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

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

Kumpilazzjoni Nru. 41/2019

Il-Pulizija
(Spettur Eman Hayman)

-vs-

Tiziana Scicluna, detentriċi tal-Karta tal-Identita` 479587M

Illum: 15 ta' Gunju, 2020

Il-Qorti,

Rat l-akkużi miġjuba fil-konfront tal-imputata Tiziana Scicluna u cioe` talli:

Nhar nhar id-9 ta' Novembru, 2018, fil-ħinijiet ta' bejn is-14:00hrs u t-15:00hrs ġewwa il-Kalkara:

1. Volontarjament ikkaġunat ħsara fil-ġisem jew fis-saħħa, u ċioe' offiża ta' natura gravi fuq il-persuna ta' Rose Scicluna I.D: 375354M, skont ma' iċċertifika Dr. Marius Caruana Med Reġ No : 2984 miċ-Ċentru tas-Saħħa ta' Raħal Ġdid.

2. Hebbet kontra l-persuna ta' Rose Scicluna I.D: 375354M sabiex tinġurjaha, idejjaqha jew tagħmel ħsara lil din il-persuna jew lil ħaddieħor.

3. Kissret il-bon ordni jew il-kwiet tal-pubbliku, b'għajjat u bil-ġlied.
Il-Qorti ġiet mitluba f'każ ta' ħtija, biex tipprovdi għall-persuna ta' Rose Scicluna, ID: 375354M, jew sabiex jinżamm il-bon ordni pubbliku, flimkien mal-

piena applikabbli għar-reat, torbot lil Tiziana Scicluna b'obbligazzjoni tagħha nnifisha taħt penali ta' somma ta' flus li tiġi ffissata mill-Qorti billi tapplika l-Artikolu 383 tal-Kapitolu 9 tal-Liġijiet ta' Malta, għal żmien li tħoss xieraq.

Rat in-nota tal-Avukat Generali permezz ta' liema baghat lill-imputata biex tigi gudikata minn din il-Qorti bhala Qorti ta' Gudikatura Kriminali kif mahsub fis-segwenti artikoli:[1]

1. Fl-artikoli 214, 215, 218 tal-Kapitolu 9 tal-Liġijiet ta' Malta;
2. Fl-artikoli 339(1)(d) tal-Kapitolu 9 tal-Liġijiet ta' Malta;
3. Fl-artikoli 338(dd) tal-Kapitolu 9 tal-Liġijiet ta' Malta;
4. Fl-artikoli 382A, 383, 384, 385, 386, 412C u 412D tal-Kapitolu 9 tal-Liġijiet ta' Malta;
5. Fl-artikolu 17, 31, 532A, 532B u 533 tal-Kapitolu 9 tal-Liġijiet ta' Malta.

Rat li l-imputata m'ghandha l-ebda oggezzjoni biex il-kaz jigi hekk trattat.

Rat l-atti u d-dokumenti kollha.

Semghet it-trattazzjoni finali.

Ikkunsidrat-

Rose Scicluna spjegat li wara li marret iggib lin-neputi mill-iskola, u qarbet lejn darha, ressqet fuqha l-imputata li ghamlitilha subghajha ma wiccha w *"Qaltli ghidt lill-mara tat-tifel tieghek, wassalli risposta ghax qalet it-tfal iggieldu u bdiet tghajjat. Dak kollox, ghidtilha, nizzel subghajk minn hemm, tghajjatx u r-risposta inwassalilek u **jien bqajt miexja u regghet giet fuqi**, u ....**qabdet idha, ghollieta u tefghatni mal-art** u dak kull ma kien kollu"*. Imbuttatha mill-ispalla tal-lemin, Rose imbarmet u waqqat.[2] Ma ntqal l-ebda kliem dispreggjattiv.[3] Minn *x-rays* li sarulha rrizulta li kienet soffriet ksur tant li baqghet tuza l-krozzi.[4] In kontro-ezami tixhed li f'idha kellha il-basket tal-iskola u *lunch box*. Tinnega li tfixklet fil-basktijiet ***"Qabbditni minn spallti u imbuttatni lura[5]... ...*** *Le le u mhux [tfixxkilt] fil-basktijiet xejn. Il-basktijiet baqghu imdendlin f'idejja u kelli n-nuccali tat-tifel, kollox f'idejja."*.[6]

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[1] Fol.118
[2] Fol.18
[3] Fol.19
[4] Fol.20
[5] Fol.21
[6] Fol.22

PC136 Glenn Spagnol iddeskriva kif l-imputata talbet l-assistenza tal-pulizija. Meta dawn marru fuq il-post kollox kien normali. Mitkellma mill-pulizija Tiziana qaltilhom li *"kmieni dakinhar kellmuha l-ghalliema tat-tifel taghha minhabba xi bullying li qed isir fl-iskola. Hija u sejra lura d-dar rat lil certu Rose Scicluna u marret tghidilha bhal speci x'gara u ma garax fuq il-kaz. Issa u hi kompliet tghid li kellhom xi jghidu b'mod verbalment u din ma missietha qatt u f'daqqa wahda waqghet…… Kif rat hekk Tiziana marret lura d-dar u wara certu hin marru jhabbtulha il-familjari ta' Rose Scicluna u kien f'dak il-mument li cemplet lilna ghall-assistenza taghna."*[7] Ingabar *cctv footage* izda mill-filmat ma setghax jghid x'wassal sabiex persuna taqa' mal-art.[8] Il-*footage* gie esebit mill-**Ispettur Eman Hayman**.[9]

Joseph Scicluna, missier l-imputata, xehed li kien qed jistenna lin-neputi jasal mill-iskola meta sema' l-ghajjat. Dak il-hin kien kantuniera boghod jistenna l-van jasal. *"Xejn kien ghadu ma giex it-tifel ta' Tiziana Scicluna, jiena ersaqt ghax smajt l-ghajjat u ma tkellimtx ghax ma kienx xejn hlief ghajjat bejniethom u kull ma kelli biss provokazzjoni minn naha ta' Rose Scicluna, ejja missni, ejja missni u jien ma tkellimtx, ma tarax."*[10] Meta wasal hdejhom, lil Rose sabha bil-wieqfa.[11] Mistoqsi mill-abbli avukat ghall-parte civile ghaliex ma qal xejn lill-pulizija dwar il-kliem provokatorju li qaltlu Rose, jghid li kien qal b'dan lill-pulizija[12] – xi haga li s-Surgent jinnega.[13] Martu nizlet ma bintu biex jitkellmu ma Rose izda hu resaq lejhom biss x'hin sema' l-ghajjat.[14] Joseph jghid li kien jaf li bintu kellha tkellem lil omm it-tifel, izda rat lill-nanntu w marret tghid lilha.[15]

Ghalkemm kif juri l-filmat mhux minnu li Joseph baqa' sieket u ma kellux involviment fl-argument li evolva, galadarba dan wasal fuq il-post wara li Rose kienet gja` waqghet, il-Qorti ma thossx li hu opportun tikkumenta ulterjorment dwar il-kreddibilita` o meno ta' dan ix-xhud.

Rita Scicluna, omm l-imputata, bdiet biex tispjega li wara ittra li nkitbet mill-mara ta' bin Rose li n-neputi taghha, li jbghati bl-*autism,* kien qed issawtilhom it-tifel, Tiziana kellmet l-ghalliema u l-LSE ta' binha. Dawn qalulha li dan ma kienx minnu. Tiziana ddecidiet tkellem lill-omm it-tifel dwar dan izda minflok sabet lill-nanntu, Rose. *"U sabet lin-nanna tieghu u marret tkellimha t-tifla bl-edukazzjoni u qabdet tghajjat Rose u kif rajt hekk jiena mort hdejn it-tifla u ghidtilha t-*

7 Fol.24-25
8 Fol.25
9 Fol.27. Vide CD, **Dok.EH,** a fol.64
10 Fol.34
11 Fol.35
12 Fol.37
13 Fol.54
14 Fol.40
15 Fol.41

tifla bil-mod qed tkellmek, bl-edukazzjoni u kif rat lili saret dimonju ghax din kaz ilu, tletin sena ilu kellna kaz familjari u daqshekk konna ilna ma nitkellmu….. u bdiet tghajjat imsomma kif rat lili Rose u tant kienet mifxula li <u>tfixxklet f'saqajha u waqghet,</u> giet fuq il-basktijiet u regghet qamet… <u>rajtha taqa' wahedha u qamet wahedha</u>".[16] Kienu vicin xulxin ghaliex kienu qed jitkellmu. Tkompli *"kif rat lili saret dimonju, kienet ilha zzomm go fiha biex tpattihielna ghax ma nitkellmux ahna. Infixxlet f'saqajha, waqghet u qamet wahedha……* *Il-basktijiet tan-neputi taghha, kienu f'idejha, giet fuqhom meta tfixxklet f'saqajha u qamet."*[17] Tiddeskrivi l-atteggjament ta' Rose, *"Qisha indannata ghax ma nafx jien tmur tkellem bniedem bl-edukazzjoni u jaqbad jghajjat, mhux edukazzjoni dik ux."*, filwaqt li tichad li bintha ghamlet idejha ma wicc Rose – fatt li **jirrizulta mill-footage**. Zewgha wasal wara li din kienet regghet qamet fuq saqqajha, tant li baqghet tghajjarhom wara li qamet u tistieden lill-zewgha ghall-glied.[18] Fi tmiem ix-xhieda taghha tghid li minkejja li l-Qorti Rose tigi bil-krozzi, ratha fuq il-bejt bl-ixkupa u pala.[19]

WPC366 Jessica Degiorgio kkonfermat li kienet prezenti fit-tehid tal-istqarrija tal-imputata. Tiziana kkonfermat li avvicinat lil Rose biex tkellimha, izda din bdiet tghajjarha fuq affarijiet li sehhew fil-passat. Is-Surgent kellem lill-omm Tiziana li qalet li rat lil Rose ixxejjer idejha ma wicc bintha, toffendi lilha u lill-zewgha u ratha titfixxkel f'saqajha u taqa' fl-art.[20]

PS1576 Simon Grech beda biex ikkonferma l-**Current Incident Report**.[21] Mistoqsi jekk Joseph Scicluna qalx lill-pulizija li Rose kienet bdiet tipprovokah, is-surgent jghid li <u>kieku dan intqal lilu kien ikun mnizzel fir-rapport</u>.[22]

Dan ikompli jimmina serjament ix-xhieda ta' Joseph Scicluna!

Mill-**Current Incident Report** jirrizulta li *a tempo vergine* Tiziana qalet li Rose qabdet tghajjat maghha minghajr hi ma kienet ghamlitilha xejn u kien waqt l-argument li evolva bejniethom li din waqghet mal-art. Ftit tal-hin wara, Rose u qraba taghha marru wara d-dar ta' Tiziana tant li kien ghalhekk li hi cemplet lill-pulizija ghall-assistenza. Ir-rapport sar fl-4pm.[23] Meta l-pulizija tkellmet ma Rose, li wkoll irrikorriet l-ghassa biex taghmel rapport ghall-habta tal-4:30pm, din semmiet li Tiziana bdiet tghajjat maghha, ***"imbuttatha u waqghet mal-art*** *bil-konsegwenza li ghamlitilha ksur fil-pala tas-sieq tan-naha tal-lemin"*. Tiziana

[16] Fol.43-44
[17] Fol.45
[18] Fol.46-47
[19] Fol.47
[20] Fol.49-50
[21] Fol.6-10
[22] Fol.54
[23] Fol.8

regghet giet mitkellma u din spjegat li meta qaltilha li dak li nghad fuq binha ma kienx minnu, *"Rose Scicluna qabdet tghajjar u tghajjat lill-ommha fuq affarijiet li graw 30 sena qabel u kif bdiet iddur maghhom tfixlet fil-basktijiet tat-tifel u waqghet mal-art"*.[24] Rita Scicluna semmiet mal-pulizija li Rose *"ghamlet idejha ma wicc bintha u bdiet toffendiha lilha u lil zewgha Joseph Scicluna sakemm hin minnhom ratha titfixkel f'saqajha u taqa' mal-art"*. Joseph qal li fl-ebda hin ma ra lil Rose taqa' ma-art.[25]

Fl-istqarrija minn taghha Tiziana tghid li meta marret tirrinfaccja lil Rose biex isserhilha rasha li dak allegat fuq binha ma kienx minnu, *"qabdet tghajjat mieghi izda ninsisti li ghamlet dan wara li rat lill-ommi distanza l-boghod*[26]*…..indunat minn ahna u kien hawn li Rosie qishu irvillat u hawn inqala argument bejn Rosie u ommi fejn Rosie infexxet tghajjar l'ommi u gara li waqt li kienet qeghda taghmel dan, bl-eccitament tfixklet f'saqajha u waqghat…..Rosie bdiet taghmel idejha ma wicc ommi, resqet lura u tfixklet f'saqajha, kellha zewg basktijiet f'idejha u nizlet bil-mod fuqhom…**jien lanqas missejtha**"*. Tistqarr ukoll li xi 20 minuta wara Rosie marret ma bintha wara il-bieb tad-dar taghha tghajjarha u tghidilna *"inzlu ha nifqawkhom"*.[27]

Jigi nnutat li ghalkemm fid-dikjarazzjoni *a tempo vergine* qalet li Rose tfixxklet fil-basktijiet tat-tifel,[28] fl-istqarrija tbiddel il-verzjoni u dan wara li murija l-*footage* minn imkien ma jidher li Rose tfixxklet fil-basktijiet ghax fuq idejha kienu u hemm baqghu! Tispjega li kien il-pulizija li ma fehemx dak li qaltlu hi w tinsisiti li kull ma qaltlu kien li Rose tifxxklet f'saqajha.

Il-Qorti ma temminx li s-Surgent ha zbal fil-verzjoni li nizzel fil-Current Incident Report u temmen li dak kien fil-fatt x'qaltlu Tiziana a tempo vergine; dettal li meta murijha l-footage mill-Ispettur fil-kors tal-istqarrija taghha, taghzel li tibiddilha wara dak li ddikjarat l-ewwel darba ma rrizultax! **Kif seta' qatt is-Surgent jaghti dak id-dettal, li Scicluna tfixklet fil-basktijiet, meta hu ma kienx fuq ix-xena u kien qed jirriproduci dak irrakontat lilu???**

Jekk is-surgent ma kienx fuq il-post, kif fir-rapport tieghu jissemmew il-**basktijiet li tifxxklet fihom Rose, u li dawn kienu jappartjenu lit-tifel?** Il-logika w s-sens kommun jiddetta li xi hadd qallu b'dan, u minn ghajr ghall-imputata seta' jibbenefika minn verzjoni simili u cioe` li Rose tfixxklet fil-basktijiet tat-tifel? Verzjoni li kellha tinbiddel meta giet rinfaccjata mill-footage!

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[24] Fol.8-9
[25] Fol.9
[26] Fol.11
[27] Fol.12
[28] Fol.8-9

Dr. Marius Caruana kkonferma certifikat mediku mahrug minnu li juri li l-griehi sofferti minn Rose Scicluna kienu ta' natura gravi minhabba li kien ksur.[29] L-ezami sar fil-16:47hrs. Jispejga li Rose Scicluna *"kienet sostniet ksur fl-ghadam tas-saqajn, ok, ir-raba' u l-hames swaba', pero' l-ghadam li jidhlu gos-sieq jigifieri. Il-hames ghadma kienet miksura minn zewgt ibnadi u r-raba' wahda kienet miksura minn banda wahda. Dan gie eventwalment ikkonfermat fuq ir-report li nhareg minn Mater Dei. Is-Sinjura kellha bzonn li tintbaghat Mater Dei fejn imbaghad komplew iseguwha u ovvjament ikkuraw il-ksur li kellha f'saqajha…..il-ksur kien frisk…. fejn ha jkollok twisting injury tas-sieq fejn is-Sinjura x'aktarx waqghet u s-sieq marret fuqha innifisha, jigifieri imbarrmet mit-tul taghha qed nghidu* ***l-pala tas-sieq jigifieri imbarrmet mit-tul taghha. Jista' jkun li jigu kkawzati wkoll minn piz li jaqa' fuq is-sieq,*** *pero' li niftakar minn dan il-kaz ma jidhirlix li kien hemm xi tbengil jew qtugh li kien jikkonferma dan jigifieri l-probabbilita' l-kbira kienet li kien hemm tip ta' incident, kien hemm din il-liwja tas-sieq……* ***Barma tal-pala tas-sieq li ovvjament bil-piz taghha mbaghad jikkawza ksur.".***[30]

L-Ispettur Eman Hayman spjega dak li ra mill-*footage* li kien ingabar mill-pulizija in segwitu ghall-alterkazzjoni bejn Tiziana u Rose, *"Tiziana u Rose kienu f'distanza vicina hafna...u ftit distanza l-boghod kien hemm omm Tiziana".*[31] Fil-bidu kienu xi metru l-boghod izda din id-distanza naqset u f'hin minnhom jidher impatt, *"Mhux imbuttatura vjolenti...imma kien hemm tip ta' impatt u b'mod istantju Rose taqa' imma qamet u baqghet miexja ....kuntatt hemm kien...hi rajtha qeghda tmiss lejn in-naha tax-xellug tal-vittma...upper body.....u b'mod istantanju wara dan il-kuntatt Rose waqghet".*[32]

Jonathan Mizzi pprezenta r-rapport tieghu wara li nizzel numru ta' *stills* mill-*footage* esebit.[33] Il-Qorti ma strahietx fuq il-konkluzjoni tal-abbli espert izda ezaminat hi stess l-filmat esebit. Dan qed jinghad in kwantu ghal dak rilevat mill-abbli difensur tal-imputata fil-kors tas-sottomissjonijiet finali.

Tiziana Scicluna tixhed li wara li kellmet l-ghalliema ta' binha baqghet tistenna lill-omm it-tifel li allegat kien gie msawwat minn binha. Minflok sabet lill-nanntu w marret tellimha dwar dak li kien intqal lill-iskola.[34] Ommha baqghet distanza l-boghod. *"Bdejna nargumentaw, tfixklet, kien hemm il-bankina warajha, tfixklet f'saqajha, waqghet, regghet qamet qisha mhux hi u mbaghad li waqaf l-argument u morna d-dar, twenty minutes wara giet mat-tifla taghha Rose Scicluna mat-tifla*

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[29] Fol.13
[30] Fol.58-59
[31] Fol.61
[32] Fol.62
[33] **Dok.JM** a fol.70 et seq
[34] Fol.120

taghha voul diri bil-mixi, jghajjruna, jhedduna, jobzqu u joffenduna. Jien kont wahdi fil-post, ittawwalt mill-gallarija ghax ommi u missieri kienu marru vista ta' ghajnejha l-mummy u kont wahdi u xejn spiccat hemm l-istorja……Le konna vicin ghax konna qed nargumentaw imma hadd ma miss lil hadd, la hi u lanqas ahna, hadd ma miss lil hadd.".[35] In kontro-ezami tghid *"meta bdiet tghajjat bdejt nghidilha jien mhux qed nghajjat mieghek, speci kellimni bil-mod imbaghad semghetha ommi tghajjat u giet ommi taqbez ghalija……. Bdiet tghidli tkellimnix, tkellimnix, x'hin bdejt nghidilha fuq it-tifel, tkellimnix, tkellimnix qaltli ma rridx nisma".*[36] Tinsisti li hi ma ghamlet xejn imma baqghet hdejn ommha u missierha tisma l-argument. [37]

Din l-ahhar dikjarazzjoni mhix ghal kollox veritjiera. Il-filmat juri li kienet **Tiziana li segwiet lil Rose**. Kienet Tiziana li wkoll involviet ruha tant li dahhlet bejn ommha u Rose u f'anqas minn zewgt sekondi, **meta Tiziana giet kwazi wicc imb'wicc ma Rose, Rose waqghet**. Mhux minnu li kienet semplicement *by-stander* tant li anke wara li Rose qamet mill-art**, ommha kellha zzommha u timbottaha lura milli terga' tavvicina lil Rose.** Hu biss lejn l-ahhar mumenti tal-argument li hi tiehu pass lura u thalli lill-ommha w missierha jkomplu jikkustinjaw ma Rose.

Lanqas ma hi veritjiera meta tistqarr li wara li qalet lil Rose dak li kellha tghidilha, u cioe` li binha ma kellux x'jaqsam f'xi *bullying*, l-istorja intemmet hemm. Fil-fatt kif juri l-filmat, meta Rose ma tkomplix tkellimha u tipprova tibqa' miexja l-quddiem, Tiziana hi pronta u tkompli issewgiha – ezatt kif qalet Rose meta xehdet *vica voce: "jien bqajt miexja u regghet giet fuqhi".*[38]

Il-filmat juriha tiehu sehem attiv fid-dizgwid tant li **Rose waqghet fil-mument li l-argument jidher jishon sew u fl-istess waqt li Tiziana tigi wicc imb'wicc ma Rose kif ratha tinzel il-bankina biex tkompli tilletika ma ommha.**

[35] Fol.121
[36] Fol.123
[37] Fol.124
[38] Fol.18

Verzjonijiet Konfliggenti

Ghalhekk dan il-kaz hu senjalat b'zewg verzjonijiet konfliggenti. Dik ta' Rose Scicluna li tinsisti li Tiziana imbuttata w b'konsegwenza waqghet, u dik tal-imputata w ommha li jghidu li Rose waqghet meta tfixxklet f'saqajha. Dan ma jfissirx li ghalhekk u necessarjament il-Qorti ghanda tillibera lill-imputata.

Issir riferenza ghas-sentenza **Il-Pulizija vs Ivan Giliberti et**: [39]

> Illi kif gie ritenut minn din il-Qorti fis-sentenza Taghha fl-appell Kriminali "**Il-Pulizija vs. Emmanuel Attard**" [3.4.2003]i ghalkemm jista' jkun hemm "*certu konflitt fil-provi , dan ma jfissirx li dan ghandu bil-fors johloq dubju dettat mir-raguni li necessarjament ghandu jwassal ghall-liberazzjoni. Kif issottometta l-abbli Prosekutur, f'kull kaz ix-xiehda ta' xhud wiehed biss jekk emmnut minn min ghandu jiggudika fuq il-fatt hija bizzejjed biex taghmel prova shiha w kompluta minn kollox daqs kemm kieku l-fatt ikun gie pruvat minn zewg xhieda jew aktar (Art. 638 (2) tal-Kap.9) . U kwistjoni dwar il-kredibilita' ta' xhud tithalla fid-diskrezzjoni ta' min ghandu jiggudika l-fatti , billi jittiehed qies tal-imgieba , kondotta, karattru tax-xhud, tal-fatt jekk ix-xiehda ghandhiex mis-sewwa jew hix konsistenti , u ta' fattizzi ohra tax-xiehda tieghu , u jekk ix-xiehda hix imsahha minn xhieda ohra w tac-cirkostanzi kollha tal-kaz."*

L-istess Qorti f'**Il-Pulizija vs Joseph Zahra** kkunsidrat:[40]

> Inoltre jigi osservat ukoll li x-xiehda ta' xhud wiehed biss, jekk emmnut, hija bizzejjed biex tikkostitwixxi prova shiha u kompluta minn kollox, daqs kemm kieku l-fatt ikun gie pruvat minn zewg xhieda jew aktar[41]. U kif gie ritenut minn din il-Qorti diversament presjeduta fis-sentenza fl-ismijiet **Il-Pulizija vs Joseph Thorne** tad-9 ta' Lulju 2003, *"mhux kull konflitt fil-provi ghandu awtomatikament iwassal ghal liberazzjoni tal-persuna akkuzata. Imma l-Qorti, f'kaz ta' konflitt fil-provi, trid tevalwa l-provi skond il-kriterji enuncjati fl-artikolu 637 tal-Kodici Kriminali u tasal ghall-konkluzjoni dwar lil min trid temmen u f'hiex ser temmnu jew ma temmnux".*[42]
>
> ……………..
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> Evidentement l-Ewwel Qorti, wara konsiderazzjoni tal-provi kollha li ngabu quddiemha, wara li kellha l-opportunita` tqis "l-imgieba, il-kondotta u l-karattru" tax-xhieda u "tal-fatt jekk ix-xiehda ghandhiex mis-sewwa jew hix konsistenti, u ta' fattizzi ohra tax-xiehda tieghu, u jekk ix-xiehda hix imsahha minn xiehda ohra, u tac-cirkostanzi kollha tal-kaz" (artikolu 637 tal-Kap. 9) u wara li semghet is-sottomissjonijiet tal-prosekuzzjoni u tad-difiza, ikkonkludiet li l-appellant kien hati ta' l-imputazzjoni dedotta. ….

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[39] Per Onor. Imhallef Joseph Galea Debono, Deciza 07.01.2004; App. Krim. Nru. 188/2003

[40] Per Onor. Imhallef David Scicluna, Deciza 5 ta' Mejju, 2006; Appell Kriminali Numru. 243/2005

[41] Ara artikolu 638(2) tal-Kap. 9.

[42] Ara wkoll Appell Kriminali **The Police vs Graham Charles Ducker**, 19 ta' Mejju, 1957.

Fis-sentenza taghha **Il-Pulizija vs Mario Emanuel Camilleri** l-Qorti kkunsidrat:[43]

> Illi kif inhu maghruf f'kaz ta' kunflitt fil-provi mbaghad, jew cahda da parti ta' l-imputat tal-fatti li qed ikunu imputati lilu mhux necessarjament ghandu jigi liberat. Hawn ukoll pronunzjat ruhha diversi drabi l-Qorti ta'l-Appell Kriminali.
>
> *Il-fatt li l-appellant cahad dawn l-incidenti w li ghalhekk hemm konflitt fil-provi ma jfissirx necessarjament li hu kellu jigi liberat ghax l-Ewwel Qorti kienet libera li temmen il-versjonijiet ta' … u tiskarta dik tieghu. Mhux kull konflitt fil-provi awtomatikament iwassal ghall-liberazzjoni ta' akkuzat. Kif gie ritenut minn din il-Qorti diversament preseduta fl-Appell Kriminali:* ***"Il-Pulizija vs. Graham Charles Ducker"[****19.5.1997]: "It is true that conflicting evidence 'per se' does not necessarily mean that whoever has to judge may not come to a conclusion of guilt. Whoever has to judge may, after consideration of all circumstances of the case, dismiss one version and accept as true the opposing one"[44].*

Fl-isfond ta' dan it-taghlim il-Qorti ser tghaddi biex tezamina l-filmat esebit, sabiex tara jekk isservix bhala korroborazzjoni ta' xi verzjoni jew ohra.[45]

Il-filmat/*cctv footage*

Qabel xejn jigi rrimarkat li fl-istqarrija taghha Tiziana, murija estratt mill-filmat, tindika lilha bhala l-persuna liebsa qalziet griz u flokk iswed, ommha liebsa gakketta bajda (Rita) u r-ragel li jidher fil-filmat bhala missierha (Joseph).[46]

Qed jigi rrimarkat ukoll li l-filmat ma ghandux hinijiet. L-estratt tal-*footage* jibda 00:00:00 sal-00:35:51 u ghalhekk kull riferenza ghal xi hin tirreferi esklussivament ghall-hin tal-estratt.

08:47: Tiziana titfacca ghall-ewwel darba wieqfa fit-tarag li hemm fit-tarf tat-triq opposta, li taghlaq (*cul-de-sac).*

08:54: Tinghaqad maghha ommha Rita. Jidhru jistennew b'Tiziana tippassegja qrib it-tarag;, minn hin ghall-hin titkellem ma Rita li baqghet wieqfa fit-tarag.

20:03-20:09: Tiziana tidher **thalli l-post fejn kienet qed tistenna, tinzel it-tarag b'pass mghaggel**, b'ommha tidher ukoll fit-tarf tat-tarag u tibqa' gejja dejjem

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[43] Qorti tal-Magistrati (Ghawdex) Bhala Qorti ta' Gudikatura Kriminali. Per Onor. Magistrat Dr. Josette Demicoli, Deciza 31.01.2013

[44] **Pulizija vs Omissis**; Appell Numru 51/2003 deciz 04/09/2009 per Imhallef Dr J Galea Debono.

[45] **Dok.EH** a fol.64

[46] Fol.11

thaffef il-pass fid-direzzjoni ta' Rose li tinqabad fuq il-filmat fil**-20:17.** Rose ghandha maghha n-neputi u tidher izzomlu basket u *lunchbox* li ma jidhrux li huma ta' xi toqol tenut kont li zzommhom imdendla mal-minkeb hi w miexja b'pass mghaggel. Rita, issa bil-wieqfa, tibqa' ssegwi dak li kien qed jigri mid-distanza fejn baqghet.

20:31: Jiltaqaw Tiziana u Rose. Tiziana tidher tiggestikola. Jibqghu fl-istess triq, i.e. ma darux il-kantuniera fejn allura ma jinqabadx mis-*cctv*. F'dawn il-hinijiet huma qrib xulxin b'Tiziana taht il-bankina u Rose tibqa' fuq il-bankina.

20:51: Rose tidher twaqqaf hesrem il-konversazzjoni w tkompli fi triqitha fid-direzzjoni tal-kantuniera. **Tiziana dlonk titla' l-bankina u tmur dritt ghal warajha minflok lejn id-direzzjoni li giet minnha**.

20:52-53: Rose iddur u tirrinfaccja lil Tiziana.

20:54: Rita, li tidher issegwi dak li kien qed issehh fuq in-naha l-ohra tat-triq, tinzel it-tarag u tersaq b'pass mghaggel lejn bintha u Rose. Tiziana u Rose jergaw jibdew jargumentaw.

21:11: Rose tintebah b'Rita li issa wasslet biex taqsam it-triq ghal fejn kienet Rose u Tiziana.

21:22: Rita tasal fil-kantuniera. Issa Rose u Tiziana huma ferm vicin xulxin.

21:36: Rose iddur il-kantuniera (b'hekk tigi *out of vision* tas-cctv). Rita u Tiziana jidhru ghadhom jikkustinjaw ma xi hadd wara l-kantuniera.

21:55: Rita, Tiziana u Rose jergghu jidhru fil-kantuniera jikkustinjaw taht il-bankina. Tiziana tkompli tavvicina lil Rose.

21:58: Hekk kif Rose tersaq fid-direzzjoni ta' Rita, **Tiziana tidhol f'nofshom u tersaq ghal fuq Rose b'wiccha lejha u darha lejn ommha. Hu precizament f'dan il-mument li Rose, li harsitha kienet il-quddiem lejn Rita, tidher ticcaqlaq lagenba (*sideways*) u taqa'.**

Il-Qorti ezaminat b'reqqa kbira din il-parti tal-filmat u rat li Rose sekondi qabel il-waqa' taghha ghall-gharrieda, kienet **bil-wieqfa** targumenta ma Rita. Kif Rita tghaddi minn quddiemha, **Rose kompliet targumenta maghha b'harsitha l-quddiem**. Kien hawn li Tiziana **tidhol bejn Rose u Rita**.

Issa Rose li jidher li kienet qed tikkustinja ma Rita li kienet quddiemha, ma kellha l-ebda raguni ghaliex ticcaqlaq lagenba (*sideways*) meta kienet qed

<u>tindirizza lil Rita li kienet propju quddiemha.</u> Dan il-moviment wassal sabiex is-sieq ix-xellugija ta' Rose tahbat mal-bankina u b'konsegwenza Rose tilfet il-bilanc u waqghet. Il-filmat juri kif <u>ghall-gharrieda u bla mistenni</u> Rose tidher idur lejn il-lemin taghha u fl-istess istanza, **hekk kif Rose niezla mal-art, Tiziana tidher <u>tigebd l-id il-leminija lura</u> (21:50-21:51) waqt li harstiha tibqa' <u>ffissata l-isfel</u> ghal ftit sekondi fuq Rose mal-art;** minghajr mqarr ma tittenta toffri xi forma ta' ghajnuna.

Izda dak li gibed l-attenzjoni tal-Qorti kienet ir-rejazzjoni ta' Rita wara li tara lil Rose mal-art. **Rita tidher cjar izzom lil Tiziana milli terga' tavvicina lil Rose, timbottaha lura u anke tidher tigbed lil Tizana minn idha biex tbeghda minn Rose. Tali ghemil fih innisfu ifisser hafna ghall-Qorti: 21:52-22:00.**

22:03: Joseph jintlemah gej jigri mit-triq opposta fid-direzzjoni taghhom.

22:13: Jasal hdejn martu w bintu.

22:20-22:24: <u>Rita tidher tigbed lura lil zewgha milli jersaq lejn Rose</u>. Dan meta <u>skond Joseph kienet Rose li bdiet tipprovokah</u>. Ghalhekk kemm hu aktar minnu li kliem *"missni missni"*, li skond Joseph qaltlu Rose, kienu ntqalu mhux bhala stedina ghall-glied minn mara ccirkondata minn tlieta minn nies, izda kienet mistoqsija fis-sens jekk kienx, bhal bintu, ser imissha wkoll??

Il-Qorti temmen li kien propju ghaliex ma kien hemm l-ebda provokazzjoni li ma semma'xejn mas-surgent. Kummenti ulterjuri fuq il-kreddibilita` ta' dan ix-xhud huma superfluwi.

Bejn **22:30-22:53** jibqghu *out of vision* tal-camera, indikazzjoni li kienu lkoll wara l-kantuniera.

22:53: Tiziana tidher taqsam it-triq ghalkemm fil-**22:56** terga' lura fid-direzzjoni fejn sehhet l-alterkazzjoni

24:07: Jidhru jhallu l-post biex jirritornaw minn fejn gew izda l-argument ikompli.

24:30: Rose issegwighom u taqsam it-triq fid-direzzjoni taghhom fejn jissokta l-argument ma Rita.

24:38: Rose tirritorna ghal fuq il-bankina fil-kantuniera.

24:54: Ghalkemm Rita, Joseph u Tiziana telqu w qabdu it-tarag fit-tarf tal-*cul de sac*, Rose terga' tmur ghal warajhom izda terga' lura.

Ghalkemm il-filmat mhux xi wiehed cjar, madanakollu meta jigi *zoomed in* ippermetta lill-Qorti tasal sabiex issib li **aktar ghandha mis-sewwa l-verzjoni ta' Rose Scicluna.**

Ir-rakkont taghha dwar kif sfat imbuttata minn Tiziana jaghti spjegazzjoni ghall-moviment xejn mistenni da parti ta' Rose, li filli qeghda bil-wieqfa thares il-quddiem u tilletika ma Rita, u fl-istess hin taghmel pass lagenba mhux mistenni propju f'direzzjoni fejn ma kien hemm hadd.

Il-verzjoni ta' Rose taghti spjegazzjoni l-ghaliex Tiziana tidher tigbed idha lura fl-istess hin li Rose qeghda taqa' mal-art. Il-verzjoni ta' Rose taghti spjegazzjoni ghal x'hiex Rita bdiet tigbed lura w trazzan lill-bintha Tiziana, tidhol quddiemha kif din, ghalkemm ghada kemm rat lil Rose taqa' mal-art u tqum minghajr ghajnuna taghha jew ta' ommha, terga' taghti s-salt lejha. Hi l-istess verzjoni ta' Rose li ssib korroborazzjoni meta issemmi kif ghalkemm hi ppruvat tibqa' sejra fi triqtha, Tiziana marret warajha.

Il-Qorti tal-Appell Kriminali fid-decizjoni taghha **Il-Pulizija vs Fabio Schembri**[47] trattat il-piz probatorju ta' *footage* mehud fil-kuntest tal-provi fl-assjem taghhom:

> L-ewwel aggravju 1(c). Dwar dan l-aggravju din il-Qorti ma tarax li ghandha ghalfejn tiddilunga wisq fuqu. Kienx il-video footage in kwistjoni korroborazzjoni jew le skont il-ligi hu ta' ftit importanza. Kien certament cirkostanza li l-ewwel Qorti setghet tiehu in konsiderazzjoni, kif ghamlet, biex issahhah o meno l-konvinciment taghha u kien jispetta lill-Qorti fl-apprezzament taghha tal-provi tiddeciedi jekk dak il-video kienx isahhah jew le dak li xehdu l-membri tal-Birdlife. Kif kien jispetta lilha, l-ewwel Qorti dehrilha li hekk kien il-kaz. Ghalhekk din il-Qorti qieghdha wkoll tirrigetta dan l-aggravju. [sottolinejar tal-Qorti]

Fis-sentenza taghha l-ewwel Qorti kellha s-segwenti konsidrazzjonijiet x'taghmel. Ghalkemm f'dan il-kaz l-kwistjoni kienet titratta identifikazzjoni tal-imputat, il-konsiderazzjonijiet hemm maghmula isibu applikazzjoni ghall-kaz in dezamina:[48]

> …….ir-regoli illi tfasslu f'kawza **R vs Turnbull** fl-Ingilterra, li ghalkemm ma jikkostitwixxu l-ebda regola taht il-ligi Maltija, madanakollu huma linji gwida fil-kaz ta'l-identifikazzjoni tal-persuna akkuzata. Illi dana gie ukoll sottolinjat f'sentenza moghtija mill-Qorti ta'l-Appelli Kriminali fl-ismijiet **Il-Pulizija vs Stephen Zammit** (deciza 16 ta' Lulju 1998) fejn il-Qorti tat esposizzjoni tar-regoli Turnbull fid-decizjoni taghha:

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[47] Per S.T.O. Prim Imhallef Silvio Camilleri, Deciza1 t'April, 2011; Numru 206/2010

[48] Qorti tal-Magistrati (Ghawdex) bhala Qorti ta' Gudikatura Kriminali; Per Magistrat Edwina Grima, Deciza 29 t'April, 2010

"*First, whenever the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken, the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. In addition he should instruct them as to the reason for the need for such a warning and should make some reference to the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken. Provided this is done in clear terms the judge need not use any particular form of words.*

Secondly, the judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way, as for example by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance? If in any case, whether it is being dealt with summarily or on indictment, the prosecution have reason to believe that there is such a material discrepancy they should supply the accused or his legal advisers with particulars of the description the police were first given. In all cases if the accused asks to be given particulars of such descriptions, the prosecution should supply them. Finally, he should remind the jury of any specific weaknesses which had appeared in the identification evidence.

Recognition may be more reliable than identification of a stranger; but even when the witness is purporting to recognise someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made.

All these matters go to the quality of the identification evidence. If the quality is good and remains good at the close of the accused's case, the danger of a mistaken identification is lessened; but the poorer the quality, the greater the danger.

Illi kif diga inghad iktar 'il fuq il-provi imressqa mill-prosekuzzjoni ghar-rigward ta'l-identifikazzjoni tal-persuna ta'l-akkuzat huma x-xhieda tal-voluntiera mal-Birdlife u l-video footage Dokument CD. Illi ix-xhud Daniel Muscat jiddentifika lil persuna intercettata mill-pulizija bhala l-istess persuna li iktar kmieni huwa jara mghammad, igorr arma tan-nar u jispara. Isostni illi huwa baqa' isegwi lil dina l-persuna sakemm twaqqaf mill-pulizija u ghalhekk huwa cert li dana huwa l-istess bniedem. Dana ighidu f'iktar minn darba fil-kors tax-xhieda tieghu. Huwa konvint minn dana ghaliex ighid illi huwa baqa' isegwi lil persuni mghammda u ghalkemm ma setax jara l-irjus taghhom il-hin kollu minhabba li cdew jitghattew f'xi hin bil-hitan tas-sejjiegh u xi sigar u haxix iehor madanakollu jibla isostni illi huwa qatt ma tilifhom mill-vista tieghu rahom meta imbaghad rikbu fuq il-mutur u ghalkemm ma setax jara lilhom 'il hin kollu isostni illi peress illi l-mutur kellu id-dawl tieghu mixghul, hu seta' jibqa jsegwi il-kors li kien qed jaghmel dana il-mutur sakemm twaqqaf mill-pulizija. Illi imbaghad il-prosekuzzjoni esebiet il-filmat ta' dak illi jixdu dwaru dawn ix-xhieda, prova li hija imsejjha bhala Real evidence fil-gurisprudenza Ingliza. Hawnhekk hija l-Qorti li hija msejjah sabiex taghmel l-identifikazzjoni u l-kostatazzjonijiet taghha wara ezami tal-provi l-ohra migjuba quddiemha.

Illi fil-ktieb tieghu **Cross**, On Evidence (6th edition) huwa jaghti definizzjoni ta' dak imsejjah bhala real evidence:

'Things are an independent species of evidence as their production calls upon the court to reach conclusions on the basis of its own perception and not on that of witnesses directly or indirectly reported to it ... …
Although it was devised by Bentham and adopted by Best, 'Real evidence' is not a term which had received the blessing of common judicial usage. There is general agreement that it covers the production of material objects for inspection by the judge or jury in court, but it is debatable how much further the term should be extended'.

Cross imbaghad ighaddi sabiex jaghti diversi ezempji ta' dak illi jikkostitwixxi "real evidence" u fost dawn l-ezempji huwa jinkludi automatic recordings u ighid:

'Most discussion has hitherto centered on the admissibility of tape-recordings, but this has now been supplemented by a thin trickle of authority on the admissibility of other media such as film, video-tape and computer output. In all of these cases the evidence is real evidence when it is tendered to show what it was that was recorded'.

L-awtur **Murphy**, imbaghad fil-ktieb tieghu 'A Practical Approach to Evidence' (3rd Ed) jaghti dina id-definizzjoni ta' 'Real evidence' (fol. 7):

'A term employed to denote any material from which the court may draw conclusions or inferences by using its own senses. The genus includes material objects produced to the court for its inspection, the presentation of the physical characteristics of any person or animal, the demeanour of witnesses (which may or may not be offered or presented to the court by design), views of the locus in quo or of any object incapable of being brought to court without undue difficulty and such items as tapes, films and photographs, the physical appearance of which may be significant over and above the sum total of their contents as such ... What is of importance in each case is the visual, aural or other sensory impression which the evidence, by its own characteristics produces on the court, and on which the court may act to find the truth or probability of any fact which seems to follow from it'. …

'The court may look at and draw any proper conclusions from its visual observation of any relevant material object produced before it ... The tribunal of fact is entitled to act on the results of its own perception, even where it conflicts with other evidence given about the object ...'.

Ikompli:

'The court must, before admitting recordings as evidence be satisfied that the evidence which may be yielded is relevant and that the recording produced is authentic and original ... The above principles apply to the use of film produced by hidden, automatic security cameras installed in banks and elsewhere for the purpose of recording robberies and other incidents. The jury are entitled to consider the film as identification evidence of the persons recorded on it, subject to the

foundational requirements stated above" see eg 'R v Dodson; R v Williams [1984] Crim LR 489; see "Taylor v Chief Constable of Cheshire [1986] 1 WLR 1979'.

Fil-kawza **Taylor vs Chief Constable of Cheshire (1986),** Ralph Gibson LJ ighid:

'Where there is a recording, a witness has the opportunity to study again and again what may be a fleeting glimpse of a short incident, and the study may affect greatly both his ability to describe what he saw and his confidence in an identification. When the film or recording is shown to the court, his evidence and the validity of his increased confidence, if he has any, can be assessed in the light of what the court itself can see'"

Illi kawza li tixbah lil kawza odjerna hija kaz fl-Ingilterra **R vs Murphy and Maguire (1990).** Dana kien jitratta dwar filmat li ingibed mill-gholi u cioe' minn helicopter li kien qieghed jittajjar fuq ix-xena tar-reat. Dana il-heli-tele film kif jissejjah ittiehed mill-gholi, ma kienx juri fic-car l-ucuh tal-persuni li gew fotografati u l-Qorti kellha tasal ghal identifikazzjoni minn fatturi ohra u cioe' evidenza ohra li kien hemm fl-atti tal-process. Il-Qorti stqarret:

"We consider that the Turnbull guidelines should be applied and adopted as far as appropriate by a judge in a Diplock court to his assessment of the weight to be given to visual identification made from a video film, whether that identification purports to be made by a witness or witnesses, or by the judge himself. We see nothing in principle to justify a distinction between the consideration of the identification evidence of a bystander and that of a witness or judge who identifies from a video film screen. The imperfections of human observation, the dangers of suggestibility and the possibilities of honest mistake even by a plurality of witnesses still arise and justify the need for special caution before convicting."

Skont it-taghlim gurisprudenzjali surriferit, il-*footage* esebit **Dok.EH**[49] serva sabiex il-Qorti taghti aktar piz u kreddibilita` verzjoni u mhux ohra; **dik ta' Rose Scicluna** u mhux ta' Tiziana Scicluna.

Bix-xhieda taghha, Rose Scicluna tissostanzja dak li setghet tosserva w tikkonstata l-Qorti minn fuq il-*footage,* fejn *inter alia* ssemmi kif *"**jien bqajt miexja u regghet giet fuqi"**;* xi haga li tirrizulta mill-filmat.[50]

Il-Qorti kkunsidrat ukoll li kif jidher mill-f*ootage*, Tiziana kienet wicc imb'wicc ma Rose meta din waqghet, izda madanakollu ma taghmel l-ebda tentattativ biex izommha jew imqarr tghinha wara li waqghet.

[49] Fol.64
[50] Fol.18

Il-*footage,* meta tarah aktar mill-vicin permezz taz-*zoom*, **juri l-id ta' Tiziana tigi *retracted*,** mehudha lura u mhux *extended*, estiza kif issir istintivament meta persuna vicin ohra li tkun ser taqa' jaghmel.

Konsiderazzjoni ohra tal-Qorti tirrigwarda l-fatt li kif jistqaru Tiziana w ommha, kien ma Rita li Rose ma kienitx tingieb (ezattament zammet *grudge*) u mhux ma Tiziana. Li kieku Rose riedet issebbah il-verzjoni moghtija mhemmx dubbju li kienet timplika lil omm u mhux il-bint.

Ma dan kollu jinghad il-fatt li l-kliem uzat minn, Rose sa mill-ewwel darba meta taghat il-verzjoni taghha *a tempo vergine*, tghid li Tiziana ***"imbuttata"*** u mhux sawtitha jew taghta xi daqqa, li facilment setghu jikkontribwixxu biex titwaqqa'! Izda Rose ma qaghditx izzejjen l-istorja, kabbrithiex; qalet dak li sehh u xejn izjed.

L-istess jinghad rigward l-imputazzjoni li Tiziana wzat kliem ingurjuz jew mqarr dispreggjattiv fil-konfront taghha, fejn Rose minghajr tlaqliq ghad-domandi tal-Qorti, tichad li sar xi diskors simili mill-imputata:

*"**Qorti**: Qaltlek xi kliem dispregjattiv lilek jew le? Hekk biss?*
***Rose Scicluna**: Fuq dawk l-affarijiet*
***Qorti**: Biss? Jigifieri lilek ma wegghatek bl-ebda mod,*
***Rose Scicluna**: Fuq dan li kien il-kaz*
***Qorti**: Hebbet ghalik biss?*
***Rose Scicluna**: Hebbet ghalija*
***Qorti**: Pero' ingurjatek le*
***Rose Scicluna**: F'liema sens ingurjatni?*
***Qorti**: Ma qaltlekx xi kliem li forsi wegghatek bihom?*
***Rose Scicluna**: Hi ma qaltliex….."*.[51]

Ghalkemm ma tressqet l-ebda sottomissjoni mill-abbli difensur tal-imputata fir-rigward, il-Qorti qiset ukoll jekk **setghax** kien il-kaz li Tiziana laqtet lil Rose involontarjment. Kien ghalhekk li l-Qorti ghamlet domanda cjara f'dan is-sens lill-imputata. Tiziana izda, hi kategorika fir-risposta taghha u **teskludi l-ghemil involontarju da parti taghha:**

*Qorti: Jigifieri meta din tfixxklet f'saqajha, jista' jkun ghax inti **forsi lqatta',** mbuttajtha?*
*Tiziana Scicluna: **Le ma missejtx maghha**".*[52]

[51] Fol.19
[52] Fol.121

In-Natura tal-Offizi

Il-Professur Ray Gatt spjega: *"Meta ezaminajtha kellha hafna ugiegh, kienet ghadha timxi bil-krozzi, jiena ma stajtx nohrog disabilita' ghax ghalkemm il-ksur fieq, l-x-rays li hemm, hi l-pazjenta ghadha tikkomplenja minn hafna ugiegh li jiena ghamilt dijagnosi ta' chronic regional pain syndrome u bhala fatt mhux l-espert li naghti disabilita' fuq dik….. Minn naha ta' ortopedija ma sibtilha xejn ta' dizabbilita' permanenti ghax il-ksur kien fieq"*. Peress li kien kaz ta' ksur, dan jirrikjedi sitt gimghat biex l-ghadam jerga' jghaqqad.[53]

Fis-sentenza moghtija mill-Qorti ta'l-Appelli Kriminali, **Il-Pulizija vs Emanuel Zammit**, deciza fit-30 ta' Marzu, 1998, intqal:

> "Il-ligi taghna, ghall-fini tar-reat ta' offiza volontarja fuq il-persuna, hi mehtiega l-intenzjoni generika li wiehed jaghmel hsara. Jekk l-intenzjoni ta'l-agent tkun li jaghmel hsara, zghira kemm hi zghira dik il-hsara li jkollu f'mohhu li jaghmel, hu irid iwiegeb ghal konsegwenzi kollha li effetivament jirrizultaw bhala konsegwenza diretta ta' l-ghemil tieghu" Il-Professur Mamo ighid: **"*To constitute the crime of willful bodily harm, the injury must have been caused intentionally. But the intention required is merely the animus nocendi, the generic intent to cause harm, without requiring necessarily the actual intention to do the particular kind of bodily harm which, in fact, ensues.***

Fil-ktieb tieghu, Notes on Criminal Law, il-**Professur Anthony J. Mamo** ikompli jghid hekk:

> In other words, it is <u>not essential</u> that the intention was to produce the full degree of harm that has actually been inflicted.... ... Therefore, in the case of bodily harm, if the intent of the doer is to injure, <u>he will answer for the harm actually caused</u>, in application of the principle "dolus indeterminatus determinatur ab exitu.[54] [sottolinear ta' din il-Qorti].

Fid-dawl ta' dawn ir-rizultanzi processwali, il-Qorti issib li l-prosekuzzjoni rnexxiela tipprova l-ewwel imputazzjoni bil-griehi kawzati jinkwadraw taht l-artikolu 216(1)(d) tal-Kodici Kriminali (offizi gravi) u mhux taht l-artikolu 218 (gravissima).

It-tieni imputazzjoni li wkoll giet pruvata kif jidher mill-filmat, serviet ta' mezz ai fini ghall-ewwel imputazzjoni

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[53] Fol.110-111

[54] Pagna 225. Ara f'dan is-sens **Il-Pulizija vs Noel Degiorgio**, Qorti tal-Magistrati (Malta) Bhala Qorti ta' Gudikatura Kriminali, Magistrat Dr. Marseanne Farrugia 22.12.2014; **The Police vs Chinonso Jude Okeakpu** 2.10.2013 **u Il-Pulizija vs Stephen Ciangura**, 26.09.2012, Qorti tal-Magistrati (Malta) Bhala Qorti ta' Gudikatura Kriminali, Magistrat Dr. Edwina Grima.

Mhemmx dubbju li l-provi wrew li anke t-tielet imputazzjoni giet ppruvata soddisfacentement.

In konsiderazzjoni tal-piena, il-Qorti qiset n-natura tar-reati li qed tinstab htija dwarhom, tal-fedina penali netta tal-imputata kif ukoll tac-cirkostanzi tal-kaz. Il-Qorti qiset li ghalkemm l-ghemil ta' Tiziana jimmerita kundanna, dan ma kienx xi kaz fejn intuzat xi vjolenza, bhal meta bniedem jigi msawwat. Maghdud dan kollu izda, mhemmx dubbju li Tiziana gharfet l-konsegwenzi li timbotta persuna ta' 64 sena li propju warajha kien hemm bankina. Tghodda b'wahda l-ghemil minn taghha ma kellux konsegwenzi ferm aktar gravi; konsegwenzi li kienet tkun biss hi li kellha twiegeb ghalihom.

Ghalkemm l-imputazzjoni kif migjuba ma taghmel l-ebda riferenza ghall-eta` tal-vittma ghajr ghan-numru tal-karta tal-identita` taghha, u tenut kont li fin-Nota ta' Rinviju mibghuta mill-Avukat Generali lanqas ma gie indikat l-artikolu 222A tal-Kodici Kriminali (li jipprovdi ghall-zieda fil-piena ta' grad jew zewg gradi meta l-offiża ssir fuq persuna li tkun għalqet l-età ta' sittin sena), il-piena erogabbli tibqa' dik ta' prigunerija minn sena sa seba (7) snin.[55]

Il-Qorti qiset ukoll li Tiziana irrejagixxiet u mbuttat lil Rose hekk kif ratha li niezlet mill-bankina w avvicinat lill-ommha. Meqjusa dawn ic-cirkostanzi din il-Qorti hi tal-fehma li m'ghandhiex tigi imposta piena karcerarja.

Ghal dawn il-mottivi, wara li rat l-artikoli 17, 31, 214, 215, 216(1)(d), 338(dd) u 339(1)(d) tal-Kodici Kriminali, issib lill-imputata hatja tal-imputazzjonijiet kollha migjubha fil-konfront taghha, tikkundannaha **hmistax (15) il-xahar prigunerija** li bl-applikazzjoni tal-artikolu 28A tal-Kodici Kriminali qed jigu sospizi ghall-sentejn millum.

Finalment u bl-applikazzjoni ta' l-artikolu 533 tal-Kapitolu IX tal-Ligijiet ta' Malta qeghda tordna lill-hatja thallas l-ammont ta' **€326.40** rapprezentanti l-ispejjez peritali.

Dr. Donatella M. Frendo Dimech
Magistrat

[55] Dan l-artiklu gie emendat bl-Att XIII tal-2018 li ddahhal fis-sehh bl-Avviz Legali 154 tal-2018 fl-14 ta' Mejju, 2018.