *"Jien nghid illi minn fommi dak il-kliem qatt ma ntqal. Jekk rawni forsi liebes b'xi beritta."*[94]

Jigi sottolinejat li dan hu kontradett minn Attard, Sciberras u Borg, li lkoll jghidu li kien qalilhom li kien pilota u/jew kaptan.

Dwar il-€500 mitluba lil Attard jaghti spjegazzjoni li kif ser jintwera aktar l-isfel hi zmentita minn kliemu stess fil-messagg mibghut minnu f'Novembru, 2011:[95] *"xtaq illi jkompli jistudja l-ATPL, hu kien qalli diga` ghamel l-ezami tal-PPL, ghidtlu ok. Staqsejtu kemm ghandu zmien kien over thirty (30) years old, ghidtlu nara x'nista` nirrangalek mal-Iskola a package biex taghmel l-ezami tal-ATPL and get back to me. In the meantime gimgha wara gie ghandi, tkellimna fid-dar tieghi ghidtlu lesti li jaccettawk, ghidtlu ha ntik dokumenti tal-European Pilot Academy form biex timliha, tajtu kopji tat-Transport Malta biex jimlihom, tlabtu biex igib zewgt (2) ritratti u l-medical certificate jekk ghadux valid ghax dak kull sena trid iggeddu u tlabtu li jrid*

[90] Dok. DP a fol. 384-386

[91] Kjarament din l-affermazzjoni tqanqal domandi mill-prosekuzzjoni fil-kontro-ezami wara li jghid li jqatta' hafna hin gos-simulator, domandi gustifikati izda hawn l-imputat jindika li ma dahalx fis- simulator in kwantu biex igib kwalifiki dwar l-operat tieghu. Ghall-inqas hekk fehmet il-qorti

[92] Fol.344-345

[93] Fol.346

[94] Fol.347-348

[95] Fol.67

<u>*ihallas five hundred Euros (€500) registration fee ghal European Pilot Academy*</u> *u tani cekk ta' five hundred Euros (€500)…..dana kien ha jtinni l-formoli biex nghaddihomlu nghaddihom mad-dokumenti lil European Pilot Academy. Hemmhekk jinfetah account u tohroglu dik li jghidulha l-acceptance letter tal-Iskola."*[96] Jinnega li l-flus hadhom ghalih biex jghallem lil Attard *"No, no, no….. jiena tajtu xi dokumenti personali ghax biex tibda l-iskola jaghtuk printouts u jiena kelli l-originali tal-Oxford u tajthomlu biex jibda l-kors biex ma joqghodx jahli hafna flus. Sabha difficli, bdiet hekk, sabha difficli ghaliex jiena bdejtu tajtu tal-metrology u ma tajtux aviation dokumenti…. jiena qatt ma tajt courses…. Qatt tajt courses ghal TPL jiena u lanqas ghal courses ghal ATPL."*[97]. Dwar ic-cheque jghid li ma gabrux[98] filwaqt li Attard jiftakar ezatt min tahulu. Hu dettal li galadarba ic-cheque kien hemm *stop payment* fuqu, ma jinfluwixxi bl-ebda mod fuq il-kreddibilita` ta' Attard.

Mistoqsi jekk kellux skola u ghaliex kien jirreferi ghall-skola u studenti jgid:

Avukat: Philip Attard, hu qed jghid illi inti ghidtlu li biex iddahhlu fl-iskola tieghek
Xhud: Tieghi, ***fl-iskola tieghi jigifieri mhux l-iskola tieghi…..*** *Jiena m'ghandiex skola. Jiena s-simulator qieghed id-dar illi m'hiex skola it's my personal accommodation. L-iskola rrid infisser jiena il-European Pilot Academy. Philip Attard kien jaf ghax kien diga` ghamel il-PPL mal-European Pilot Academy… U fl-istess skola kont ha nerga` ndahhlu biex ikompli minn hemmhekk…. L-uniku arrangament li ghandi, ghandi d-dokumenti hawn li jinfurmawni jekk student imur dirett il-European Pilot Academy he has to pay the full package. Jekk ikolli jiena hbieb bir-rispett li ghandhom lejja u lejn il-familja tieghi kienu jtunni package …l-Academy jghidli isma` mela iccargjah perkasu six hundred (600) flok eight hundred (800), flok nine hundred (900)*[99] *…Issa jitla` jixhed Matthew Rota u l-arrangement. …L-arrangement illi lili kienu jtunni prezzijiet ahjar milli kienu jaghtu….preferential rates"*[100]

<u>Dan jigi kontradett</u> minn **Matthew Rota**, inkarigat minn Sales fi hdan il-European Flight Academy! Kien minnu li l-imputat gieli rrefera xi studenti ghal dik l-iskola, izda ma jafx li kien isir xi hlas tramite l-

[96] Fol.350-351
[97] Fol.352-354
[98] Fol.356
[99] Fol.357-358
[100] Fol.365

imputat minkejja li *email* wahdanija mibghuta fl-2014 dwar ahwa Libjani tindika li kien Paris li ghamel l-ewwel depozitu ghalihom.[101] Mistqosi kif kien isir il-hlas jwiegeb:

"Xhud: Ikellmu dirett lili lis-studenti u dejjem imexxu maghna bhala skola….. Lis-studenti jiffontjaw maghna dirett…..
Qorti: Mhux jiehu l-flus hu u jhallas hu lilkom?
*Xhud: **Le, le, le.***
Qorti: Jigifieri hu qatt ma ha flus ghal xi hadd, japplikalhom maghkom?
*Xhud: **Le, le jien kelli dirett ihallsu dirett lili**.*[102]

Rota hu kategoriku li ma kienet tinghata l-ebda *preferential rate* lill-studenti li jirreferi ghandhom:

Avukat: Allura naqblu li kien hemm komunikazzjoni bejnietkom jigifieri fuq lis-studenti.
Xhud: Naqblu.
Avukat: Issa fuq hlasijiet ara tiftakarx illi forsi kien hemm xi arrangament bejnietkom ukoll, bejn lis-skola, forsi mhux bejnek partikolarment bejn l-iskola?
*Xhud: **Sa fejn niftakar le.***
Avukat: Le.
*Xhud: **Sa fejn niftakar jiena le**……*[103]
Qorti: Ma kienx jigbor il-flus ghalihom u japplikalhom hu?
Xhud: Ma niftakarx bic-car min kien ihallas, jien sa fejn naf jien lis-studenti dejjem ihallsu lilna…
Pros: Issa rigward packages intom lil David Paris, inti personali qatt iddiskutejt xi packages mieghu jew offrejtlu xi packages lilu personali?
*Xhud: **Sa fejn niftakar jien le.**[104]*

Illi l-imputat jikkonferma li ma kellux kwalifiki ta' pilota, *"No, m'iniex Pilota jiena…M'iniex Kaptan lanqas….. Hu kitibha CPT ma ktibtiex jiena. Hu ghajjatli Kaptan, ma nafx ghalfejn ghajjatli Kaptan lili…. Ma nafx, ma nistax nispjegaha ghaliex ghajjatli bhala Kaptan. Il-karti li jpprezentajt minn student ohra jghiduli Sur Paris."*[105] Dwar ir-ritratt libes uniformi tal-Airmalta[106] jghid li kien fuq konferenza dwar uzu ta' *simulators* fejn partecipanti ikunu mehtiega jilbsu uniformijiet – <u>baqa ma gie prodott l-ebda prova</u>

[101] Fol.394
[102] Fol.418-419
[103] Fol.421
[104] Fol.425-426
[105] Fol.359 u 363
[106] Fol.408

dwar dan ir-rekwizit u cioe` li partecipant *dresses up for the part*; **l-istedina ghall-konferenza li esebixxa ma titlob lil hadd jilbes uniformi u fil-fatt mir-ritratti esebiti minnu stess ta' persuni fil-vicinanzi tas-simulators, ma hemm hadd libes b'epiletti jew bil-pilot wings**!!![107]

In kontro-ezami jikkonferma[108] wkoll l-messagg mibghut lil Attard f' Novembru, 2015, fejn **Paris jinfurmah li accettah bhala student u jindikalu l-kors kif ser ikun mqassam u kemm jiswieh.** Izda id-diffikulta` li jiskontra biex jaghti interpretazzjoni ohra ghal dak il-messagg tant elokwenti tispikka meta jghid li r-riferenza li kien ser jgholli lehnu kienet ghall-hin li kien ser ikun ma Attard fis-*simulator "Yes ngholli lehni gieli ghollejt lehni waqt il-function tas-simulator."!*[109]

Illi f'mument iehor filwaqt li ghall-ewwel jghid li *"No jiena qatt m'ghidt li jien Kaptan mal-Airmalta. Minn fommi qatt m'ghidt lil hadd jiena li jien Kaptan mal-Airmalta"*,[110] kkonfrontat bil-fatt li meta Attard staqsieh jekk kienx pilota dan wiegbu fl-affermattiv,[111] isib diffikulta` kbira jispjegaha:

Pros: Jigifieri tikkonferma li lill-Philip Attard inti ghidtlu hawnhekk meta staqsiek are you a Pilot if I may ask inti irrispondejtu yes.
Xhud: Ok, yes.
Pros: Ghalfejn ghidtlu yes jekk ma kontx Pilot imma? Spjegali din.
Xhud: Ma nistax nispjegaha, ma nafx x'ser naqbadt nghidlek.[112]***…..***

Pros: Kull meta ndirizzawk bhala Captain l-istudenti fil-messaggi taghhom int ghala min-naha tieghek qatt m'ghidtilhom illi inti m'intiex Kaptan?
Xhud: Point taking [recte taken] its true.
Qorti: You liked being, inti ghalik l-avjazzjoni kollox.
Xhud: Le mhux l-avjazzjoni kollox.
Qorti: Nghid sew li hadt gost li thossok incensat b'dak ilmod?
Xhud: Mhux l-avjazzjoni hi kollox. Hafna jghiduli jekk imur tas-Sliema, il-Kaptan hawn king.[113]

Illi fil-fehma tal-Qorti x-xhieda tal-imputat hi wahda konvoluta u xejn perswaziva. M'ghandhix mis-sewwa. Il-komportament fuq il-pedana

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[107] **Vide Dok. DP3** email a fol. 405 u ritratti annessi
[108] Fol.374
[109] Fol.375
[110] Fol.372
[111] Vide fol.45 u kopja 65
[112] Fol.373
[113] Fol.378

tax-xhieda kien ta' bniedem f'diffikulta, nieqes mis-serenita` mistennija minn min jghid is-sewwa. Issib diffikulta` jispjega il-messagg mibghut minnu lil Attard nhar il-27 ta' Novembru, 2015, fejn wrieh li qed jaccettah bhala student tieghu, fejn kien ser ikun hemm okkazzjonijiet li fihom kien ser jgholli lehnu, fejn kien ser ikun hemm istanzi meta ser ikun kostrett *"**as I push for work to be done etc...when teaching** on computer...when **I usually lead** by saying...make a note of this"* .[114]

Illi filwaqt li jirrizulta li kien ikkomunika mal-akkademja rigward l-ahwa Elbarasi u li hemm prova li kien ghamel depozitu ghan-nom taghhom,[115] ma sarx l-istess fil-konfront ta' Attard ghalkemm bejn dakinhar li gie mghoddi ic-cheque sal-jum li Attard infurmah li ma riedx ikompli kien ghadda bizzejjed zmien biex jaghmel dan.[116]

Illi fil-fatt ma giet esebita l-ebda korrispondenza bejn Paris u l-European Flight Academy dwar xi *query* rigwardanti l-eventwali registrazzjoni ghall-kors tal-ATPL ghall-Attard li b'xi mod, sal-grad mistenni mid-difiza, kienet tipprova li l-flus kienu sejrin bhala depozitu ghal mal-akkademja kif jallega! Wisq anqas ma jirrizulta li talab xi deskrizzjoni tal-*course* structure ghall-ATPL jew staqsihom dwar il-hlas li student kien mistenni jhallas. **Minghajr ombra ta' dubbju l-imputat ma rnexxilux jipprova l-kaz tieghu sal-grad tal-probabbli!**

Jibqa' l-fatt li fil-konfront ta' Attard biss gew mhallsa flejjes. Ma jirrizultax li kien jistqasi ghall-flus sabiex jintuza s-*simulator* kif juru certu *chats* esebiti minnu ghalkemm dawk rigwardanti Alexander Frendo intbghatu ferm wara li beda jigi investigat l-imputat dwar dawn l-akkuzi.[117]Mhux l-istess jista jinghad ghall-messagg mibghut lil certu Aaron, fejn ukoll jghidlu li mhemmx hlasijiet mistennija.[118] Messaggi ohra esebiti bla dubbju juru li l-imputat kien anzjuz jghin u hekk ghamel fil-konfront ta' numru ta' studenti; il-messaggi ta' ringrazzjament u tifhir jaghtu xhieda ta' dan.[119]

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[114] Fol.67
[115] **Dok.DP1** Fol.394
[116] Waqt li l-imputat jghid ghaddew tmint ijiem, Attard issemmi bejn hmistax u tlett gimghat. Altru li anke gimgha kienet bizzejjed tenut kont tal-impenn li kien jimmanifesta Paris biex jghin studenti li rrikorrew ghandu.
[117] **Dok.DP** a fol.382. Messagg inbghat f'ottubru izda kien gie interrogat f'April 2016.
[118] Fol.384-386, messagg datat Frar, 2016
[119] Fol.387 -393

Madanakollu dak li jixhed fil-konfront ta' Attard ma ghandhux mis-sewwa, mhux kredibbli. Paris jasal jikkoncedi li ma kienx jikkoregi lil min issejjahlu bit-titlu ta' *Captain.* Kemm Attard kif ukoll Borg semmew kif qalilhom li qed jibni skola[120] jew li kellu skola.[121] Ma joffri ebda spjegazzjoni li ghandha mis-sewwa ghaliex, kemm il-darba kien qed jirregistra lil Attard biex jaghmel l-ATPL mal-European Flight Academy u ghalhekk talbu €500, **naqas milli jaghmel riferenza ghal dak il-fatt tul il-konversazzjoni tieghu mieghu li bdiet f'Gunju, 2015, izda minflok l-impressjoni li pprogetta kien li l-kors kien ser ikun insenjat minnu** u minn hadd izjed u li dak kien il-prezz li ***"we will be charging 500 euros, to register you,"***[122]

Tenut kont li mad-diskors li kien hemm bejn Attard u l-imputat, jizdied il-fatt li Attard gie mghoddi dokumenti biex jimla u jiffirma sabiex jigi registrat ghall-kors u hekk kif mitlub mill-imputat ghadda hlas ta' €500, il-messagg mibghut minn Paris fis-27 ta' Novembru, 2015, jibqa' wiehed cjar u inekwivoku. L-interpretazzjoni li jipprova jaghtih l-imputat ma treggix:

> ***"I have decided to take you in. I am very tired with students and their paper work...":*** jekk it-tahrig kien ser isir mal-*flight academy* u ghandu jintuza biss is-*simulator*, x'*paperwork* kien mehtieg jiskrutinizza l-imputat? Mhux l-akkademja kellha taccettah, kellha tkun hi *that takes him in*?
>
> ***"I am going to treat you like one of the others, were i have to upper my voice, as sometimes they don't listen, same goes for you, as i push for work to be done etc":*** Mhux l-akkademja kellha tkun dik li timbotta l-istudenti jekk skond l-imputat hu kien biss jiehu hsieb l-*enrollment* taghhom? Dan id-diskors jikkontradixxi bil-qawwi dak li jghid l-imputat fix-xhieda tieghu li kien joffri biss l-uzu tas-*simulator* minghajr ma jaghti l-impressjoni li hu xi ghalliem jew li kapaci jaghti tahrig!
>
> *"What we need is sort out your days of attendance...most of the sections, are about 1 hour half,* ***when teaching on computer, for simulation,***

[120] Fol.139 per Attard;
[121] Fol.158 per Borg
[122] Fol.67

we always need 3 hours. As regarding documents of every section, such as Pilot law, navigation etc, we provide those during the computer lessons on hydronic system, Fuel etc, you will be taking notes, as they will come up for exam. I ususally lead by saying...make a note of this, knowing exams questions": Mhemmx dubbju li minn kliemu hu kien ser ikun l-instructor u l-ebda *flight academy*!

"From our side, ***as expense, we will be charging 500 euros, to register you****, sections, sim, and Gover,ent fees, after six months, you will pay, 300 euros and in the end of the year another 500 euros, for the last sections of CPL, Instrument rating, MCC.* ***I have given you the best package,*** *since you are so determined to do this course.....let's take things step by step,* ***I teach in a way, that you will absorb things quicker****. I will prepare doc tomorrow, and studies, and I will contact you."*[123]

Kummenti ulterjuri huma superfluwi; l-ingann operat mill-imputat wassal lil Attard ihallas €500 ghal-kors li gie patwit li kellu jinghata mill-imputat.

Filfatt Attard fil-5 ta' Dicembru, 2015, jistaqsieh:

"Hi. Cpt. I dont know how many chapters are there in total for each subject but my intention is to study each subject one by one. For example ***chapters 5 and 6 of the General Nav subject are missing. Would you be able to give me the whole material of the ATPL course?"***[124]Indikazzjoni cjara ulterjuri li l-imputat ghadda l-*handouts* personalment, mill-liema *handouts* Attard induna li kien hemm partijiet nieqsa w stqasa lil Paris jekk attwalment kienx f'posizzjoni jghaddi l-materjal kollu mehtieg ghall-kors tal-ATPL!! Messaggi li jikkoroborraw sal-inqas dettal ix-xhieda ta' Attard.

Illi mal-mument li l-imputat pprezenta anke l-*handouts* flimkien mad-dokumentazzjoni li Attard gie dirett jimla u jiffirma sabiex, skond l-imputat, jirregistrah ghall-ezamijiet tal-ATPL ma Transport Malta, l-ingann perpetrat mill-imputat serva sabiex il-kondotta tieghu tevolvi minn frodi innominat ghal **truffa. Mal-gideb kontinwu w l-artifizji li kienu ilhom jinhmew anke permezz tal-*facebook page* tieghu, issa mmaterjalizzat ghal kollox it-truffa.**

[123] Fol.67-68 (pagni huma numerati bil-kontra). **Dok.AMX5** a fol.56
[124] Fol.68

Ghalhekk fid-dawl ta' dawn ir-rizultanzi processwali, il-Qorti tqis li l-ewwel imputazzjoni giet ampjament ppruvata. Mhemmx dubbju li Attard soffra telf patrimonjali mal-mument li ghadda c-cheque lil Paris; azzjoni rizultat ta' ingann li holoq l-imputat li kkulminat malli Attard hallas dak mitlub *"we will be charging";*[125] l-ewwel pagament ta' €500.

Ghall kull buon fini jinghad li l-frodi avverat ruhha mal-mument li c-cheque ghadda fil-pussess ta' Paris, minkejja li l-prosekuzzjoni ghazlet li takkuza lill-imputat bit-tentattiv tieghu biss. Fil-konfront tal-persuni l-ohra, Sciberras u Borg, ma jirrizulta ebda tentattiv. Fl-ahjar ipotezi ghall-prosekuzzjoni l-ghemil tal-imputat kien jinkwadra biss f'atti preparatorji.

Fis-sentenza taghha **Il-Pulizija vs Charles Sciberras,** il-Qorti tal-Appell Kriminali qalet:[126]

Mela allura mill-qari tad-disposizzjoni tal-ligi, johorgu tlett elementi essenzjali li jikkostitwixxu it-tentattiv u cioe':

1. Atti esterni li juru l-intenzjoni tal-persuna li tikkometti reat.
2. Bidu ta'l-esekuzzjoni tad-delitt.
3. In-nuqqas ta'esekuzzjoni tad-delitt minhabba cirkostanzi indipendenti mill-volonta tal-hati.

Illi ghalhekk l-ewwel u qabel kollox l-intenzjoni tad-delinkwent trid tigi manifestata permezz ta'l-hekk imsejjha atti preparatorji. Bil-fors illi irid ikun hemm xi azzjoni, liema azzjoni trid tkun saret bl-intenzjoni specifika li jigi komess delitt, b'tali mod li ma thalli l-ebda dubbju dwar liema reat ikun qed jigi ikkontemplat. Madanakollu dawn l-atti preparatorji fihom infushom u wahedhom ma jistghu qatt iwasslu ghat-tenttativ u ghalhekk ghal xi htija fil-kamp penali, jekk l-hati ma ikunx ta bidu ghall-esekuzzjoni tad-delitt.

Kif ighid il-**Professur Mamo** fin-noti tieghu:

"To intend to commit a crime is one thing; to get ready to commit it is another; to try to commit it is a third. We may say indeed that every intentional crime involves four distinct stages – Intention, Preparation, Attempt and Completion. Action in pursuance of the intent is not commonly criminal if it does no more than manifest the *mens rea*, nor if it goes no further than the stage of preparation."

Madanakollu kif ikompli ighid il-Professur Mamo, huwa difficli sabiex wiehed jigbed linja ta' demarkazzjoni bejn dak li jikkostitwixxi atti preparatorji biss u dawk l-azzjonijiet li jistghu imbaghad jigu ikklasifikati bhala l-bidu ta'l-esekuzzjoni tad-delitt. X'distinzjoni hemm bejn il-preparazzjoni sabiex wiehed jikkometti id-delitt u it-tentattiv ta'l-istess?

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[125] Fol.67

[126] Per Onor. Imhallef Edwina Grima, Deciza 30.06.2016; App. Krim. Nru 211/2015

Il-Professur Mamo, isostni u dana fid-dawl ta' dak li ighidu diversi gurisiti prominenti fosthom il-**Cararra, Maino u Liugi Masucci**:

"So long as an overt act, whether in itself or by reason of the circumstances surrounding it, does not clearly show that it is directed to a criminal purpose, it cannot be regarded as an act of execution of a crime, because no act which in itself and in appearance is or can be innocent can be considered as a commencement of another offence. When, however, it appears clear that such act was directed to a criminal purpose, then, in order to decide whether such act represents a commencement of the execution of the crime it must be seen whether it forms part of that series of acts which, in their natural completeness would constitute the actual commission of the crime. If the act forms an integral parrt of this series of acts which in their completeness would consummate the crime, that act is one of execution. If, on the contrary, the act merely precedes the criminal action, to which it was directed and is such that, however much repeated, it could never accomplish the consummation of that crime, the act is not an act of execution."

Illi t-tieni imputazzjoni hi dik ravvizata bl-artikolu 310BA tal-Kodici Kriminali, introdott bl-*Att XXIV tal-2014,* mfassal kwazi kelma b'kelma fuq Sections 6 u 7 tal-*Fraud Act, 2006*.[127] Fil-passat il-*mens rea* li kellha tigi pruvata ai finijiet tal-artikolu 310BA(1)(2) - li jirrispekjaw Sections 6[128] u 7 - kienet dik l-intenzjoni generika li jsir att frawdolenti:

Section 7 makes it an offence to make, adapt, supply or offer to supply any article knowing that it is designed or adapted for use in the course of or in connection with fraud, or intending it to be used to commit or facilitate fraud. For example, a person makes devices which when attached to electricity meters cause the meter to malfunction. The actual amount of electricity used is concealed from the provider, who thus makes a loss. ...[129]

[127] **6 Possession etc. of articles for use in frauds**
(1) A person is guilty of an offence if he has in his possession or under his control any article for use in the course of or in connection with any fraud.....
7 Making or supplying articles for use in frauds
(1) A person is guilty of an offence if he makes, adapts, supplies or offers to supply any article—
(a) knowing that it is designed or adapted for use in the course of or in connection with fraud, or
(b) intending it to be used to commit, or assist in the commission of, fraud.

[128] Section 6 makes it an offence for a person to possess or have under his control any article for use in the course of or in connection with any fraud. This wording draws on that of the existing law in section 25 of the Theft Act 1968 and section 24 of the Theft Act (Northern Ireland) 1969. (These provisions make it an offence for a person to "go equipped" to commit a burglary, theft or cheat, although they apply only when the offender is not at his place of abode.) The intention is to attract the case law on section 25, which has established that proof is required that the defendant had the article for the purpose or with the intention that it be used in the course of or in connection with the offence, and that a general intention to commit fraud will suffice. In *R* v *Ellames* 60 Cr. App. R. 7 (CA), the court said that:

"In our view, to establish an offence under s 25(1) the prosecution must prove that the defendant was in possession of the article, and intended the article to be used in the course of or in connection with some future burglary, theft or cheat. But it is not necessary to prove that he intended it to be used in the course of or in connection with any specific burglary, theft or cheat; it is enough to prove a general intention to use it for some burglary, theft or cheat; we think that this view is supported by the use of the word 'any' in s 25(1). Nor, in our view, is it necessary to prove that the defendant intended to use it himself; it will be enough to prove that he had it with him with the intention that it should be used by someone else."

[129] https://www.legislation.gov.uk/ukpga/2006/35/notes/division/5/6

Illi l-*Crown Prosecution Service* toffri dawn in-noti spjegattivi:[130]

Making or supplying articles for use in frauds (Section 7)

The defendant:

- makes, adapts, supplies or offers to supply any article;
- for use in the course of or in connection with fraud;
- knowing that it is designed or adapted for use in the course of or in connection with fraud (Section 7 (1) (a)) or
- intending it to be used to commit or assist in the commission of fraud (Section 7 (1) (b).

"Knowledge" in Section 7 (1) (a) is a strict *mens rea* requirement. The House of Lords in *Montila* [2004] UKHL 50 said:

"A person may have reasonable grounds to suspect that property is one thing (A) when in fact it is something different (B). But that is not so when the question is what a person knows. A person cannot know that something is A when in fact it is B. The proposition that a person knows that something is A is based on the premise that it is true that it is A. The fact that the property is A provides the starting point. Then there is the question whether the person knows that the property is A."

In practice, the use to which the article can be put is likely to provide sufficient evidence of the defendant's state of mind. For example, articles such as:

- the kits that are attached to ATM machines to capture card details;
- forged credit cards or the equipment for making them;
- lists of credit card numbers;
- counterfeit goods presented as genuine;
- do not have an innocent purpose that readily springs to mind.

A person who makes an article specifically for use in fraud, for example, a software programme to create a phishing website or send phishing email, may be ambivalent about whether the person to whom it is supplied actually uses it for fraud. He will fall foul of Section 7 (1) (a) but will not have the necessary intention for Section 7 (1) (b).

The manufacturer of articles that are *capable* of being used in or in connection with fraud but have other innocent uses will not fall foul of this section unless he *intends* that it should be used in a dishonest way (Section 7 (1) (b)). The makers of credit card readers are one example. The readers

[130] https://www.cps.gov.uk/legal-guidance/fraud-act-2006

> have an innocent purpose they are commonly used by traders who "store up" the details of all the transactions carried out during a day and submit them all together at the end of the day. The card reader merely verifies the validity of the card at the point when it is read and stores all the necessary information about the transaction. The other, dishonest, use is by point of sale staff who use the readers to "skim" credit card details either for use or sale. The dishonest manufacturer who intended a dishonest use would be guilty of Section 7 (1) (b) offence.

Illi fuq skorta ta' dan l-insenjament din l-imputazzjoni ma gietx soddisfacentement ippruvata. Is-*simulator* ghalkemm tassew serva ghal messa in xena li holoq l-imputat ma jirrizultax li gie specifikatament maghmul, addattat, provdut jew offert sabiex jigi provdut biex tittwettaq il-frodi.

Illi l-addebitu tar-recidiva ai termini tal-artikolu 50 tal-Kodici Kriminali, lanqas ma giet pruvata tenut kont li fiz-zmien li sehh ir-reat li qed tinstab htija dwaru, il-kaz tal-imputat kien ghadu *sub-judice*. It-tielet imputazzjoni wkoll ma gietx ppruvata.

Illi dwar il-piena l-Qorti kkunsidrat li l-ghemil qarrieqi tal-imputat kienet *out of character*. Ghamel hafna gid ukoll u serva ta' ghajnuna ghal diversi. Il-problema tal-imputat hi li ma gharrafx sa fejn kellu jieqaf. Halla l-entuzjazmu tieghu ghall-avjazzjoni, is-sodisfazzjoni li seta' jservi ta' *mentor* ghall-studenti li mieghu qasmu l-passjoni ghall-avjazzjoni, jkaxxkruh sal-ghatba tar-rejita. Giet ikkunsidrata l-fedina penali tieghu li ma tohloq l-ebda preokkupazzjoni ghall-qorti u c-cirkostanzi kollha l-ohra tal-kaz. Hu perikoluz ferm li wiehed jaghti impressjoni ta' xi haga li mhuwiex. Min persuna li *one looked up to*, spicca persuna li holoq biss dizappunt f'ohrajn; sens ta' tradiment. Xi bzonn kien hemm li tinholoq din il-hrafa? Istanzi simili kapaci jnisslu diffidenza u nuqqas ta' fiducja li ddum snin biex tingheleb specjalment f'dawk ta' eta zghira li jisfaw traduti w ingannati propju minn min fdaw biex jghinhom;

Ghal dawn il-mottivi, din il-Qorti wara li rat l-artikoli 41(1)(a), 49, 308 u 310(1)(c) tal-Kodici Kriminali, filwaqt li ssib lill-imputat hati tal-ewwel imputazzjoni, tilliberah mill-kumplament, u bl-applikazzjoni tal-artikolu 22 tal-Att dwar il-Probation, Kapitolu 466 tal-Ligijiet ta' Malta, tilliberah bil-kundizzjoni li ma jaghmilx reat iehor fi zmien sentejn millum.

Il-Qorti spjegat lill-hati l-konsegwenzi jekk jikkommetti reat iehor waqt il-perjodu operattiv ta' din is-sentenza.

Dr. Donatella M. Frendo Dimech LL.D., Mag. Jur. (Int. Law)
Magistrat