Qorti tal-Appell Kriminali

Onor. Imhallef Consuelo Scerri Herrera, LL.D., Dip Matr., (Can)

Appell Numru: 426 / 2015

Il-Pulizija

vs

Clifford Bugeja

Illum, 7 ta' Mejju, 2019

Il-Qorti,

Rat l-akkuzi dedotti kontra Robert Azzopardi bin-numru tal-karta tal-identita' 117994(M) u l-appellant Clifford Bugeja, iben Christopher, imwieled Pieta' fit-13 ta' Awwissu, 1995, detentur tal-karta tal-identita' numru 339395(M), akkuzat quddiem il-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali:

Talli f'dawn il-Gzejjer fis-06 ta' Awissu 2014 bejn in-nofs siegha ta' filghodu u s-siegha u nofs ta' filghodu (12:30a.m - 01.30a.m) f' San Giljan:

1. Minghajr hsieb li joqtlu jew li jqieghdu l-hajja fil-perikolu car, ikkagunaw ferita ta' natura hafifa fil-gisem ta' Brahim Benatsou (Art 221 Kap 9 tal-Kodici Kriminali);

2. Talli fl-istess data, hin, lok u cirkostanzi volontarjament kisru l-bon-ordni jew il-kwiet pubbliku b'għajjat u glied Art 338(dd) Kap.9 tal-Kodici Kriminali;

3. Talli fl-istess data, lok, hin u cirkostanzi hebbew kontra Brahim Benastou, Rafik Beztout, Kashana Anne Elder u Louise Weddell sabiex jingurjawhom, idejquhom jew jaghmlulhom hsara (Art. 339 (1)(d) Kap 9 tal-Kodici

Kriminali);

4. Talli fl-istess data, hin, lok u cirkostanzi hadmu bhala agenzija ta' gwardjani privati jew bhala gwardjani privati jew hekk offrew is-servizzi taghhom, minghajr ma kellhom licenzja skont id-disposizzjonijiet tal-Kap 389.

5. Il-Qorti giet ukoll mitluba sabiex tipprovdi ghal garanzija ta' Brahim Benatsou, Rafik Beztout, Kashama Anne Elder u Louise Weddell skont l-Artikolu 383 tal-Kodici Kriminali.

Rat is-sentenza tal-Qorti tal-Magistrati (Malta) tat-30 ta' Settembru, 2015 fejn il-Qorti ma sabitx lill-imputat Clifford Bugeja hati tal-ewwel imputazzjoni u minnha lliberatu minn kull htija u piena izda fl-istess hin sabitu hati tat-tieni, tielet u r-raba' imputazzjonijiet migjuba kontra tieghu u wara li rat l-Artikoli 17, 338(dd) u 339(1)(d) tal-Kodici Kriminali kif ukoll l-Artikolu 25(b) tal-Kapitolu 389 tal-Ligijiet ta' Malta, u wara li rat il-fedina penali netta tieghu, wara li qieset li fic-cirkostanzi hemm lok li jigi applikat l-Artikolu 22 tal-Kapitolu 446 tal-Ligijiet ta' Malta ghamlet ordni li permezz taghha lliberatu bil-kondizzjoni li ma jaghmilx reat iehor fi zmien sena millum.

Ai termini tal-Artikolu 22(3) tal-Kapitolu 446 tal-Liġijiet ta' Malta l-Qorti fissret lill-hati bi kliem car u li jinftiehem l-effetti tal-ordni ghall-liberazzjoni kondizzjonata fis-sens li jekk jaghmel reat iehor matul dan il-perjodu ta' liberazzjoni kondizzjonata, il-hati jkun jista' jinghata sentenza ghar-reat originali.

Inoltre stante li l-Artikolu 25(b) tal-Kapitolu 389 tal-Ligijet ta' Malta jippreskrivi wkoll il-piena tal-multa, flimkien ma din l-ordni, il-Qorti kkundannat lill-hati ghall-hlas ta' multa ta' elf euro (€1000).

Rat ir-rikors tal-appellant Clifford Bugeja minnu pprezentat fid-9 ta' Ottubru, 2015 fejn talab lil din il-Qorti joghgobha tirriforma s-sentenza hawn appellata fis-sens illi tikkonfermaha fejn il-Qorti ddikjarat illi l-esponenti mhux hati u tirrevokaha fil-partijiet fejn sabitu hati u tiddikjarah mhux hati skont il-ligi u fin-nuqqas li tapplika piena anqas harxa.

Rat l-aggravji tal-appellanti u cioe':-

1. Illi fl-ewwel lok, it-tieni akkuza li taghha l-appellant instab hati hija akkuza li trid tigi ppruvata mill-prosekuzzjoni sal-grad rikjest mill-ligi. Mix-xhieda prodotta, mill-prosekuzzjoni imkien ma rrizulta illi l-appellant kiser volontarjament l-bon-ordni jew il-kwiet pubbliku b' għajjat u ġlied. Illi l-Ewwel Qorti strahet fuq ix-xhieda ta' l-istess Kashana Anne Elder sabiex sabet l-esponenti hati fuq din l-akkuza ossia meta qalet is-segwenti: *"F' dan il-każ, il-Qorti tqis li l-kommozzjoni u l-kollutazzjoni li segwiet kienu tali li qajmu disturb almenu f' membru tal-pubbliku preżenti – ċjoe fil-persuna ta' Kashana Anne Elder u li għalhekk dan ir-reat jirriżulta integrat fil-konfront taż-żewġt imputati."* Izda Kashana Anne Elder meta giet mistoqsija jekk ratx lill-esponenti involut fl-incident fuq deskritt hija qalet, *"I do not remember seeing him no."* Illi ghalhekk l-esponenti kellu jigi lliberat minn din l-akkuza dedotta kontra tieghu.

2. Illi fit-tieni lok, it-tielet akkuza li taghha l-appellant instab hati hija ukoll akkuza li trid tigi ppruvata mill-prosekuzzjoni sal-grad rikjest mill-ligi. Ix-xhieda prodotta mill-prosekuzzjoni hija mimlija inkonsistenzi u ghalhekk ma jistax jigi ppruvat b' certezza hekk mitluba mill-kamp kriminali illi l-esponenti ħebb kontra Brahim Benastou, Rafik Beztout, Kashana Anne Elder u Louise Weddell sabiex jinġurjahom, idejaqhom jew jagħmlilhom ħsara. Fil-fatt aparti illi kif diga' ntqal Kashana Anne Elder ma ratx lill-esponenti involut fl-incident, allura jekk hija ma ratx lill-esponenti involut fl-incident kif l-esponenti seta' jinstab hati illi hebb kontriha sabiex jingurjaha, jdejaqha jew jghamlilha xi hsara? Louise Weddell qalet li ma tafx minn laqatha u dan meta giet mistoqsija mill-Ispettur Micallef: *"Who hit you?"* Hija wiegbet: *"I don' t know someone, there were so many, it wasn't only these two gentleman, there were too many involved."* Ghalhekk l-esponenti ukoll kellu jigi lliberat fil-konfront taghha la darba hija stess ammetiet illi huwa ma ghamel xejn lilha. Brahim Benatsou ukoll sahaq illi ma rax lill-esponenti. Fil-fatt l-Ewwel Qorti staqsietu s-segwenti: *"This gentleman who is standing up, therefore Clifford Bugeja, did you see him as being involved in any way during this situation, during this incident that happened?"* U huwa wiegeb: *"I can't remember him…"* Illi ghalhekk la darba lanqas ftakar li kien hemm l-esponenti fl-incident, huwa ma setax jinstab hati fil-konfront ta' Benatsou. Illi Rafik Betzout qal illi ra lill-esponenti l-ewwel

pulling Brahim Benatsou u wara qal li rah *pushing* Benatsou izda wiehed irrid jigi mfakkar illi l-istess Betzout qal li kien hemm hafna security guards, kien id-dlam gewwa Havana u huwa kien qala daqqa f' wiccu allegatament minn Robert Azzopardi. Ghalhekk wiehed issibha ferm difficli illi f'dik il-konfuzjoni shiha huwa seta' jgharaf lill-esponenti. Di piu' wiehed issibha ferm iktar difficli kif Brahim Benatsou l-persuna li allegatament gie "pulled" u "pushed" minn l-esponenti, ma setax jiftakar illi l-esponenti kien involut! Illi ghalhekk l-esponenti kellu jigi lliberat minn din l-akkuza dedotta kontra tieghu.

3. Illi fit-tielet lok, ir-raba' akkuza li taghha l-appellant instab hati hija ukoll akkuza li trid tigi ppruvata mill-prosekuzzjoni sal-grad rikjest mill-ligi. L-Ewwel Qorti sabitu hati li huwa kien minghajr licenzja ta' gwardjan privat. Illi l-esponenti kif konfermat mill-istess Qorti kien fil-pussess ta' licenjza ta' gwardjan privat izda ma kienx fil-pussess ta' licenzja ta' gwardjan privat ta' post ta' divertiment. Illi l-provi huma ta' fatt kif ukoll ta' interpretazzjoni legali. Il-fatti mhumiex kontestati, u cioe' li huwa minnu illi l-esponenti kien fil-pussess ta' licenzja ta' gwardjan privat izda mhux wahda ta' post ta' divertiment. L-akkuza hija cara u cioe' illi l-esponent ma kienx fil-pussess ta' licenzja ta' gwardjan privat punto e basta. L-akkuza ma maritx oltre minn dan u ma semmietx li ma kienx fil-pussess ta' licenzja ta' gwardja privat f'post ta' divertiment. Il-Qorti ta' l-ewwel grad abbinat l-akkuza mal-post ta' fejn sehh l-allegat incident u cioe' l-istabbiliment ta' divertiment tal-Havana. Izda l-akkuza hija cara. L-akkuza kif mahruga ma semmietx il-lok ta' l-incident bhala l-istabiliment ta' divertiment bl-isem ta' Havana imma semmietu bhala San Giljan. Gewwa San Giljan m' hemmx biss stabbilimenti ta' divertiment izda hemm stabbilimenti ohra kif ukoll djar residenzjali. Illi jekk nqabblu l-akkuza ta' nuqqas ta' licenzja ta' gwardjan privat mal-lok fl-akkuza, u cioe' San Giljan, imkien ma hemm indikat illi l-post huwa ta' divertiment. Illi ghalhekk la darba l-lok kien San Giljan u la darba l-akkuza kienet biss rigward in-nuqqas ta' licenzja ta' gwardjan privat, l-Ewwel Qorti ma setghatx issib lill-esponenti hati ghax ma kellux il-licenzja rikjesta. Illi ghalhekk l-esponenti kellu jigi lliberat minn din l-akkuza dedotta kontra tieghu.

4. Illi minghajr pregudizzju u dwar il-piena, l-piena nflitta kemm ghat-tieni u t-tielet akkuza hija kbira fic-cirkostanzi. Illi tenendo konto illi t-tieni akkuza giet ippruvata biss bis-sahha ta' Elder, liema persuna ma ratx lill-esponenti fix-xena u tenendo konto illi rigward it-tielet akkuza jekk il-Qorti se tikkoncedi illi ' pulling' u ' pushing' ta' Brahim Benatsou jikkwalifikaw fil-parametri rikjesti mill-ligi (u dana ghaliex f' kemm ta' Elder, kif ta' Weddell kif ukoll ta' Betzout, l-esponenti ma rrizultax involut) din zgur ma tikkwalifikax sabiex l-ordni li nghatat mill-Ewwel Qorti u cioe' tilliberah bil-kondizzjoni li ma jagħmilx reat ieħor fi zmien sena snin millum. Illi l-esponenti jhoss illi z-zmien ta' sena huwa twil wisq tenendo konto dak li ghadu kif gie premess. Di piu' t-tieni u t-tielet akkuza huma ta' natura kontravenzjonali – fil-fatt huma l-Artikolu 338 (dd) u 339 (1)(d) u ghalhekk it-tul ta' sena huwa ezagerat. Illi rigward ir-raba' akkuza l-ammont ta' €1,000 huwa gholi wisq tenendo konto l-eta' ta' l-esponenti u cioe' l-fatt li ghandu ghoxrin sena, u tenedo konto illi l-esponent huwa minghajr impjieg.

Rat l-atti kollha tal-kawza.

Rat it-trattazzjoni traskritta tal-partijiet, liema trattazzjoni saret quddiem din il-Qorti diversament preseduta.

Rat il-fedina penali aggornata tal-appellant esebita mill-prosekuzjoni fuq ordni tal-Qorti.

Ikkunsidrat,

Quddiem l-Ewwel Qorti gie pprezentat rapport tal-Pulizija, certifikat mediku, stqarrija ta' Robert Azzopardi u stqarrija ta' Clifford Bugeja u l-fedina penali taghhom. Fir-rapport tal-Pulizija ossia l-Current Incident Report fost fatti ohra tnizzlu ukoll is-segwenti:

'Today 06/08/2014 at around 01:30Hrs 'Control Room' informed this end that there was a fight near 'Burger King' situated in St. George's Road, St. Julians. Divisional Police repaired on spot where they were approached by four people listed as PFR who explained that whilst inside the club 'Havana' situated in the same street, one of them namely Mr. Brahim had a

quarrel with some guy after which the bouncers intervened as starting hitting them whilst taking them out. During the incident only Mrs. Elder was not assaulted by same bouncers. Complainant stated that the bouncers present were roughly eight.

Divisional Police together with Mrs. Waddell repaired at Havana where Joseph Galea ID404085M responsible thereat was requested to ask all of his personell to get out of the club. In fact after all of the securities exited the building, Mrs. Waddell identified two assailants listed as persons related.

The Victims repaired at the station where when questioned Mr. Brahim stated that whilst dancing inside Havana, two guys wanted to dance with Mrs. Waddell where he informed him that he was with her. Same added that this guy started crying and all of a sudden the securities approached and started punching them. Mr. Brahim positively identified the two people listed as person related as having assaulted him whilst identifying Mr. Azzopardi as punching Mrs. Waddell.

Mrs. Waddell corraborated his version and insisted that Mr. Azzopardi punched her and also Mr. Brahim. Mrs. Elder also insisted that Mr. Azzopardi hit Mrs. Waddell and Mr. Brahim but stated she did not recall Mr. Bugeja in the incident. However Mr. Beztout stated that besides Mr. Azzopardi who hit Mrs. Wadell and Mr. Brahim, Mr. Bugeja also was involved and hit him besides Mr. Brahim.

Mr. Brahim had an eye injury...'

Fis-seduta tas-6 ta' Awissu 2014 l-Ufficjal Prosekutur l-Ispettur Micallef qara u kkonferma bil-gurament tieghu l-imputazzjonijiet migjuba kontra l-imputat. Id-difiza ezentat lil Prosekuzzjoni milli ttella' lil Dr M Debono numru ta' registrazzjoni 3215 biex tikkonferma c-certifikat ezebit mahrug f'isem Brahim Benatsou kif ukoll ezentat ukoll lil Prosekuzzjoni milli tisma' xhieda ta' PS 887 Stefan Mercieca, xhud tal-istatements esebiti.

Is-**Surgent PS 1456 Jonathan Cassar** xehed fis-seduta tas-6 ta' Awissu 2014 u qal li llum stess ghal habta tas-siegha u nofs l-Ghassa San Giljan ircevew telefonanta mill-

control room li kien hemm argument hdejn il-Burger King. Il-Pulizija tad-divizjoni telghu u hemm hekk sabu erba' (4) persuni ta' nazzjonalita' barranija, zewg irgiel Francizi u zewg nisa Skocizi fejn dawn qalulhom li waqt li kienu gewwa l-Havana gew aggrediti. Seta' jigi nutat li wiehed minnhom is-Sur Brahim kellu daqqa mhux hazin go ghajnejh. Dan kien wehed mill-Francizi filwaqt li wahda mill-Iskoccizi is-Sinjura Waddell li kienet l-unika wahda mit-tfajliet li giet agredita stqarret li kienet qalghet daqqa ta' ponn. Staqsiehom jekk jgharfux lil bouncers li allegatament aggredewhom fejn dawn qalu li iva jgharfuhom u meta staqsihom kemm kienu dawn indikaw li kienu bejn wiehed u iehor tmien (8) bouncers. Staqsa lis-Sinjura Waddell biex tigi maghhom fejn tkellem mal-persuna inkarigata certu Joe Galea fejn talbu sabiex kull persuna li tahdem gol-istabbiliment tohrog barra. Spjega li qabel ma ghamel dan, kif waslu quddiem l-istabbiliment kien hemm is-Sur Robert Azzopardi li mill-ewwel ndikatu bhala l-persuna li kien taghha d-daqqa ta' ponn u li kien agreda lil Brahim Waddell. Jghid li ha lilha u ma hax l-erbgha (4) li huma quddiem l-istabbiliment. Hargu madwar sebgha (7) bouncers, fejn stqarret li l-ebda wiehed minnhom ma kien involut. Rega kellem lis-Sur Galea, staqsieh jekk ghadx kien hemm min jigi u fil-fatt gie s-Sur Clifford li ndikatu li kien wiehed mill-agressuri. Meta mar l-ghassa u staqsihom iktar fid-dettall x'gara, spjegaw li s-Sur Brahim kellu argument verbali ma' wiehed li xtaq li jizfen mas-Sinjura Waddell li apparantement kien qed jisfen maghha hu u waqt li dawn bdew jargumentaw b'mod verbali, kull ma jaf li dahru l-bouncers ghalihom u harguhom 'il barra u waqt li harguhom bdew isawtuhom it-tarag u hekk u sahansitra kif hargu barra mil-istabbiliment is-Sur Brahim qala daqqa ta' ponn. Spjega li '*t-tfajla l-oħra li ma ġietx aggredita is-Sinjura Waddell kienet l-unika waħda li lis-Sur Clifford ma għarfitux fuq ix-xena jiġifieri meta jiena urejtha r-ritratti tagħhom għas-Sur Robert Azzopardi iva kollha kemm huma stqarrew li ta daqqiet ta' ponn kemm lis-Sur Brahim u lis-Sinjura Waddell iżda is-Sinjura Elder lis-Sur Clifford ma setgħetx tippikcerjah fix-xena.*' Arresta lis-Sur Clifford u lis-Sur Robert u hadhom il-lock up. Waddell gharfithom lit-tnejn li huma, mistoqsi '*Pero' Elder għarfet lil Azzopardi imma mhux lil Bugeja.*' wiegeb '*Ovvjamant it-tnejn l-oħra għarfuh lil Clifford pero' dik ma għarfitux.*' Spjega li meta nizzilhom l-ghassa, tella r-ritratti taghhom u gharfuhom mir-ritratti. Fuq il-post is-Sinjura Waddell gharfithom pero' imbaghad is-Sur Brahim u s-Sur Beztout ikkonfermaw li kienu huma. Waqt li kien qieghed l-Ghassa ghajnejn is-Sur Brahim bdiet tinfetah, staqsieh

jekk ridtx l-assistenza tal-ambulanza, giet l-ambulanza u hadet lilu u lis-Sinjura Waddell Mater Dei filwaqt li l-ohrajn li s-Sur Beztout allegatament gie msawwat ukoll marru warajhom bil-karozza. Talab il-footage lil manager tal-Havana fejn dan tah kopja ta' footage bejn nofs il-lejl u s-saghtejn ta' filghodu fit-tarag ta' Havana u l-camera li taghti ghal entratura tal-Havana. L-incident beda kif titla' t-tarag tal-Havana fejn il-bar, il-bouncers allegatament nehhewhom minn hemm hekk u harguhom il-barra. Biex tohrog barra trid tohrog minn got-tarag. Allegatament issawtu hemm hekk. Il-manager tal-Havana qal li l-unika cameras li hemm jaghtu fuq il-cash, fit-tarag li l-Pulizija li mar għal footage qallu li hemm il-bicca tat-tarag u barra li ghandhom camera taghti fuq bar. Iz-zewg imputati jahdmu bhala bouncers Havana. Jghid li jaf li kienu jahdmu bhala bouncers ghax setgha jiddedotta mill-hwejjeg mill-fatt li ghandhom ir-radios fuqhom. Kif marru Robert Azzopardi kien qieghed fuq barra mal-bieb ta' barra filwaqt li l-iehor gie wara. Meta tela' biex jarrestahom it-tnejn (2) li huma kienu fuq barra.

In kontro-ezami qal li mhux il-kwerelanti cemplu izda ircevew telefonata mill-control room fejn gie rrapurtat li kien hemm xi argument fejn il-Burger King u ovvjament telghu ghal dak l-argument. Qal li jista' jaghti l-kaz li telghu ghal dak l-argument pero' imbaghad insertaw li habtu dawn maghhom. It-telefonata dahlet. ghal habta tas-1:30. Bhala hin, jghid li hadd ma jaf il-hin ezatt pero' ghax ovvjament wara s-1:30 ma garax zgur ghax lilhom sabuhom hemm hekk u milli setgha jiddedotta l-hin kien bejn in-nofs siegha u s-siegha u nofs. Il-filmat ma setghax jarah biex jara x'gara u x'ma garax u l-hin ezatt jigifieri pero' f'dak it-*time frame* gara l-incident. Ma jistax jghid li kienu bix-xorb izda kienu fi stat ta' agitazzjoni. Ma kellhomx xorb f'idejhom u lanqas ma xamm riha ta' xorb. L-identifikazzjoni minn Waddell saret fuq il-post u tat-tlieta (3) l-ohra saret mir-ritratti. Lis-Sur Robert Azzopardi mill-boghod ippinpontatu mill-ewwel. Jghid li hu kien qieghed barra ghax hu kien l-unika wiehed li kien qieghed barra, mal-ewwel qaltilhom '"*that is the one who hit me and hit Mr. Brahim*", '"*hit my friend*"' huma l-kliem precizi li qalet. Brahim huwa li qala' d-daqqa. Rigward is-Sur Clifford, jghid li dan eventwalment gie identifikat wara li hareg minn go l-istabbiliment pero' hargu sebgha (7). It-tnejn li huma kienet certa. Il-fatt li wiehed kien barra mal-ewwel setghet tidentifikah, l-iehor ghaddew dawk l-ghaxar minuti sakemm bdew hiergin in-nies u hekk biex

identifikatu. Meta saqsihom jekk dawn jgharfux lil bouncers li allegatament aggredewhom, dawn accennaw li kien hemm tmien (8) bouncers involuti jigifieri meta marru biex harguhom tmien (8) bouncers. Meta mar fuq il-post hargu sebgha (7). Minn dawk is-sebgha (7) gharfu tnejn jigifieri l-hamsa (5) l-ohra ma kienux involuti. Jghid li Paceville mimli bouncers. Skont ma qal is-Sur Joe Galea u skont li hargu kien hemm sebgha (7) bouncers Havana. Hargu hamsa (5) ghax kien hemm tnejn (2) barra. Kien hemm is-Sur Robert Azzopardi u iehor. Jghid li dawn it-tnejn kienu involuti direttament ghar-raguni li ghas-Sur Rbert Azzopardi kollha insistew li ta daqqa ta' ponn lis-Sinjura Waddell u li agreda lis-Sur Brahim, filwaqt li l-iehor qalu li agreda lis-Sur Brahim billi tah daqqa ta' ponn go ghajnejh. Is-Sur Clifford le. Is-Sur Clifford kien qieghed hemm u beda jxejjer xi daqqiet issa ma specifikawx id-daqqiet kif kienu. Is-Sur Beztout accenna li s-sur Clifford kien wiehed milli aggredih lis-Sur Beztout u jghid li qalu li Clifford aggreda ukoll lill-iehor Brahim pero' ma kienx specifikat kif aggredih filwaqt li per ezempju s-Sur Robert Azzopardi gie specifikat li ta' daqqa ta' ponn lis-Sinjura Waddell u lis-sur Brahim, fil-konfront tas-Sur Clifford li aggreda lit-tnejn li huma, kif ma specifikawx pero' milli setgha jifhem li dawn qabduh u kienu qed ikaxkruh 'il barra u kien f'dawk l-istanti li bdew hiergin id-daqqiet. Dan milli qalu huma. Is-Sur Brahim stqarr li meta dawn gew fuqu, l-ewwel kelma li qalhom li hu mhux perikoluz jigifieri ma kien qed jaghmel xejn perikoluz ghax marru fuqu u qabduh pero' milli tawh x'jifhem ix-xhieda l-mod if harguh il-barra ma kienx il-mod ta' kif il-Pulizija johorgu lin-nies 'l barra jew kif suppost jinhareg il' barra jigifieri waqt li kien qed jigi eskortat 'il barra dawn qalghu d-daqqiet u fil-fatt fuq wiehed minnhom kienet evidenti li kellu d-daqqiet. Dan x'qalu huma ghax ma kienx hemm hu.

Dwar xi glieda qabel, kull ma qalulu l-vittmi li kien hemm dan id-diverbju bejn is-Sur Brahim u persuuna li ma jafx min hi. Kien hemm terza persuna li bdew jargumentaw verbalment, minn dak il-hin jigifieri waqt l-argument verbali gew il-bouncers. Skont dan l-Ispettur li jista' jaghti l-kaz li skont huma tant grat f'daqqa din il-bicca li filli qeghdin hekk u filli gew aggrediti li dettalji precizi jemmen li lanqas huma ma jistghu jfornuhom. Bhala hin ma jafx kemm damet din l-affari sakemm harguhom 'il barra. Jghid li ma setghax isib it-tmienja (8) izda sab biss tnejn (2).

In kontro-ezami ikkonferma li baghtu ghalih il-control room ghax kien hemm argument il-Burger King. Kif mar hemm hekk ma kien hemm xejn, assolutament xejn li tirrikjedi l-intervent tal-Pulizija pero' waqt li kienu qed isuqu bil-karrozza gew iwaqfuhom dawn. Jghid li jista' jaghti l-kaz li ma hemmx relazzjoni bejn ir-rapport tal-control room u dawn li gew iwaqqfuhom. Jekk kien hemm glied iehor Havana, ma jafx bih. Robert Azzopardi kien fejn il-bieb ta' barra jistrieh fuq cinta. Mistoqsi '*Mela ara naqblux li persuna li tidħol go stabbiliment l-ewwel ma tara lil din il-persuna u l-aħħar ma tara lil din il-persuna?*' wiegeb '*Mhux hekk.*' Ikkonferma li ikun hemm id-dlam Havana. Ikkonferma li securities kollha libsin iswed u fid-dlam. Xehed li '*nista' ngħid pero' li fir-rigward tas-Sur Robert Azzopardi kien hemm konvinzjoni esagerata minn naħa tas-Sinjura Waddell għar-raguni li din qalet daqqa ta' ponn u bdiet tgħidli li minn għandu qalgħatha.*' Huwa urihom it-ritratti tal-akkuzati biss jigifieri dawk li indikat Waddell fuq il-post. Urihom ir-ritratti tal-akkuzati kemm biex jikkonferma li jekk ha jaffettwa arrest, kif eventwalment affetwa, ha jkun arrest sostanzjat. Dwar il-persuna li originarjament inqalghet il-glieda qal li saqsihom jekk ghandhomx idea min kienet imma ma jafux min hu. Jafu li kienu zewg guvintur imma ma fornewlux dettalji. Huma kienu fi stat ta' xokk jigifieri jemmen li kienu dettalji trivjali dawk ghax fil-verita' dawk iz-zewg persuni ma kien hemm xejn, just argument verbali. Ma rahomx fi stat ta' sakra, ma xammhomx izda mhux jeskludi li xorbu. Ma marx tahthom biex ixommhom.

Louise Waddell xehdet fl-istess seduta bil-lingwa Ingliza fejn spjegat li kienet fil-club Havana ma Ryan, Kashana u Rafik. Ma tafx x'hin kien ghax ma jkollhiex arlogg fuqha. Xtraw drink, kienu mal-bar jiehdu drink, kien hemm subien fuq in-naha l-ohra tal-bar bi flixkun vodka, kienu gew fuqhom. Qatt ma rawhom f'hajjithom. Kienu gew vicin hafna, spjegat '*we said scuse me but we are with Ryan and Rafik and then one of them started to push Ryan and then all of a sudden all the bouncers.*' Mistoqsija '*What is the name of the one who was pushed?*' wiegbet '*Ryan the one that has been assulted.*' B'referenza ghal persuna bil-*black eye*. Spjegat '*He was pushed by one of the other boys and we have got in the middle so we said no, no. All of a sudden the bouncers have come running, pulled Ryan's hand ... through him on the floor and it was all crasy.*' Spjegat li bdiet ftit il-boghod mill-bar f'Havana fis-sular ta' fuq. Xehdet '*It finished the scaffel just behind the front bar and than it got to the top of the stairs, it went all down the stairs, I*

have been hit in the face by one of the bouncers at the top of the stairs. I remember certain wobbling and ... in the wall and we were just get out, get out. Rafik, the bouncers had him too because Ryan were taking him downstairs first.' Tghid li hi tirreferi ghal dak li gie aggredit u li ghandu l-griehi f'wiccu bhala 'Ryan'. Hija gharfet iz-zewg imputati u qalet '*I recognize both these gentlemen as being involved.*' Dwar l-appellant Clifford Bugeja qalet '*I have seen him punch and pull him to the floor, the french boy that I call Ryan.*' Dwar l-imputat l-iehor qalet '*No I have seen the other one with the other boy Rafik. He grabbed him round the neck.*' Dwar x'rat lill-imputat Robert Azzopardi jaghmel wiegbet '*He came and grabbed the other boy, the french boy Rafik by the back of the neck and I was scared he was going to choke him and this was at the top of the stairs. Rafik fell back and I thought he had collopsion.*' Mistoqsija fejn waqa b'lura wiegbet '*At the top of the stairs and he had his foot on the wall to stop being psuhed and we have said move you foot just go, get out of here.*' Ikkonfermat li Rafik prova li ma jitkeccix barra mill-club. Wiegbet '*But we said move your feet, we need to go, this is crazy and then I have been hurt in the proċess.*' Mistoqsija minn aggrediha qalet '*I don't know someone, there were so many, it wasn't only these two gentlemen, there were too many involved.*' Mistoqsija x'rat lill-imputato jaghmlu aktar wiegbet '*I have seen them grievously escort my two friends out of the club for absolutely no reason. They punched, kicked.*' Qalet '*Punched Ryan the one who has been assulted badly.*' Mistoqsija jekk ma tagharfx minn aggrediha mill-imputat tghid li hasbet li Robert imma mhijiex certa. Qalet '*I got hurt and then I fell against the wall.*' Tghid li grat ta' malajr.

In kontro-ezami qalet li wara rraportat mal-ewwel, bdiet tibki isterikament. Kienet burger king. Kemm mexew il-fuq minn fejn grat ghas-sigurta u biex isibu pulizija biex jghinhom. Kien dlam hafna u l-muzika kienet gholja hafna. Hadet drink qabel ma waslu u iehor meta waslu, b'kollox hadet zewg drinks. Qabel kienu fi club iehor. Tiftakar it-terzi persuni li kienu involuti f'incident iehor, wiehed Sud Afrikan li kellu t-shirt u kien qieghed ipoggi fuq il-bar u kien qieghed igib it-tazzi minn wara l-bar biex iferra l-flixkun tal-vodka tieghu. Mhijiex certa huwiex hbieb mal-bar ghax jidhrilha li kien qieghed ipoggi fuq il-bar u ma tahsibx li hi haga normali li taghmel. Hu u shabu marru hdejha. Wiehed kellu gilda skura, wiehed b'beritta u xaghru skura. Kienet l-ewwel darba li rathom f'hajjitha. Wiehed mis-Sud Afrikani beda jigi wisq vicin taghha u ta' habibtha Kashana. Bdew jizfnu vicin u qalulhom li huma

qeghdin ma shabhom li ilhom jafuhom minn meta waslu Malta l-Gimgha, joqghodu fl-istess hotel. Mistoqsija '*And there was this scaffel involving?*' wiegbet '*Just pushing.*' Is-Sud Afrikani bdew jimbuttaw lil Ryan. Mistoqsija dwar jekk shabu kienux qed jixorbu qalet li s-subien ma bdewx jixorbu ghax kienu ser isuqu. Kashana hadet zewg drinks bhala. Tghid li Paceville post mhux tip taghha izda marru ghall-esperjenza, biex jaraw kif inhu. Kienet l-ewwel darba f'Malta u riedu jmorru jaraw kif inhu. Meta s-Sud Afrikani bdew jimbuttaw lil Ryan ma bdewx jimbuttaw lil Rafik. Rafik kien warajha. Tahseb li lil Ryan biss bdew jimbuttaw. Is-subien qalu li huma mis-Sud Afrika. Gew xi hamsa (5), sitta (6) biex jipruvaw iwaqfu din l-iscaffel. Tghid li '*All happened in seconds, you know I didn't count thm how many people were on top of Ryan, Ryan had at least four / five bouncers.*' Mistoqsija kif tnejn biss huma l-imputati qalet li l-lejl li ghadda ttiehdet hdejn il-bieb ta' Havana u kienet isterika tibki ghax giet imwegga u aggredita bla raguni. Mistoqsija '*And you just identified the first person and the last person that came out?*' wiegbet '*Yes I think so because it was also quick. But I have seen their faces upstairs.*' Tghid li kien dlam izda xorta setghet tara, kien hemm dawl fuq kullimkien. Kellha drink f'idejha. Tikkonferma li kien hemm hafna nies Havana. Tghid li gharfet wicchom, qatt ma rathom qabel u rathom gejjien ghal fuq shabha. Il-bouncers kienu kollha libsin iswed. Mistoqsija x'kien '*remarkable*' dwar dawn it-tnejn, wiegbet '*I just remember his dark hair and I was sure that ... pushed away.*'

In kontro-ezami qalet li l-persuna li rat jahdem hi u diehla, kien b'goaty. Kien qieghed ipoggi waqt li mexew il-fuq. Dan kien wara nofs il-lejl. L-ewwel marru jieklu fil-hotel, kollha kielu fil-bar tal-hotel. Ma kinitx hadet drink. Mistoqsija ghala ma qalitx lil Pulizija dwar is-subien Sud Afrikani jew deskrizzjoni ta' fejn l-*iscuffel* bdiet, wiegbet '*Because I feel personnally that what started this whole situation and then I feel that the bouncers had come wrongly targeting the boys that were with us that were doing nothing.*' Tghid li qalulhom lil Pulizija. Tghid li l-persuna Sud Afrikana ma kinitx l-aggressur, kien il-habib tieghu. Kien b'jeans, t-shirt, xaghru u gilda skura u mar ghal Ryan. Qalet '*He went for Ryan and then Ryan said come, come and then all the bouncers have jumped in and they were the ones that caused more of a problem I feel because there was no problem to be ...*'

Kashana Anne Elder xehdet ukoll fl-istess seduta bil-lingwa Ingliza. Kienet fil-club Havana f'Paceville ma shabha Louise, Rafik u Ryan. Grat bejn nofs il-lejl u s-siegha izda mhijiex certa tal-hin. Spjegat li kienu mal-bar kif titla t-tarag u kien hemm zewg irgiel fuq in-naha l-ohra u kienu qed jiehdu drink u gie ragel li ried jizfen ma Louise u ragel iehor beda jiggieled ma shabna. Bdew jimbuttaw lil xulxin ghal xi minuta u l-bouncers telghu, tghid '*may be two, then another one and some more and there may be about eight, all together and I had stepped back, there were a lot of people and I had stayed back and they were roughly eight and they got closer to the door and may be five of them, something like that I am not sure because I was further back where my friend Ryan was on the floor and they were on top of him and my other friend rafik was at the door with one man or may be two man here and Louise was sort of in the middle of here and I stepped back because people were hitting and I stepped back and they ... Ryan first down the stairs and all the gentlemen were here, he came up, one gentleman was like by himself, on the top and he was holding my friend by the throat and then another gentleman came up and they took him out but the gentleman was holding him ... on the back of the head and the other gentlemen was saying "stop, stop" and then we all went down the stars, outside and me and my friends were shouting and I left.*' Mistoqsija ratx lil xi hadd isawwat lil shaba qalet '*I didn't see I only recognize the gentelman.*' Hi gharfet lil Robert Azzopardi. Qalet '*He was holding my friend by the throat like this and when my friend was like "stop, stop"... on the face.*' Tghid '*He was locking Rafik, the other gentleman not the one with the black eye.*' Ikkonferma li kien qieghed izomm lil Rafik minn ghonqu u tghid '*Yes but I got there late, Ryan was sort of coming out by then, I was at the back and there were a lot of ... they were all in a big group at first and I was further back so they were sort of all together, ... on him and ... and there were may be two or three with Rafik at first and then you, and I don't know who hit Ryan, I did not see.*' Mistoqsija '*Now did you see this gentleman being in any way involved during this situation?*' wiegbet '*I do not remember seeing him no.*'

Spjegat '*We all went down the stairs and my friend was shouting and the English boys came over and they were syaing who hit him, why did you hit him, the older gentleman was saying "why did you hit him" and he said ... and I said "your friend, that man just hit my friend in the face", and he said "which", I said "no, no, it is him, I saw him" and he said "no, I don't know who hit your friend" and I said "I saw him there" and he said "no" and I said "ok, just go", just leave because it was pointless.*' Mistoqsi jekk Ryan giex aggredit qalet '*They*

were all on the ground so if he was on the ground, there were loads of people on top of him and I was further back. They were fighting and I am small you know so I am not going over there. I stayed at the back. You know, I couldn't help him.'

In kontro-ezami qalet li ma haditx drink il-hotel, hadet drink f'club aktar l-isfel u f'Havana tahseb li hadet iehor. B'kollox xorbot tnejn u kellha drink mal-bar izda ma lehqitx xorbitu. Kien dlam izda mhux dlam izzejjed. Setghet tara ghax kienu mal-bar, kien hemm dawl mill-bar u mill-bieb u setghet tara ir-ragel u hafna nies. Qabel ma ntervjenew il-bouncers kien hemm imbuttar miz-zewg partijiet, jigifieri minn Ryan u Rafik u ma tafx minn kien ir-ragel l-iehor. Kellu gilda u xaghar skura, t-shirt abjad. Kienu qeghdin jimbuttaw. Qalet '*And I had got in the middle and said "that is enough, stop" and he was saying "fuck off, fuck off*". Ma waqfux u l-bouncers intervjenew. Hi telqet minn jeddha. Rafik u Ryan ma hargux minn jeddhom, kienu eskortati. Tghid li '*I wouldn't call it escorted but yes*' u dan peress li '*they were ahead on them on the ground, you know, and they were trying, the gentlmeman there was trying like this to put my friend on the ground. He was trying to put him on the foor and that is when I was like "stop, stop", you know, they ... they were being very physical. That wasn't escorting, if you escort somebody you lead them out, that was not.*' Tghid li kien hemm xi tmien (8) bouncers. Hi ma gharfitx lill-imputat Clifford Bugeja.

Dwar l-*iscuffel* ta' Rafik u Ryan ma' persuna ohra, tghid li dan kien ma persuna ohra. Kienu warajha, kien hemm wiehed Sud Afrikan li kien qed ikellimha u l-habib tieghu kien fuq wara. Ma tafx ghala bdiet u min bdiha ghax kienu warajha u li l-persuna Sud Afrikana kellu idejh fuqha u qaltlu le. Hi waqfitu. Qalet "*Rafik said "are you ok" and I said "yes" and then the next thing there were shaffing.*" Tghid li tahdem go bar ghal ghaxar (10) snin u gieli kellha teskorta nies barra. Mistoqsija ghala ma kkalmatx is-sitwazzjoni hi qalet '*Men that size it was very dangerous, very dangerous.*' Ikkonfermat li kien hemm hafna bouncers. Il-bouncers ma kellmux lis-Sud Afrikani, ma qalulhomx biex jitilqu, injorawhom. Ryan u Rafik waqfu izda r-ragel l-iehor baqa jiprova jimbotta. Dwar il-bouncers fuq Ryan qalet li "*First they dragged him over and they were all pushing him.*" Mhux kollha kienu wicchom l'isfel. Kienet fuq wara u kienu f'cirku u qalet setghet tara l-ucuh ta' faccata.

Brahim Benatsou xehed bil-lingwa Ingliza fis-seduta tas-sitta (6) ta' Awissu tas-sena elfejn u erbatax (2014) fejn qal li kien f'Havana Club ma shabu, tfajliet Louise u habiba taghha u l-habib tieghu Rafik peress li ltaqghu mat-tfajliet fil-hotel taghhom. It-tfajliet isejhulu Ryan u lil siehbu Raffael. L-incident sehh f'nofs il-lejl, in-nofs siegha. Waslu Havana club, telghu, kienu mat-tfajliet, ma xorobx kemm ha Red bull u forsi birra wiehed. Gew zewg guvintur u invitaw lit-tfajliet biex jixorbu maghhom, wiehed minnhom gilda ta' kulur sewda. Qatt ma kienu rawhom qabel. Il-gilda ta' siehbu ma kinitx skura hafna, bhal tax-xhud u izghar mill-ewwel wiehed. It-tieni wiehed prova jizfen mat-tfajla mhux ma Louise, mal-ohra. Hu prova jizfen maghha u qal lil guvni li kienet maghom u l-guvni l-iehor kien qieghed jixrob hafna, gie u beda jitkellem jghajjat aktar umbghad ra security jaslu. Is-security ma pruvax jara x'gara, hadu lilu kien hemm xi hamsa, sitta, sebgha ma jafx ghax kien dlam, haduh u r-ragel li qieghed hawn jiftakar li rah mal-grupp li wasal, persuna hadlu idejh, spjega '*I person take my hand like this, one behind me, take my neck like this and I said that I am not dangerous, no problem, ... language I speak with them, they don't speak so they put me on the floor, then one person I remember him he punches me here.*' Jghid '*On the left side and the guy who is here.*' Xehed li '*He the guy here punched me on, yes you.*' jghid li '*I saw him because I just tried to take my hand to say that I am not dangerous and I saw he punched me.*' Mistoqsi '*And who was holding you by the neck?*' wiegeb li ma jistax jghid ghax ma setghax jara, pruvaw jaghttu s-sitwazzjoni. Ikkonferma li Robert Azzopardi tah daqqa ta' ponn f'ghajnejh il-leminija. Ikkonferma li huwa cert dwar dan. Mistoqsi dwar l-imputat l-iehor Clifford Bugeja qal li ma jistax jiftakar ghax ma baqax f'sensieh minhabba d-daqqa ta' ponn. Wara marru barra, marru hdejn Burger King biex isaqsu ghal Pulizija u cemplu minn hemm. Il-pulizija cemplu l-ambulanza ghax kellu d-demm f'ghajnjeh. Hu ha ritratti tal-griehi li sofra u meta mar l-isptar tawh certiifkat mediku. Ikkonferma li l-Ophtalmology ikkonfermaw li ma ghandux problema bil-vista u qal li ghandu problema b'ghonqu ma jistax icaqalqu. Huwa identifika c-certifikat prezentat fl-atti. Ha tlett (3) jew erba' (4) ritratti. Ritratt ittiehed hdejn il-club. Il-Qorti iddirigietu biex jibghat ir-ritratti lid-deputat registratur. A fol 31 sa 33 jirrizultaw ritratti li jidhru li ttiehdu f'awla.

In kontro-ezami qal li xorob wiehed red bull u wiehed birra. Rafik xorob vodka red bull. Louise Waddell jahseb li xorbot l-istess ftit vodka, ma tantx hadet ghax kienu

ghadhom kemm waslu. Havana kien it-tieni club, ma jiftakarx fl-ewwel imma ha red bull, birra wiehed u Louise hadet vodka ukoll, ma jiftakarx xorbu. Jahseb li Louise xorbot zewg drinks, wiehed fl-ewwel club u iehor fit-tieni. Kashana l-istess. Kien hemm argument ma wiehed mill-guvintur li kien aggressiv fil-konfront tieghu ghax ried jizfen mat-tfajla u meta prova jwaqfu sar aggressiv. Ix-xhud kemm tkellem mieghu ghax mhuwiex aggressiv ukoll u ma kienx qieghed jixrob, mhux normali li jixrob. Birra wiehed ha. Normalment ma jixrobx, kemm ghax hareg mat-tfajliet, biex jiehdu gost. Kien hemm hafna securities involuti. Ikkonferma li dlam f'Havana u l-bouncers kienu libsien hwejjeg skuri, suwed. Ma jistax jiftakar l-ucuh kollha imma seta jgharaf l-wicc. Jista' jgharaf il-persuna li tah id-daqqa ta' ponn. Ma setghax jara l-persuna li kien warajh pero jiftakar il-persuna li kien quddiemu. Setgha jaraf ghax kien f'siktu, ma kienx xorob. Minkejja li kien dlam, xorta setgha jara u jgharaf min tah daqqa ta' ponn. Mistoqsi dwar li ma tax deskrizzjoni dwar is-subien li kienu qeghdin jitkellmu mat-tfajliet lil-Pulizija qal li l-pulizija ma talbux deskrizzjoni. Jghid li iddeskriva x'gara imma ma ntalabx jiddeskriki lil persuni lil Pulizija. Ma regax mar lura Havana mal-Pulizija izda marret Louise biss. Jghid li kien hemm tmienja (8) jew disgha (9) securities, ma jistax jghid ezatt u spjega '*we were upstairs, they punched me, they take me by here, I tried to go out because I never saw ... security guys punch people inside. Even if the people ... and is dangerous, they take him outside. Never punch people, we are tourists. We come here, we are tourist.*' Jghid li ma kienx ta' periklu, kien pacifiku. Il-habiba qalet 'stop' u habib iehor qal 'stop' u li prova johrog, u tawh daqqa ta' ponn fuq, tefawh mal-art, tawh daqqa ta' ponn '*then I tried to get out on the stairs but I get down, whn I arrive outside I turned and they put me on the stairs they hit me too so it was not dangerous like this one. We go outside, we turn and we see, there was five on the door and behind there was all here. I said why you do this, why what I was doing for doing this ...*' Jikkonferma li kien hemm hafna nies. It-tfajliet iltaqghu maghhom fil-lukanda u l-lejl li ghadda. Telqu mix-Xemxija ghal habta tal-11:30, marru biex jizfnu, biex jiehdu gost mhux biex jixorbu.

Rafik Beztout xehed bil-lingwa Ingliza fis-sitta (6) ta' Awissu tas-sena elfejn u erbatax (2014) fejn spjega li dalghodu kien Havana mal-hbieb tieghu Brahim Benatsou, Kashana Anne Elder u Louise Waddell mal-bar. Gew zewg irgiel bid-

drinks fosthom u tkelmu ma' Kashana, ried jiehodha id-*dance floor* u beda jzommilha idha u ra li ma haditx gost u qallu li hi habiba taghhom u li ma tridx tmur mieghu. Spjega '*I asked Mr. it is our friend, she don't want come with you, she say ok. But looking with his friend, with my friend, I see talking not normally. I say stop what happen, he said me, ok and other won't stop after security coming, take my friend Brahim in his hand.*' Ikkonferma li s-security guarad li ghajjat Brahim huwa fl-awla. Mistoqsi '*Who pulled Brahim?*' wiegeb li iva. Qal li wara '*I want to speak what we have, we have problem with this guy and I see many people.*' Jghid li ra hafna security guards gejjin '*Take all and they say, want to help, I want if you help me because it is not our problem. I just say ok with another man, it is ok, we don't want problem, I say my friend we go outside, we change ... and after in this moment have many security and he take me and my friend and I see he resist asked slowly, we want speak for our situation and then I see...*' Jghid li siehbu irrezista ghax ried jispjega s-sitwazzjoni lis-security guards. Irrefera ghal Robert Azzopardi bhala dak li ha lil Brahim u li Robert Azzopardi ha lix-xhud minn ghonqu u mistoqsi '*who locked you*' ikkonferma li Robert Azzopardi. Mistoqsi '*The one who is standing locked you?*' wiegeb '*Yes. And this man I see.*' Mistoqsi '*So this gentleman sitting on the right, Clifford Bugeja?*' wiegeb '*With another friend, with Brahim and I don't know because in this moment we don't see all situation because he take me.*' Mistoqsi mill-Qorti '*So before locking you, the gentleman standing up punched Brahim on the face, so first he punched Brahim and then the gentleman came to lock you?*' wiegeb '*Yes.*' Mistoqsi '*So when the gentleman who was standing up lock you?*' wiegeb '*Another bbecause in moment have many security guards coming.*' Jghid li kien hemm hamsa (5) jew sitta (6) u persuna ohra. Jghid li ta daqqa ta' ponn lil Brahim imma ma rax il-wicc ghax kien hemm hafna security. Jikkonferma li ra zewg persuni jaghtu bil-ponn lil Brahim, wiehed li din il-Qorti qieghda tifhem li huwa Robert Azzopardi fl-awla u persuna ohra. Jghid li wara gie fuqu u ghalkemm bdew jghidulu biex jieqaf niezluh barra t-tarag u qala daqqa ta' ponn izda ma jafx min.

In kontro-ezami mistoqsi rax lil Clifford wiegeb iva u kkonferma li rah izomm lil Brahim. Ma rahx jaghtih daqqa ta' ponn. Mistoqsi '*So he was pushing him, Brahim?*' wiegeb li iva. Jikkonferma li kien dlam f'Havana. Ma kellux cans jara lil kulhadd ghax immedjatament waqa wiccu fl-art. Ha drink wiehed jew zewg drinks, shot zghir. Brahim xorbot wiehed redbull u birra. It-tfajliet xorbu bhax-xhud. Ikkonferma

li kienu kollha lebsin iswed u kollha xaghrom skur. Mistoqsi '*So once you were held you went immediately down, you could not be 100% sure that Clifford went near Brahim? Perhaps another one, I mean there was so many, there were go many security guys all wearing black, all had dark hair, it was dark, there was confusion, are you 100% sure, you are under oath so you must be very, very sure if you are certain it is ok, you can say I am not sure because you have to be clear? As you said it was a split second, you were being held, then you went down facing the floor so how could you be sure that you saw him walking towards Brahim? I wouldn't be sure so? Would you be sure? Are you sure?*' wiegeb '*Yes because it is near me.*' Xorob tnejn biss u mhux normali jixrob. Xorob zewg drinks. Mistoqsi kienx fi-sakra qal li normali hafna. Insista li kien cert b'li ra u li saqsa ghall-ghajnuna u minflokk ghenu mar jimbutta lil Brahim. Hu ma kellimx lil Clifford izda lil security iehor. Mistoqsi '*Now this gentleman who is standing up, what did you see him do? He was pulling, pushing Brahim?*' wiegeb li iva. Mistoqsi '*So if it happened behind you how could you see him?*' wiegeb '*I see this security come, take.*' Mistoqsi '*So this security guard who was standing taking Brahim by his shirt and pulling him towards him?*' wiegeb '*Yes*'. Mistoqsi '*So you saw Clifford pulling Brahim because there was a scaffel?*' wiegeb li iva. Jghid li l-ewwel rah jigbdu umbghad jimbuta lil Brahim. Mistoqsi '*after the other gentleman punched Brahim what did the other gentleman do?*' wiegeb '*Me I say stop why.*' Mistoqsi '*Now did this gentleman punch, kick, strick Brahim?*' wiegeb '*I have not seen this.*' Jafu ghal hames (5) forsi tmien (8) snin u lit-tfajliet ghal jumejn (2) jew tlieta (3). Ikkonferma u tkellmu dwar l-incident il-gurnata kollha. Ikkonferma li dak li xehed xehdu ghax rah b'ghajnejh u mhux li qalulu shabu. Azzopardi kien qieghed izommu minn ghonqu. Ma jafx kemm ghadda hin minn meta inqala l-argument sakemm ma grat din imma xi zewg u tlett minuti. Gew wiehed wara l-iehor. Qal li tkellem ma xi security ghall-ghajnuna. Wara ma marx mal-Pulizija lura l-club biex jara s-security. Il-Pulizija urewh biss zewg ritratti. Ra tnejn jaghtu daqqiet ta' ponn. Dwar l-argument qal li '*I say she don't like you because he touch her, I see she don't like, I said stop after this man with the casquette say ok no problem and his friend want we go outside.*' Ma kienx hiereg barra maghhom. Mistoqsi '*They were at each other?*' wiegeb '*Yes I said stop after security coming ... with other guys just.*'

L-ispettur **Trevor Micallef** xehed ukoll fis-seduta tas-sitta (6) ta' Awisu tas-sena elfejn u erbatax (2014) fejn qal li llum ha stqarrija taz-zewg imputati, l-ewwel kienet

ta' Clifford Bugeja, wara s-solitu twissija ghazel li ma jitkellimx ma' avukat u ghazel li ma jirrispondi ghall-ebda mistoqsija kwazi u ma ffirmax l-istqarrija. Gharaf il-firma tieghu u dik ta' PS 887. Wara ha l-istqarrija ta' Robert Azzopardi fejn wara s-solitu twissija ghazel li ma jikkonsultax ma' avukat jew prokuratur legali tal-ghazla tieghu, irrilaxxja stqarrija fejn il-mistoqsijiet li ghamillu apparti xi tnejn jew tlieta ghazel li ma jirrispondix mistoqsijiet u ghazel li ma jiffirmax. Gharaf il-firma tieghu u tas-surgent 887 Mercieca.

L-**Ispettur Carol Fabri** xehdet fis-seduta tat-tlettax (13) ta' Awissu tas-sena elfejn u erbatax (2014) u qalet li bhala ufficju gew mitluba jekk Robert Azzopardi u Clifford Bugeja bin-numru tal-karta tal-identita' 339395M humiex licenzjati biex jahdmu f'post ta' divertiment bhala bouncers. Dwar is-Sur Azzopardi l-ahhar licenzja hi skaduta ta' Gunju 2013 skont ir-records taghhom u Clifford Bugeja ghandu licenzja sa Ottubru 2014. It-tnejn huma licenjza ta' gwardjan privat. Xehdet li x'wiehed jista' jahdem bhala gwardjan privat skont il-ligi hi maqsum f'erbgha (4) anke kif jidher fl-applikazzjoni ta' meta l-persuna jigi japplika fejn hemm fotokopja taz-zewg licenzji li huma ezistenti fil-file taghhom, dik hija l-licenzja. Bhala licenzja persuna tista' tapplika bhala gwardjan privat, gwardjan privat ghal postijiet ta' divertiment, gwardan privat secjalizzat tas-sewqan u gwardjan privat specjalizzat mhux tas-seqwan. L-ahhar tnejn huma tal-cash van, min isuq u min jakkumpanja lis-sewwieq tal-cash van. Biex ikollok licenzja ta' gwardjan privat ma' postijiet ta' divertiment trid tkun ilek tahdem jew mal-Pulizija jew mal-Forzi Armati ta' Malta jew mas-settur tal-habs ghal hames (5) snin li fil-kaz taz-zewg sinjuri dan ma kienx japplika. Fil-licenzja wiehed jindika l-licenzja li sejjer japplikaw, l-imputati indikaw li huma jahdmu bhala gwardjan privat mhux bhala gwardjan privat ghal postijiet tad-divertiment. Hu jaghti kopja tal-applikazzjoni li wiehed jimla hu stess meta japplika. Elenka ukoll id-differenza bejn il-licenzja u it-tag, it-tag tinhareg mhux mal-licenzja jigifieri l-licenzja li torbtok bhala licenjza, it-tag ma hijiex licenzja. Il-licenzja tithallas kull sena fl-ufficju taghhom il-Furjana. Ihallas l-individwu mhux min ikun qed jaghtih ix-xoghol. Ma jidhlux fejn ser ihaddem jew min ha jhadmu, johorgu l-licenzja u mbaghad sta ghal min ser ihaddem li jiehu hsieb. Ma kull licenzja jkun hemm ukoll refresher course jigifieri hemm certu rekwiziti li minn sena ghal sena l-individwu irid igib mieghu u jigi hu stess mhux jibghat jew tigi bil-posta ghax hu

wkoll jiffirma ghal din il-licenja li ovvjamant ghandha certa piz meta johorguha lil indiviwdu.

In kontro-ezami qalet li kull ma ilu xahrejn fl-ufficju u jidhirlu li l-ligi inbedlet mill-2011. It-tag ghandha expir izda ma jfissirx li kull sens, daw il-hames elenki ta' x'tista tahdem ukoll maghhom huma kkuluriti, it-tag tku kulurita. Is-sistema coded skont li tinghata. Xehdet li ngabru u nghataw it-tags il-godda li bil-ligi jridu jilbsu u ma jistax jahdem jekk ma tohhroglux il-licenzja, hemm perjodu ta' xahar minn meta jigi bir-refresher course. Tghid li tlett (3) xhur qabel trid tigi bir-refresher course u trid taghmel certu affarijiet jigifieri l-individwu u huwa notifikat bl-affarijiet li jrid jaghmel biex ma jinqabadx jahdem minghajr mhux it-tag ima l-licenza ghax hafna jahsbu li t-tag hija l-licenzja mentri ma hijiex. Il-licenzja hija din li l-Kummissjarju johorg li trid thallas. Spjega li s-sinjur biex jahdem ta' gwardjan, dak gwardjan privat mhux ghal post ta' entertainment ghax kieku tkun differennti. Jghid li l-imputati darba biss applikaw, ma hemmx precedenti ghax kieku kienet iggibhom.

B'referenza ghax-xoghol ta' gwardjan lokali ghamlet referenza ghal legislazzjoni susidjarja 389.01. Qalet li jekk applika ghal gwardjan privat hargitlu ta' gwardjan privat. Mistoqsi jekk gwardjan f'post ta' divertiment irid ikun mal-bieb, qalet li ma tistax jikkonferma. Spjegat li kieku fil-licenzja li ghada kif ipprpduciet indika li hu applika bhala gwardjan privat biex jahdem f'postijiet ta' entertainment, l-applikazzjoni tieghu ma kinitx hekk, gwardjan privat jigifieri x'hemm fil-licenzja, hemm fl-applikazjoni jigifieri ma jistax johrog haga meta applika ghal haga ohra. Gew prezentati numru ta' dokumentazzjoni inkluz applikazzjoni ta' Clifford Bugeja satata l-erbatax (14) ta' Ottubru tas-sena elfejn u tlettax (2013) fejn huwa applika biex jahdem f'kategorija wahda u cioe' ta' gwardjan privay. Giet prezentata ukoll kopja ta' applikazzjoni ghal licenzja ta' gwardjan rivat u gwardjani ohra.

Fis-seduta tas-sebgha u ghoxrin (27) ta' Ottubru tas-sena elfejn u erbatax (2014) xehdet l-**Ispettur Sylvana Zrinzo Azzopardi** li qalet li mhijiex stazzjonata c-citazzjonijiet. Gabet applikazzjoni li kien applika Robert Azzopardi ghal private guard. Spjegat li din hi l-applikazzjoni antika li kienu jaghmlu qabel ma harget il-ligi, hawn ir-rekwiziyi u esebit l-applikazzjoni, ir-rekwiziti li jitolbuhom u kif wkoll il-

licenzja tieghu li ghalqet fis-sitta (6) ta' Mejju tas-sena elfejn u tlettax (2013). Wara s-sitta (6) ta' Mejju tas-sena elfejn u tlettax (2013) ma kinitx valida iktar. Ix-xhud esebit Dokument SZA1 li hi applikazzjoni f'isem Robert Azzopardi. Bhala Dok SZA2 ir-rekwiziti li kien jitolbuhom dak iz-zmien. Qalet li tohrog darba fis-sena u kull sena japplikaw ghaliha biex igedduha jergghu japlikaw. Tghid li ma regax applika wara dik id-data. Qalet li suppost qabel dik id-data, tlett (3) xhur qabel irid jaghmel kors u jaghti c-certifikat, jigi jgibilhom c-certifikat tal-kors biex ikun jista' jerga' jgedded ghal sena ohra. Qatt ma gab ic-certifikat biex hu jista' jgedded il-licenzja mill-informazzjoni li ghandu.

Dwar Clifford Bugeja xehdet li ghandha l-applikazzjoni li hi bl-applikazzjoni l-gdida ghax kienu jahdmu mod u mbaghad meta harget il-ligi, il-gdida qalibha mod iehor. Din hija l-applikazzjoni fejn hu aplika ghal gwadjan privat ukoll u r-rekwiziti li bdew jitolbu. Il-licenzja harget u kienet tiskadi fit-tlettax (13) ta' Ottubru tas-sena elfejn u erbatax (2014). Fl-erbgha (4) ta' Settembru gab kopja tal-kors u l-ircevuta li jkunu tawh il-pulizija tal-ufficju. Prezentat bhala SZA4 applikazzjoni, ir-rekwiziti bhala SZA5 u kopja tal-licenzja bhala SZ6 li tiskadi fit-tettax (13) ta' Ottubru tas-sena elfejn u erbatax (2014). L-ahhar dokument huwa certiikat tal-kors li mar ghamel il-private guard training programme u l-ircevuta meta mar l-ufficju bid-data tal-erbgha (4) ta' Settembru tas-sena elfejn u erbatax (2014). Din giet immarkata bhala Dok SZA7.

In kontro-ezami ikkonfermat li Robert Azzopardi applika taht is-sistema l-antika. Meta applika ma jidhirliex li l-kors kien rekwizit izda fl-istess xhieda tikkjarifika li fil-ligi l-antika dejjem kienu jgibulhom kors anke biex igeddu. Il-procedura hi li jaghmlu l-kors u biex japplika l-ewwel darba irid imur jaghmel kors. L-ewwel kors kellu. Ma tafx minn fejn tohrog fil-ligi l-antika li jrid jaghmel kors kull sena izda l-procedura hekk kienet sakemm kienet hemm hi. Biex igeduha dejjem iridu jgibu *refresher course*, kull sena. Il-badge l-antika kien hemm biss private guard u kien hemm dati fuqa. Ma hijiex data ta' validita. Il-validita' hija l-licenzja. Il-licenzja hemm miktub cara fil-ligi illi trid tigi kull sena anke qabel hekk kienet. Meta persuna jmur jahdem bil-fors irid ikollu dik il-hand written. Il-card kull ma hija biss *authentification* tag biex hu jilbisha fuqu biss meta jkun on duty, l-identification tag ikun fiha hames

(5) snin, u kull hames (5) snin ibudlu t-tag imma ma tfisssirx li t-tag hija l-licenzja. Il-ligi li nbidlet qabel kienet private guard biss, imbaghad meta inbidlet il-ligi giet erba' (4) *private guard, private guard driving,* u *private guard non-driving* u private guard tal-entertainment u meta nbidlet il-ligi kif kien hemm l-applikazzjonijiet differenti biex japplika per ezempju bhala *private guard driving* jew *non- driving* jew inkella ta'a entertainment irid ikollu licenzja ghal kull kategorija mhux private guard biss.

Charles Calleja li jahdem Audio and Visual Technician xehed fis-seduta tas-sebgha u ghoxrin (27) ta' Ottubru tas-sena elfejn u erbatax (2014) fejn qal li d-deputata taghtu diska biex jaghmel kopji u ghamel il-kopji dwar xi kaz ta' glieda izda ma rahx kollu, irrikordjah mill-bidu sal-ahhar u daqshekk.

Fis-seduta tat-tnejn (2) ta' Dicembru tas-sena elfejn u erbatax (2014) xehdet l-**Ispettur Zrinzo Azzopardi** li qalet li l-ligi kienet harget u dejjem baqghet l-istess u ma nbidlitx u mbaghad li gara kien hemm subsidiary legisation fejn zdiedu ohrajn jigifieri fejn bdiet tghid l-ligi l-antika u l-ligi l-gdida, kull ma kienet il-ligi l-antika li hemm dak inhar tax-xhieda hi l-istess wahda li dejjem harget mbghad dejjem zdiedu maghha jigifieri l-ligi l-antika u l-ligi l-gdida zdidu mal-ligi tat-389, il-legislazzjonijiet susidjarjari 1,2,3,4 u 5 u jidhrilha Kap 389. Fil-ligi hemm Artikolu 12(1)(a)(b)(c) u (d) kif ukoll artikolu 12(2) f'Kapitolu 389. Fil-legislazzjoni sussidjarja 389.01, artikolu 4(1) kif ukoll 4(3) u 5(4) u 5(5). Dwar ir-rekwizit tac-certifikat ta' training course ghamlet referenza ghal 4(1) tal-legislazzjoni sussidjarja 389.01 u ghal 4(3). Bhala procedura qabel ma tghalqilhom il-licenzja trid tigi mgedda kull sena u igibu c-certifikat tar-refresher course u jiehdu kopja u jpogguh fil-file. Imbghad minn hemm jghaddi ghand l-ispettur biex imbghad ikun jista' jarah li ghamel il-kors, jaghmlu r-ricerki li ghamlu minn naha tal-Pulizija qabel ma tigi renewed ghax jaghmlu vetting ta' kull persuna biex terga tigi mgedda l-licenzja, kif ikun *clear* u ghamel il-kors ikunu jistghu jaccettaw r-renewal. Jekk ma jkunx clear, jew ikollu sentenza tal-Qorti, jiccekjaw fuqha skont il-ligi. Din issir kull sena u l-kors isir kull sena. Bhalissa mhux tahdem fis-sezzjoni u tghid li minn dejjem kienet hekk, minn mindu harget il-ligi. Mhijiex certa kemm damet hemm imma jidhrilha sentejn u telqet f'Ottubru tas-sena elfejn u hdax (2011) jew Novembru tas-sena elfejn u hdax (2011). Spjegat li dejjem igibu l-kors, fil-fatt anke siehbu stess gab ir-refresher course, hu ma gabux. Dwar it-

tag qalet li jkollha *expiry date* li jaghtuhielhom ghal hames (5) snin u hija wkoll fil-ligi miktuba li wara hames (5) snin tiggedded it-tag. Jilbsuha meta jkunu on duty. Qabel ma giet emendata l-ligi kienet private guard licenjza wahda biss imbaghad wara li kienet giet emendata l-ligi giet illi hemm erba' licenzji, *private guard, private guard special driving, non-driving* u tal-*entertainment.* Kull individwu l-ewwel ikollu tal-*private guard* imbaghad wara hames (5) snin jahdem biha jkun jista japplika u jkun jahdem ma' agenzija licenzjata jkun jista' japplika ghat-tlieta l-ohra. Jista' japplika ghalihom it-tlieta jew jista' japlika ghal wahda imma jkun irid ikun ilu hames (5) snin jahdem bhala private guard biex ikun jista' japplika ghal dawn it-tlieta. Kull sena jrid igedded, irid jaghmel kors, il-kummissarju jarah ic-certifikat tal-kors u jkun jista' jdedded. Fl-antik kienet tal-private guard biss. Prezentat dokumentazzjoni bhala SZA9 u SZA10. Spjegat li t-tag ghal hames (5) snin u jkollha d-data ta' meta taghlaq. Imbaghad imur bil-karta tal-identia biex jibdel u jaghmlulu ohra. Qabel kienet *private guard* biss u mbaghad il-gdida peress li hemm erba' (4) licenzji tittikja liema wahda ghandu l-individwu.

Quddiem l-Ewwel Qorti l-Avukat difensur tal-appellant prezentat nota b'numru ta' sentenzi.

Ikkunsidrat;

Illi in breve l-fatti kienu s-segwenti:

1. Illi fis-6 ta' Awissu 2014 ghal habta tas-siegha u nofs ta' filghodu (1:30am) l-Ghassa ta' San Giljan irceviet telefonata mill-control room li kien hemm argument hdejn il-Burger King;

2. Kif il-Pulizija tad-Divizjoni telghu, sabu erba' (4) persuni ta' nazzjonalita' barranija u cioe' zewg (2) irgiel Francizi u zewg (2) nisa Skoccizi fejn dawn qalulhom li waqt li kienu gewwa l-post ta' divertiment 'Havana' gew agrediti minn '*bouncers*'. Jirrizulta li dan sehh wara argument ma' guvni;

3. Is-Sinjura Waddell marret mal-Pulizija, fejn skont ma xehed is-Surgent PS 1456 Jonathan Cassar kif waslu quddiem l-istabbiliment 'Havana' kien hemm is-Sur Robert Azzopardi li mill-ewwel indikatu bhala l-persuna li taghha d-daqqa ta' ponn u agredixxa lil Brahim. Wara li hargu l-*bouncers* li kienu xoghol Havana dak il-lejl, indikat ukoll lil Clifford Bugeja bhala wiehed mill-aggressuri;

4. Illi rrizulta li l-appellant ghalkemm kien licenzjat bhala gwardjan privat, ma kienx licenzjat biex jahdem bhala gwardjan privat f'post ta' divertiment;

5. Illi ghalhekk inhargu l-imputazzjonijiet fil-konfront tal-imputati;

6. Illi Clifford Bugeja ma ntgharafx mill-allegati vittmi kollha u gie misjub hati tat-tieni (2), it-tielet (3) u r-raba'(4) imputazzjoni u lliberat mill-ewwel (1) imputazzjoni mill-Ewwel Qorti.

Illi l-ewwel zewg aggravji tal-appellant jirrigwardaw principalment l-apprezzament tal-fatti li l-Ewwel Qorti ghamlet rigwardanti t-tieni (2) u t-tielet (3) imputazzjonijiet. Kif gie ritenut diversi drabi mill-Qrati, din il-Qorti ma tiddisturbax l-apprezzament dwar il-provi maghmul mill-Ewwel Qorti jekk tasal ghall-konkluzjoni li dik il-Qorti setghet ragonevolment u legalment tasal ghal konkluzjoni li waslet ghaliha.

L-ewwel agravju tal-appellant jirrigwarda it-tieni (2) akkuza li taghha instab hati, liema akkuza trid tigi ppruvata mill-prosekuzzjoni sal-grad rikjest mill-ligi. Skont l-appellant, mix-xhieda prodotti mill-prosekuzzjoni imkien ma rrizulta illi l-appellant kiser volontarjament l-bon ordni jew il-kwiet pubbliku b'ghajjat u glied. Illi skont l-appellant, l-Ewwel Qorti strahet fuq ix-xhieda ta' Kashana Anne Elder sabiex sabet lill-appellant hati ta' din l-akkuza meta kkunsidrat li "*F'dan il-każ, il-Qorti tqis li l-kommozzjoni u l-kollutazzjoni li segwiet kienu tali li qajmu disturb almenu f'membru tal-pubbliku prezenti-ċjoe fil-persuna ta' Kashana Anne Elder u li għalhekk dan ir-reat jirriżulta integrat fil-konfront taż-żewġt imputati.*" L-appellant jissottometti li meta Kashana Anne Elder giet mistoqsija jekk ratx lill-appellant involut fl-incident hija qalet "*I do not remember seeing him no*" ghalhekk l-appellant kellu jigi liberat minn din l-akkuza dedotta kontra tieghu.

Illi t-tieni imputazzjoni taqra li '*Nakkuzahom aktar talli fl istess data, lok, hin u cirkostanzi volontarjament kisru l-bon ordni jew il-kwiet pubbliku, bl-ghajjat u bil-glied Art 338(dd) Kap.9 tal-Kodici Kriminali.*' Louise Waddel li xehdet fis-6 ta' Awissu 2014 dwar l-appellant qalet '*I have seen him punch and pull him to the floor, the french boy that I call Ryan.*'[1] Mistoqsija '*What else did you these two gentlemen doing?*' wiegbet ' *I have seen them grievously escort my two friends out of the club for absolutely no reason. The punched, kicked.*' Kashana Anne Elder[2] li ukoll xehdet fis-sitta (6) ta' Awissu tas-sena elfejn u erbatax (2014) ma gharfitx lill-appellant. Brahim Benatsour li xehed ukoll fis-seduta tas-sitta (6) ta' Awissu tas-sena elfejjn u erbatax (2014) meta mistoqsi '*This gentleman who is standing up, therefore Clifford Bugeja, did you see him as being involved in any way during this situation, during this incident that happened*?' wiegeb '*I can't remember him because I loose some conscience because the punch was ...*' Filwaqt li Rafik Beztout li xehed fis-seduta tas-sitta (6) ta' Awissu tas-sena elfejn u erbatax (2014) in kontro ezami jghid li ra lill-appellant u jikkonferma li zamm lil Brahim, jghid li ma rahx jaghti daqqa ta' ponn u mistoqsi rahx jimbutta lil Brahim wiegeb iva.

Ghalkemm dawn l-erbgha (5) xhieda xehdu fl-istess gurnata li sehh l-allegat incident, dak li jipprovdi r-rapport tal-Pulizija huwa f'xi waqtiet konfliggenti ma dak li huma xehdu dak in-nhar stess quddiem l-Ewwel Qorti. Ir-rapport tal-Pulizija a fol 2 et sequitur fost fatti ohra jipprovdi li '*when questioned Mr. Brahim stated that whilst dancing inside Havana, two guys wanted to dance with Mrs. Waddell where he informed him that he was with her. Same added that this guy started crying and all of a sudden the securities approached and started punching them. Mr. Brahim positively identified the two people listed as person related as having assaulted him whilst identifying Mr. Azzopardi as punching Mrs. Waddell.*

Mrs. Waddell corraborated his version and insisted that Mr. Azzopardi punched her and also Mr. Brahim. Mrs. Elder also insisted that Mr. Azzopardi hit Mrs. Waddell and Mr. Brahim but stated that she did not recall Mr. Bugeja in the incident. However Mr. Beztout stated that

[1] Fejn ix-xhieda juzaw l-isem 'Ryan' huma qeghdin jirreferu ghal 'Brahim'.
[2] Fic-citazzjoni tnizzel l-isem 'Kashama Anne Elder' filwaqt li fir-rapport tal-Pulizija tnizzel 'Kashana Anne Elder'.

besides Mr. Azzopardi who hit Mrs. Wadel and Mr. Brahim, Mr. Bugeja also was involved and hit him besides Mr. Brahim.'

Illi dwar din l-imputazzjoni kontravenzjonali, din il-Qorti bhall-Ewwel Qorti taghmel referenza ghas-sentenza fl-ismijiet '**Il-Pulizija Vs Rocco D'Alessandro**'[3] fejn gie kkunsidrat li:

'Minħabba li l-ewwel imputazzjoni hija ksur volontarju tal- bon-ordni jew tal-paċi pubblika, il-Qorti qed tirreferi għas- sentenza 'Il-Pulizija versus Michael Camilleri et' tas-27 ta' Frar 2008 tal-Qorti tal-Appell Kriminali kif preseduta mill- Imħallef Dr.David Scicluna. F'dik is-sentenza nsibu dan li ġej dwar in-natura ta' din il-kontravenzjoni.

'Issa, kif gie spjegat fl-Appell Kriminali fl-ismijiet 'Il-Pulizija v. Paul Busuttil' deciz fit-23 ta' Gunju 1994:

"Skond gurisprudenza kostanti tal-Qrati tagħna, dan ir-reat javvera ruħu meta jkun hemm dak li fil-common law Ingliża kien jissejjah 'a breach of the peace'. Din l- ekwiparazzjoni ta' dana r-reat mal-kunċett Ingliz ta' 'a breach of the peace' tirrisali għal zmien Sir Adriano Dingli li proprju f'kawza deciza minnu fl-10 ta' Gunju, 1890, fl- ismijiet 'Ispettore Raffaele Calleja v. Paolo Bugeja et.,' kien qal hekk:

'Che il buon ordine e la tranquillita` pubblica sta nella sicurezza, o nella opinione ferma della sicurezza sociale, - nel rispetto dei diritti e dei doveri sia degli individui in faccia all'autorita` pubblica, sia degli individui stessi fra loro, e ogni atto che toglie o diminuisce la opinione della sicurezza pubblica, o della sicurezza individuale, e` violazione dell'ordine pubblico, indipendentemente dalla perpetrazione di altro reato'(Kollez. Vol. XII, p. 472, 475).1 Vol. LXXVIII.v.277.

A skans ta' ħafna repetizzjoni, din il-Qorti tagħmel referenza għall-ġurisprudenza miġbura fl-artikolu intitolat 'Calleja v. Balzan: Reflections on Public Order' pubblikat fil-Vol. X ta' The Law Journal - Id-Dritt (University of Malta, Autumn 1983) pagna 13 et seq., u specjalment pagni 28 sa 31. B'zieda ma' dak li hemm f'dak l-artikolu wiehed jista' jghid li r-reat ta' 'breach of the peace' fil-ligi Skoċċiza jirrikjedi wkoll ċertu element, imqar f'ammont żgħir hafna, ta' allarm. Fi kliem McCall Smith u Sheldon, fil-ktieb tagħhom. 'Scots Criminal

[3] Deciza mill-Qorti tal-Appell Kriminali nhar l-20 ta' Mejju, 2013 (Appell Kriminali Numru. 223/2012)

Law', Edinburgh, Butterworths, 1992):

'The essence of the offence is the causing of alarm in the minds of the lieges. This alarm has been variously defined by courts. In Ferguson v. Carnochan (1889) it was said not necessarily to be 'alarm in the sense of personal fear, but alarm lest if what is going on is allowed to continue it will lead to the breaking of the social peace'. Alarm may now be too strong a term: in Macmillan v. Normand (1989) the offence was committed when abusive language caused 'concern' on the part of policemen at whom it was directed' (p.192).

Naturalment huwa kwazi impossibbli li wieħed jiddeċiedi aprioristikament x'jammonta jew x'ma jammontax f'kull kaz għar-reat ta' ksur volontarju tal-bon ordni u l-kwiet tal- pubbliku. Kif jgħid awtur ieħor Skoċċiż, Gerald H. Gordon, fit-test awtorevoli tiegħu 'The Criminal Law of Scotland' (Edinburgh, 1978):

'Whether or not any particular acts amount to such a disturbance is a question of fact depending on the circumstances of each case, and strictly speaking probably no case on breach of the peace can be regarded as an authority of general application' (p.985, para. 41- 01).

U aktar 'il quddiem l-istess awtur jghid: ' . Although it has been held not to be a breach of the peace merely to annoy someone, such annoyance could amount to a criminal breach of the peace if the circumstances were such that it was calculated to lead to actual disturbance' (p. 986, para. 41-01).

Fl-Appell Kriminali fl-ismijiet Il-Pulizija v. Joseph Spiteri deciz fl-24 ta' Mejju 1996, din il-Qorti diversament presjeduta żiedet tgħid hekk:

"Il-Qorti hawnhekk tixtieq tippreciza a skans ta' ekwivoċi li l-kuncett ta' 'breach of the peace' kif abbraccjat fl-Iskozja huwa aktar wiesa' minn kif gie interpretat mill-qrati Inglizi. Fi kliem Jones u Christie fil-ktieb taghhom 'Criminal Law' (Edinburgh, Sweet & Maxwell, 1992), b'referenza għal-liġi Skoċċiża in materja:

'While the major part of the criminal law of Scotland could indeed be expressed in some facile, breach-of the-peace- type phrase, such as 'doing things (or refraining from doing things) which cause, or could reasonably cause alarm or disturbance', this would lead inevitably to complete uncertainty as to what exactly the law did prohibit. At present there is considerable uncertainty as to what breach of the peace itself properly covers; and it would thus be most

unwelcome to extend that uncertainty by enlarging the scope of breach of the peace at the expense of other, fairly well defined offences. But this is, of course, something of a vicious circle. It is precisely because breach of the peace has become so ill-defined that it has proved possible for it to stray into fields occupied by other offences. The only way to halt this process is for breach of the peace to be defined in a clearer and more limited fashion than is currently the case. Regrettably, however, there is little indication that this is likely to be so' (p. 295).

Il-kuncett Ingliz ta' 'breach of the peace' li, kif ingħad, il- Qrati tagħna jidher li fil-massima segwew, gie spjegat mill- Professur A.T.H. Smith fil-ktieb tiegħu 'Offences Against Public Order' (London, Sweet & Maxwell, 1987) hekk:

'Because of the association between 'peace' and 'quiet', there is a natural tendency to suppose that a breach of the peace is 'any behaviour that disturbed or tended to disturb the tranquillity of the citizenry'. But if any legal expression is a term of art, breach of the peace is one of them. Recently the courts have refined the concept, and established very clearly that it is allied to harm, actual or prospective, against persons or property. The leading modern authority is undoubtedly the decision of the Court of Appeal in Howell . Watkins L.J. said:

' . Even in these days when affrays, riotous behaviour and other disturbances happen all too frequently, we cannot accept that there can be a breach of the peace unless there has been an act done or threatened to be done which either actually harms a person, or in his presence his property, or is likely to cause such harm, or which puts someone in fear of such harm being done' (p.182).

Minn dana kollu din il-Qorti tara li, bħala regola, ikun hemm il-kontravvenzjoni kontemplata fil-paragrafu (dd) ta' l-art. 338 tal-Kap. 9 meta jkun hemm għemil volontarju li minnu nnifsu jew minħabba c-cirkostanzi li fihom dak l- għemil iseħħ inissel imqar minimu ta' inkwiet jew tħassib f'moħħ persuna (li ma tkunx l-akkużat jew imputat) dwar l- inkolumita` fiżika ta' persuna jew dwar l-inkolumita` ta' proprjeta`, kemm b'rizultat dirett ta' dak l-għemil jew minħabba l-possibilita` ta' reazzjoni għal dak l-għemil. Naturalment dawn iċ-ċirkostanzi jridu jkunu tali li oġġettivament inisslu l-imsemmi nkwiet jew tħassib.'

Il-Qorti kkwotat minn din is-sentenza 'in extenso' għaliex l- ispjegazzjoni mogħtija tista' tgħin biex il-Prosekuzzjoni tkun tista' tiddeċiedi aħjar meta għandha tagħti din l-imputazzjoni u meta le.

Minn dan il-każ jirriżulta li l-prinċipju li Qorti għandha ssegwi biex tar jekk kienx hemm ksur tal-ordni pubbliku huwa jekk mill-atti jirriżultax xi għemil volontarju li minnu nnifsu jnissel xi minimu ta' inkwiet jew tħassib f'moħħ persuna dwar l-inkolumita' fiżika ta' persuna jew proprjeta'.

Mill-provi l-Qorti ma tarax li jirriżulta dan il-biża' u għalhekk qed tiddeċiedi li l-appellant ma hux ħati ta' din l- imputazzjoni.'

Ghalkemm fix-xhieda moghtija *viva voce* minn Kashana Anne Elder hi ma gharfitx lill-imputat appellant bhala involut, hi xehdet li "*I stepped back because people were hitting and I stepped back*" ghalhekk l-Ewwel Qorti kkunsidrat li "*Huwa ċar li din il-persuna, membru tal-pubbliku preżenti f'dan l-istabbiliment ma ħassethiex sikura f'dak il-post fejn kienet minħabba l-ġlieda li seħħet quddiemha. Dan il-ġest evidentement juri li hija kellha apprensjoni għall-inkolumnita tagħha inkwantu kieku ma kienx hekk ma kienetx tersaq lura...*'. Din il-Qorti ma ghandhiex dubju li l-kommozzjoni kif deskritta mix-xhieda kienet tali li twassal ghal ksur tal-bon ordni jew kwiet pubbliku, izda dak li trid tara din il-Qorti huwa jekk kienx l-appellant li volontarjament kiser dan il-bon ordni jew il-kwiet pubbliku. L-Ewwel Qorti qieset li '*l-involviment u l-azzjoni tal-imputati, għalkemm b'modi u intensita ta' involvement differenti, xorta waħda tintegra dan ir-reat.*' u dan minkejja li Kashana Anne Elder ma gharfitx lill-appellant.

Fi proceduri penali, il-Prosekuzzjoni hija mistennija li tressaq provi u li tiprova l-kaz taghha ghal kull imputazzjoni abbazi ta' minghajr dubju dettat mir-raguni. Kif ikkunsidrat fis-sentenza moghtija minn din il-Qorti kif preseduta ghalkemm dwar mertu kompletament differenti ghal dan in ezami fis-sentenza fl-ismijiet **<u>'Il-Pulizija Vs Joseph Azzopardi Edward Vella</u>**'[4] gie kkunsidrat li:

'*L-obbligu li tipprova l-htija tal-akkuzat jrid ikun assolut, oltre kull dubbju dettat mir-raguni u f'kaz li jkun hemm xi dubbju ragjonevoli, il-Prosekuzzjoni tigi kunsidrata' li ma ppruvatx l-kaz taghha ta' htija u ghalhekk l-Qorti hija obbligata' li tillibera.*

Fil-fatt rigward liema grad ta' prova irid jigi sodisfatt l-Qorti taghmel referenza ghal dak li

[4] Deciza mill-Qorti tal-Appell Kriminali nhar l-4 ta' Settembru, 2018 (Appell Nru. 470/2017)

qal Lord Denning

"that degree is well settled...it must carry a high degree of probability...if the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence ' of course it is possible but not in the least probable' the case is proved beyond reasonable doubt, but nothing short of that will suffice."

Xi tfisser dubbju ragjonevoli mhux facli biex jigi deskritt, pero zgur li tfisser aktar mill- grad ta' probabilita. Il-livell tal-prova hija wahda gholja pero ma tridx tigi konfuza mal- livell ta' certezza morali u lanqas ma prova xjentifika. Lord J. Denning fis-sentenza Miller v Minister of Pensions (1935) qal:

"that degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible but not in the least probable' the case is proved beyond reasonable doubt but nothing short of that will suffice ."'

Fis-sentenza fl-ismijiet **'Il-Pulizija (Spettur Raymond D'Anastas) Vs PETER DE RAFFAELE'**[5] gie kkunsidrat li:

'Il-provi li hemm fl-atti certament mhux provi li in bazi taghhom Qorti tista' tasal sabiex issib htija fih b'mod ragjonevoli. Il-provi huma biss dawk li hemm fl-atti, u jekk tonqos xi prova importanti, din ma tista' qatt tigi sostitwitha b'xi kongetturi, b'xi konkluzzjoni mehuda gratuwitament, b'xi asserzjoni ta' xi fatt li ma jirrizultax mill-provi prodotti.'

Dak li din il-Qorti trid tikkunsidra huwa jekk mill-assjem tal-provi, l-Ewwel Qorti kinitx *safe and satisfactory* li ssib li l-appellant kien involut u li volontarjament kiser il-bon ordni jew il-kwiet pubbliku, bl-ghajjat u bil-glied. Jirrizulta li ghalkemm Louise Waddell meta akkumpanjat lil Pulizija lejn Havana identifkat liz-zewg imputati, fir-rapport tal-Pulizija jintqal li '*Mrs. Waddell corraborated his version and insisted that Mr. Azzopardi punched her and also Mr. Brahim.*' Biss pero' meta xehdet quddiem l-Ewwel Qorti din qalet li l-appellant Clifford Bugeja kien anke ta' daqqa' ta' ponn kif jidher aktar 'il fuq. L-Ewwel Qorti qieset li '*mhix qegħda tistrih fuq din il-verżjoni in kwantu*

[5] Deciza mill-Qorti ta' l-Appell Kriminali nhar il-25 ta' Settembru, 2001 (Appell Nru: 232/2000)

hija kontrastata minn dawn iż-żewġt xhieda li kienu direttament involuti fl-inċidenti aktar mill-qrib.' u dan fir-rigward tal-ewwel (1) aggravju fejn l-appellant gie liberat minnha. Din il-Qorti qieghda ghalhekk tiskarta dak li xehdet Louise Waddell anke *ai finijiet* tal-imputazzjonijiet l-ohra. Mill-kumplament jirrizulta li skont ma jirrizulta mix-xhieda *viva voce* la Kashana Anne Elder u lanqas Brahim Benatsou ma gharfu lill-appellant u dan minkejja li r-rapport tal-Pulizija jipprovdi li '*Mr. Brahim positively identified the two people listed as person related as having assaulted him...*' Filwaqt li Rafik Beztout fix-xhieda *viva voce* jghid jaghraf lill-appellant u jghid li rah jimbotta lil Benatsou izda fir-rapport tal-Pulizija tnizzel li '*Mr. Beztout stated that besides Mr. Azzopardi who had hit Mrs. Wadell and Mr. Brahim, Mr. Bugeja also was involved and hit him besides Mr. Brahim.*'. Illi sabiex din it-tieni (2) imputazzjoni tigi pruvata l-azzjoni trid imqar tnissel minimu ta' inkwiet jew thassib f'mohh persuna dwar l-inkomumita' fizika ta' persuna jew proprjeta' kemm b'rizultat dirett ta' dak l-ghemil jew minhabba l-possibilita' ta' reazzjoni ghal dak l-ghemil. Issa ghalkemm ma hemmx dubju li l-kommossjoni li x-xhieda jiddeskrivu li nqalghet nislet din il-biza kif deskritta f'Kashana Anne Elder ghalkemm hija ma gharfitx lill-imputat, din il-Qorti trid tikkunsidra jekk gie pruvat minghajr dubju dettat mir-raguni li l-appellant kien involut u li ghalhekk kien l-appellant ukoll li volontarjament kiser il-bon ordni u l-kwiet pubbliku u li konsegwentement ikkawza dik il-biza f'membru tal-pubbliku.

Issa huwa veru li skont l-artikolu 638(2) tal-Kapitolu 9 tal-Ligijiet ta' Malta, xhud wiehed jekk emmnut huwa bizzejjed biex taghmel prova shiha u kompluta minn kollox, irrispettivament jekk il-fatt ikunx gie pruvat minn aktar xhieda izda din il-Qorti mill-asjem tal-provi baqalha *lurking doubt* u hija tal-fehma li l-htija tal-appellant ma gietx ippruvata b'mod assolut u ghalhekk din il-Qorti in linea tal-principju li d-dubju ghandu jmur favur l-appellant hija obbligata li tillibera. Ghalhekk din il-Qorti sejra tirrevoka fejn din il-Qorti sabet htija tat-tieni (2) imputazzjoni fil-konfront tal-appellant u sejra tilliberah minnha.

It-tieni aggravju tal-appellant jirrigwarda t-tielet akkuza li taqra '*Nakkuzahom aktar talli fl istess data, lok, hin u cirkostanzi hebbew kontra Brahim Benatsou, Rafik Beztout, Kashama Anne Elder u Louise Weddell sabiex jingurjawhom, idejquhom jew jaghmlulhom*

hsara (Art. 339 (1)(d) Kap 9 tal-Kodici Kriminali).' Din l-akkuza ukoll trid tigi ppruvata mil-prosekuzzjoni sal-grad rikjest mill-ligi. Skont l-appellant, ix-xhieda prodotti mill-prosekuzzjoni hija mimlija inkonsistenzi u ghalhekk ma jistax jigi ppruvat b'certezza hekk mitlub mil-kamp kriminali illi l-appellant hebb kontra Brahim Benastou, Rafik Beztout, Kashana Anne Elder u Louise Weddel sabiex jingurjahom, idejjaqhom jew jaghmlilhom hsara. Jissottometti li jekk Kashana Anne Elder ma ratx lill-appellant involut fl-incident, kif l-appellant seta' jinstab hati illi hebb kontriha sabiex jingurjaha, jdejaqha jew jaghmlilha xi hsara? Meta mistoqsija "*Who hit you*?", hija wiegbet "*I don't know someone, there were so many, it wasn't only these two gentleman, there were too many involved*." Ghalhekk l-appellant jissottometti li kellu jigi liberat fil-konfront taghha la darba hija stess ammetiet li huwa ma ghamel xejn lilha. Brahim Benatsou ukoll sahaq li ma rax lill-appellant. Meta mistoqsi "*This gentleman who is standing up, therefore Clifford Bugeja, did you see him as being involved in any way during this situation, during this incident that happened?*" u wiegeb "*I can't remember him...*" Illi ghalhekk skont l-appellant la darba lanqas ftakar li kien hemm l-appellant fl-incident, huwa ma setax jinstab hati fil-konfront ta' Benatsou. Skont l-appellant, Rafik Betzout qal illi ra lill-appellanti l-ewwel *pulling* Brahim Benatsou u wara qal li rah *pushing* Benatsou izda wiehed irid jigi mfakkar illi l-istess Betzout qal li kien hemm hafna security guards, kien id-dlam gewwa Havana u huwa kien qala daqqa f'wiccu allegatament minn Robert Azzopardi. Wiehed issibha ferm difficli illi f'dik il-konfuzjoni shiha huwa seta' jgharaf lill-appellant. Issottometta li wiehed isibha ferm iktar difficli kif Brahim Benatsou l-persuna li allegatament gie "pulled" u "pushed" minn l-appellant, ma setax jiftakar li l-appellant kien involut. Ghalhekk skont l-appellant, hu kellu jigi liberat minn din l-akkuza migjuba kontra tieghu.

Kif ikkunsidrat, skont ix-xhieda viva voce jirrizulta li kienu Louise Waddell u Rafik Beztout li gharfu lill-appellant. Din il-Qorti izda tenut kont ta' dak ikkunsidrat f'din is-sentenzi, ma hijiex tal-fehma li gie pruvat minghajr dubju detat mir-raguni li kien Clifford Bugeja li hebb ghall-allegati vittmi sabiex jingurjahom, idejaqhom jew jaghmlilhom il-hsara. L-Ewwel Qorti abbinat din l-akkuzat mal-fatt li gwardjan privat debitament licenzat fil-qadi ta' dmirjietu ghandu s-setgha li juza dik il-forza minima mehtiega meta persuna tikser ordnijiet legittimni moghtija lilha minghajr trazzin fiziku. Kif se tikkunsidra dwar ir-raba' (4) imputazzjoni, l-appellant

ghalkemm licenzjat biex jahdem bhala gwardjan privat ma ma kienux debitament licenzjat sabiex jipprovdi servizzi ta' gwardjan privat f'post ta' divertiment u ghalhekk f'dak il-mument is-setgha moghtija lil gwardjani privati licenzati biex jipprovdu servizzi f'postijiet ta' divertiment ma kienx japplika ghalih. Jirrizulta mix-xhieda *viva voce* quddiem l-Ewwel Qorti li x-xhieda ma jiddentifikawx lill-appellant bhala l-persuna li agredixxa lil Louise Weddell. Ma hemm l-ebda prova li l-appellant hebb ghal Kashana Anne Elder biex jingurjaha, idejjaqha jew jaghmlilha hsara u ghalhekk kif tajjeb issottometta l-appellant ma setghax jinstab hati fir-rigward taghha. Filwaqt li *viva voce* ghalkemm Brahim Benatsou ma gharafx lill-appellant, meta xehdet Louise Weddell viva voce tghid li '*I have seen him punch and pull him to the floor, the french boy that I call Ryan.*' dan b'konflitt ma dak li qalet *a tempo vergine* fir-rapport tal-Pulizija ossia li ghalkemm hi identifikat iz-zewg imputati bhala l-aggressuri, fir-rapport tnizzel li qalet li kien Azzopardi li ta daqqa ta' ponn lilha u lis-Sur Brahim. Rafik Beztout in kontro ezami xehed li ra lill-appellant izommu u jimbutta lil Brahim Benatsou, dan ukoll kuntrarjament ghal dak li tnizzel fir-rapport tal-Pulizija li qal li '*Mr. Bugeja also was involved and hit him besides Mr. Brahim.*'. Ix-xhieda kkonfermaw li kien hemm numru sostanzjali ta' bouncers involuti.

F'parti mill-filmat esebit a fol 136 tal-process, jirrizultaw persuni li din il-Qorti qieghda tinterpreta bhala *bouncers* jidhru diehlin il-gewwa b'heffa u ftit minuti wara *bouncers* jidhru qeghdin jeskortaw persuni l-barra b'mod aggressiv inkluz li jidhru li qeghdin jaghtu daqqiet ta' ponn izda fejn wicc il-persuni li fuq il-filmat jidhru li qeghdin jigu aggrediti ma jidhirx stante li l-filmat juri lil persuni li qeghdin jigu aggrediti minn wara. L-Avukat difensur skont ma jirrizulta mit-traskrizzjoni tas-sottomissjonijiet orali maghmulha quddiem din il-Qorti diversament preseduta tissottometti ukoll dwar li mill-filmat ma jidhirx l-appellant u dwar x-xhud li semma li l-appellant kien 'pulling' tissottometti li '*hlief li kien qieghed 'pulling,' u kif qed nghid sempliciment 'pulling', biex tferraq glieda, Alla hares kull min iferraq glieda u mbghad jigi punished.*' Tissottometti li 'pulled' mhux 'pushed'. Din il-Qorti minkejja li jirrizulta li Rafik Beztout in kontro-ezami jghid li l-appellant kien qieghed jimbotta lil Brahim u ghalhekk mhux kif issottomettiet l-Avukat difensur tal-appellant, din il-Qorti mhijiex sejra tidhol f'jekk dawn l-allegati atti jintegrawx fir-reat kontravvenzjonali tat-tielet (3) imputazzjoni senjatament dwar jekk il-fatt li l-appellant ma kienx licenzat biex

jipprovdi servizzi ta' gwardjan privat f'positijiet ta' divertiment huwa ma setghax juzaw forza minima u dan stante li din il-Qorti b'dak li ghandha quddiemha ma tistax tiddeciedi fuq bazi ta' minghajr dubju dettat mir-raguni li l-appellant kien involut u li hebb ghal Brahim Benatsou, Rafik Beztout, Kashama Anne Elder u Louise Weddell. Id-dubju dwar l-involviment tal-appellant ghandu jmur favurih u ghalhekk din il-Qorti qieghda tirrevoka ukoll fejn l-Ewwel Qorti sabet lill-appellant hati ta' din it-tielet (3) imputazzjoni u ghalhekk sejra tilliberah minnha.

Ikkunsidrat;

Illi t-tielet aggravju jirrigwarda ir-raba' (4) imputazzjoni. Liema imputazzjoni taqra '*Nakkuzahom aktar talli fl- istess data, lok, hin u cirkostanzi hadmu bħala aġenzija ta' gwardjani privati jew bħala gwardjani privati jew hekk offrew s-servizzi tagħhom, minghajr ma kellhom licenzja skont id-disposizzjonijiet tal-Kap 389*'. L-appellant jissottometi li kien fil-pussess ta' licenzja ta' gwardjan privat izda ma kienx fil-pussess ta' licenzja ta' gwardjan privat ta' post ta' divertiment. Jirrizulta li mhuwiex kontestat skont ma gie sottomess fir-rikors tal-appell li l-appellant kien fil-pussess ta' licenzja ta' gwardjan privat izda mhux licenzja ta' gwardjan privat biex jipprovdi servizz f'post ta' divertiment. L-appellant qieghed jibbaza l-aggravju tieghu fuq kif hija imnizzla l-akkuza li issemmi li ma kellux licenzja izda ma ssemmiex specifikament licenzja ta' gwardjan divertiment ta' post ta' divertiment. Jissottometti li l-akkuza ma ssemmix il-lok tal-incident bhala fejn sehh l-allegat incident u cioe' l-istabbiliment ta' divertiment tal-Havana izda ssemmi San Giljan. Jissottometti li gewwa San Giljan ma hemmx biss l-istabiliment ta' divertiment bl-isem ta' Havana imma hemm stabbilimenti ohra kif ukoll djar residenzjali. Skont l-appellant la darba l-lok kien San Giljan u la darba l-akkuza kienet biss rigward in-nuqqas ta' licenzja ta' gwardjan privat, l-Ewwel Qorti ma setghatx issib lill-appellant hati ghax ma kellux il-licenzja rikjesta.

Din il-Qorti tibda biex tissottolinea li minkejja li l-imputazzjonijiet ma jsemmux l-istabbiliment 'Havana', izda jissemma San Giljan, ma hemmx dubju mill-provi prodotti li dak in-nhar l-appellant kien xoghol fl-istabbiliment ta' divertiment 'Havana' li jinsab f'Paceville u ghalhekk jaghmel parti minn San Giljan. Tant li meta

Louise Waddell marret mal-ufficjali tal-Pulizija hdejn 'Havana' u l-bouncers kollha ntalbu johorgu mill-istabbiliment sabiex Louise Waddell tiddentifika l-aggressuri, l-appellant Clifford Bugeja hareg mill-istabbiliment. Is-Surgent PS 1456 Jonathan Cassar meta mistoqsi kif jaf li l-imputati jahdmu bhala bouncers, wiegeb li '*Stajt niddedotta dan mill-ħwejjeg, mill-fatt li jkollhom ir-radio.*' Din il-Qorti tissottolinea li l-Prosekuzzjoni ma kellhiex ghalxiex specifikament issemmi l-istabbiliment ta' divertiment fl-imputazzjoni ghax dan wara kollox johrog car mill-provi.

Din il-Qorti sejra tikkunsidra kif giet postulata r-raba' (4) imputazzjoni ossia li hadmu bhala gwardjan privat jew offrew s-servizz taghhom minghajr ma kellhom licenzja skont id-disposizzjonijiet tal-Kapitolu 389 u ghalhekk l-imputazzjoni hija wahda generika u ma ssemiex li l-appellant ghalkemm kellu licenzja valida biex jiprovdi servizz ta' gwardjan privat, ma kellux licenzja biex jipprovdi servizz ta' gwardjan privat f'post ta' divertiment. Skont il-Kapitolu 389 tal-Ligijiet ta' Malta '"*gwardjan privat*" *tfisser individwu li hu impjegat jew li jaħdem ma' aġenzija ta' gwardjani privati fil-provvista ta' servizzi ta'gwardjani privati inklużi dawk is-servizzi f'post ta' divertiment u servizzi ta' gwardjani privati speċjalizzati;*' Fit-trattazzjoni orali traskritta quddiem din il-Qorti diversament preseduta l-Avukat difensur tal-appellant issottomettiet ukoll li l-akkuza ma tispecifikax l-artikolu tal-ligi izda tirreferi biss ghal Kapitolu 389 tal-Ligijiet ta' Malta. Dwar dan din il-Qorti tikkunsidra li l-Prosekuzzjoni ma kellhiex ghalxiex tnizzel l-artikoli li jikkontemplaw ir-reat, tant li l-indikazzjoni tal-Kapitolu 389 ma tillimitax lill-Qorti milli mhux biss tikkunsidra l-artikoli f'dan il-Kapitolu izda anke legislazzjonijiet sussidjarja taht dan il-Kapitolu.

Din il-Qorti taghmel referenza ghal uhud mill-kunsiderazzjonijiet maghmulha mill-Ewwel Qorti dwar din l-imputazzjoni:

'*B'hekk filwaqt li huwa minnu li legalment it-tifsira ta' gwardjan privat tinkludi dawk is-servizzi f'post ta' divertiment u servizzi ta' gwardjani privati specjalizzati, mill-banda l-oħra sabiex persuna tkun f'qagħda li legalment tipprovdi dawk is-servizzi hija trid tkun wetqet l-obbligi li jkunu joħorġu mill-Att u mir-Regolamenti relattivament għal dik il- kategorija ta' servizzi li huwa jkun irid japplika. In definittiva, jekk huwa ried li japplika biex jopera bħala (1) gwardjan privat (2) fil- kategorija ta' servizz f'post ta' divertiment, il-liċenza maħruġa*

biex jopera bħala gwardjan privat mhix biżżejjed – anke jekk it-tifsira ta' gwardjan privat tinkludi dawk is-servizzi – u dan għaliex bis-saħħa tal- istess liġi kif riflessa fir-regolamenti tagħmilha obbligatorja fuq l- applikant li jissodisfa ċerti kriterji ta' taħriġ u li l-liċenza tiegħu tkun tindika għall-liema kategorija ta' servizz huwa jkun qiegħed jiġi liċenzat li jopera. Fin-nuqqas ta' dan, mhux possibbli li jingħad li persuna tkun debitament liċenzata biex tipprovdi dak is-servizz partikolari.

Ergo persuna liċenzata biex tipprovdi servizz ta' gwardjan privat, tista' tipprovdi dak is-servizz. Iżda biex tkun tista' legalment tipprovdi servizz ta' gwardjan privat f'post ta' divertiment teħtieġ li tkun speċifikament liċenzata għal dik il-kategorija ta' servizz. Fin-nuqqas ta' tali liċenzar dik il-persuna ma tistax topera bħala gwardjan privat f'post ta' divertiment. U jekk tagħmel dan tkun qegħda taġixxi jekk mhux ukoll bi ksur tal-Att prinċipali, żgur kontra l-kondizzjonijiet tal-liċenza tagħha. Dan l-aħħar ksur waħdu huwa suffiċjenti sabiex jintegra r-reat de quo fir-rigward ta' Bugeja.'

L-artikolu 3 tal-Kapitolu 389 tal-Ligijiet ta' Malta jaqra:

'*Ebda persuna ma għandha taħdem bħala aġenzija ta' gwardjani privati jew bħala gwardjan privat jew hekk toffri s-servizzi tagħha, kemm-il darba dik il-persuna ma jkollhiex liċenza skont id-disposizzjonijiet ta' dan l-Att.*'

Filwaqt li r-regolament 7 tal-Legislazzjoni Sussidjarja 389.01 intitolata 'Regolamenti Dwar Gwardjani Privati' taqra:

(1) Applikazzjoni għal liċenza ta' gwardjan privat għandha ssir lill-Kummissarju fil-forma murija fit-Tielet Skeda.
(2)Għandu jitħallas lill-Kummissarju dwar liċenza ta' gwardjan privat dritt ta' tlieta u għoxrin euro u disgħa u għoxrin ċenteżmu (23.29) mal-ħruġ tal-liċenza u dritt ta' ħdax-il euro u ħamsa u sittin ċenteżmu (11.65) kull sena mat-tiġdid.
(3) Liċenzi maħruġa lill-gwardjani privati għandhom jindikaw jekk id-detentur hux "Gwardjan Privat"," Gwardjani Privat fuq Post ta' Divertiment", "Gwardjani Privati Speċjalizzat (tas-sewqan)" jew "Gwardjan Privat Speċjalizzat (mhux tas-sewqan)":
Iżda jekk id-detentur jappartjeni għal iktar minn kategorija waħda ta' Gwardjan Privat, id-detentur ikun meħtieġ li jkollu liċenza waħda biss li tindika l-kategorija/kategoriji tal-

operazzjonijiet. Għalhekk liċenza tista' tindika li d-detentur jista' jipprovdi servizzi f'xi waħda jew aktar mill-kategoriji li ġejjin:
Gwardjan Privat;
Gwardjan Privat Speċjalizzat (tas-sewqan);
Gwardjan Privat Speċjalizzat (mhux tas-sewqan);
Gwardjan Privat fuq Post ta' Divertiment.
(4) Id-detentur tal-liċenza għandu jkollu dawk id-dmirijiet u s-setgħat li huma assenjati mill-Att u b'dawn ir-regolamenti:
Iżda gwardjan privat speċjalizzat (tas-sewqan) biss jista' jipprovdi servizzi ta' gwardjani privati fir-rigward tat-trasport jew g]assa fit-trasport ta' proprjetà jew ta' flus.'

Ghalhekk jirrizulta li gialadarba l-appellant kif jirrizulta mill-provi kellu licenzja ta' gwardjan privat valida izda mhux licenzja ta' gwardjan privat biex jahdem f'post ta' divertiment, u gialadarba li l-appellant hareg mill-post ta' divertiment 'Havana' meta l-*bouncers* intalbu li johorg *ai fini* ta' identifikazzjoni, ma hemmx dubju li kien qieghed jaghti servizz ta' gwardjan privat f'post ta' divertiment ghalkemm ma kienx licenzjat biex jaghmel dan. Hawn hekk mhux biss *si tratta* li meta persuna japplika ghal licenzja jaghzel liema licenzja qieghed japplika ghaliha izda *in oltre* biex per ezempju persuna tinghata licenzja ta' gwardjan privat ma' post ta' divertiment jehtieg li jkollu certu rekwziti li ma humiex mehtiega biex persuna tapplika biex ikollha licenzja ta' gwardjan privat biss. Il-Prosekuzzjoni ma kellhiex ghalxiex tispecifika li l-appellant ghalkemm kellu licenzja biex jahdem ta' gwardjan privat ma kellux licenzja biex jahdem f'post ta' divertiment bhala gwardjan privat. L-imputazzjoni kif postulata tiprovdi li hadem bhala gwardjan privat jew offra s-servizzi tieghu minghajr ma kellu licenzja skont id-disposizzjonijiet tal-Kapitolu 389. Ghalhekk gialadarba jirrizulta li l-appellant f'dak il-lejl kien qieghed jaghti servizz ta' gwardjan privat ma post ta' divertiment minghajr ma kien licenzjat biex jaghmel dan, l-Ewwel Qorti kienet korretta meta sabet htija ta' din ir-raba' (4) imputazzjoni tirrizulta pruvata.

Ikkunsidrat;

In vista li din il-Qorti sejra tirrevoka fejn l-Ewwel Qorti sabet htija tat-tieni (2) u t-tielet (3) imputazzjoni izda qieghda tikkonferma l-htija tar-raba' (4) imputazzjoni, din il-Qorti sejra naturalment tvarja il-piena inflitta mill-Ewwel Qorti. L-Ewwel Qorti kienet illiberat lill-appellant bil-kondizzjoni li ma jaghmilx reat iehor fi zmien sena, liema piena qieghda tigi revokata minn din il-Qorti.

Stante li l-Ewwel Qorti dwar ir-raba' imputazzjoni li taghha l-appellant qieghed jigi kkonfermat li huwa hati, imponiet ukoll multa *ai termini* tal-artikolu 25(b) tal-Kapitolu 389 tal-Ligijiet ta' Malta, din il-Qorti qieghda tikkonferma l-piena ta' multa ta' elf ewro (€1000).

Ghaldaqstant, din il-Qorti qieghda taqta' u tiddeciedi billi tilqa' limitatament l-appell tal-appellant Clifford Bugeja fejn filwaqt li tirrevoka fejn l-Ewwel Qorti sabet htija tat-tieni (2) u t-tielet (3) imputazzjoni u qieghda minflokk tilliberah minnhom, tikkonferma fejn ma sabitx lill-appellant hati tal-ewwel (1) imputazzjoni u tikkonferma ukoll fejn sabet lill-appellant hati tar-raba' (4) imputazzjoni. Fir-rigward tal-piena qieghda filwaqt li tirrevoka fejn *ai termini* tal-artikolu 22 tal-Kapitolu 446 tal-Ligijiet ta' Malta ghamlet ordni fejn permezz taghha illiberatu bil-kondizzjoni li ma jaghmilx reat iehor fi zmien sena mil-lum, qieghda izda tikkonferma l-imposizzjoni ta' multa ta' elf ewro (€1000).

(ft) Consuelo-Pilar Scerri Herrera

Imhallef

VERA KOPJA

Franklin Calleja

Deputat Registratur