



FIL-QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI
MAGISTRAT DR. ELAINE MERECIECA BA. LL.D.

Illum is-7 ta' Marzu 2022

Kaz. Nru; 183-39

Il-Pulizija

vs

Matthew Galea

ID: 473781(M)

Il-Qorti:

Rat l-imputazzjonijiet migjuba fil-konfront ta' **Matthew Galea**, bin John u Maria Anne xebba Schembri imwieled Pieta nhar it-23 ta' Awwissu 1981 residenti 52, Sqaq Brittaniku, Nru. 1, Tarxien u detentur tal-karta tal-identita' bin-numru 473781M, akkuzat talli;

1. Nhar il-24 ta' Marzu 2020 ghal habta ta' 13:50hrs fl-inhawi ta' Ghar Lapsi, limiti ta' Siggiewi fi granet u l-hinijiet ta' qabel, waqt stagun maghluq ghal kacca ta' l-ghasafar, ikkaccja jew ipprova jikkaccja, ha jew ipprova jiehu xi ghasfur li huwa protett taht ir-regolamenti dwar il-konservazzjoni tal-ghasafar selvaggi, mhux skont dawn ir-regolamenti u mhux skont il-kondizzjonijiet ta' kull licenzja moghtija tahtom (reg 4(1) ta' l-a.l. 79 ta' l-2006, hekk kif emendat – Is 549.42)
2. Fl-istess data, hin, lok u cirkostanzi waqt stagun maghluq ghall-kacca ta' l-ghasafar min fuq l-art ikkaccja jew ipprova jikkaccja xi ghasfur jew garr munizzjoni jew arma tan-nar barra l-ghata taghha (reg 18(1)(a) ta' l-a.l. 79/2006, hekk kif emendat -sl 549.42)

3. Fl-istess data, hin, lok u cirkostanzi f'xi fond jew fil-pussess tieghu, taht il-kontroll tieghu jew garr barra minn xi fond jew fid-dintorni tieghu xi arma tan-nar jew munizzjon elenkati fl-iskeda II minghajr ma jkollu licenzja ghal dik l-arma taht l-Att dwar l-armi u dan bi ksur tal-Artikolu 5 (1) tal-Kap. 480 tal-Ligijiet ta' Malta.
4. Fl-istess data, lok, hin u cirkostanzi bhala detentur tal-licenzja taht xi disposizzjonijiet ta' dan l-Att dwar l-armi naqas milli jhares il-pattijiet tal-licenzja jew kellu fil-pussess jew kien igorr xi arma tan-nar jew minizzjon mhux specifikati fil-licenzja mahruga lilu u dan bi ksur ta' Art 52 tal-Kap. 480.
5. Fl-istess data, lok hin u cirkostanzi kellu fil-pussess tieghu arma tan-nar u/jew munizzjon barra mill-fond imsemmi fil-licenzja mahruga mill-Kummissarju tal-Pulizija u dan bi ksur tal-Kap. 480, Art 5(3)

Il-Qorti giet ukoll mitluba li barra l-piena skont il-ligi tordna r-revoka ta' kull licenzja jew permess mahruga that l-A.L. 79 ta' 2006 hekk kif emendat u taht it-Taqsima XV tal-Kodici tal-Ligijiet tal-Pulizija hekk kif stabbilit taht regolament 27(2) (b) tal-A.L. 70 tal-2006 hekk kif emendat u s-sospensjoni tal-licenzja taht il-Kap. 480 tal-Att dwar l-Armi tal-Ligijiet ta' Malta ghal zmien li jidrilha xieraq din il-Qorti.

Semghet ix-xiehda;

Rat id-dokumenti ezebieti fl-atti processwali odjerni;

Semghet is-sottomissjonijiet tal-partijiet;

Ikkunsidrat:

Illi in sostenn tal-imputazzjonijiet dedotti fil-konfront tal-qua imputat, il-prosekuzzjoni rressqet is-segweni provi: Affidavit ta' PC217 Mizzi, Fiona Burrows u Karl Gauci. Id-difiza min-naha taghha ghazlet li ma tressaqx provi.

Illi mill-provi mressqa jirrizulta li waqt stagun maghluq ghall-kacca, fl-24 ta' Marzu 2020 ghall-habta tas-siegħa u kwart ta' wara nofsinhar ix-xhud Fiona Burrows u kollega taghha kienu fl-inhawi ta' Ghar Lapsi fejn innotaw persuna b'senter f'ghalqa. Ix-xhud osservat lil dan l-istess persuna jahbi l-arma qalb il-haxix. Huwa regghu raw lill-istess persuna ghall-habta tat-tlieta ta' wara nofsinhar fejn iltaqa ma mara u zewgt itfal li waslu dak il-hin fuq il-post permezz ta' vettura. Ix-xhud regghet rat lil dan il-persuna ghall-habta tal-erbgha ta' wara nofsinhar fejn gie osservat flimkien mal-istess mara u zewgt itfal f'dura. Wara ftit mumentu x-xhud osservat lill-istess persuna jqum bilwieqfa jzomm senter u beda miexi fl-ghelieqi. Sussegwentament il-mara u t-tfal gew osservati jtilqghu minn fuq il-post filwaqt li l-persuna in kwistjoni ma setghetx tigi osservata

ulterjorament. In kontro-ezami hija kkonfermat li fl-ebda hin ma osservat lil dina l-persuna tispara fuq l-ghasafar jew altrimenti jikkarga u/jew jiskarga l-arma tan-nar. Min-naha tieghu PC217 jispjega kif fl-20 ta' Mejju 2020 huwa gie mgħoti rapport u filmat tal-Committee Against Bird Slaughter (CABS). Spjega li fl-investigazzjonijiet tieghu huwa ezamina l-footage li gie provdut kif ukoll in-number plates tal-vetturi msemmija fir-rapport. Spjega ukoll li l-pulizija bagħtu għal diversi nies inkluz għal qua imputat in konnessjoni ma dina l-investigazzjoni. Mizzi jispjega li wara li bagħat għal qua imputat huwa setgha jidentifikah bhala l-kaccatur fil-footage tal-CABS. Ikkonferma li qabel mal-qua imputat gie mitkellem mill-pulizija huwa ngħata d-drittijiet legali tieghu inkluz id-dritt tal-assistenza legali, liema dritt huwa rrinunzja għalih hekk kif jirrizulta mid-dikjarazzjoni pprezentata mill-prosekuzzjoni. L-imputat għazel (hekk kif kellu kull dritt li jagħmel) li ma jwegibx għad-domandi li sarulu.

Illi bla dubbju mix-xhieda u mill-filmats eżebiet minn Fiona Burrows kjarament jirrizulta attivita ta' kacca, liema attivita' kienet qed isir fi stagun magħluq¹ u fuq hin twil. Madanakollu l-unika prova li torbot direttament lill-qua imputat mal-agir illegali muri fil-filmats hija l-identifikazzjoni fil-Qorti mix-xhud Fiona Burrows li l-qua imputat kien il-kaccatur fil-filmats migbud minnha.

Dwar *dock identification* l-Archbold jgħid:

Dock identifications are not inadmissible but when considering whether to exercise its discretion to admit such evidence the court should consider whether there is a good reason why an identification procedure did not take place—there being procedures which can take place where the suspect is not willing to participate in a formal identification parade. Where such evidence is admitted the court should remember the dangers of relying on such evidence, that (if the defendant was denied the advantage of participating in an identification procedure) the defendant has been disadvantaged by not participating in an identification procedure and that an identification witness may assume that the person in the dock is the person who committed the offence.²

F'diversi sentenzi il-Qorti Maltin rritenew li meta l-Qorti tigi biex tgħarbel dik l-evidenza marbuta mal-identifikazzjoni tal-awtur ta' reat, dan għandu jsir

¹ Ara x-xhieda ta' Karl Cauchi.

² Archbold Magistrates' Courts Criminal Practice 2018 Pg 654

b'kawtela u cirkospezzjoni. Il-Qrati Maltin b'mod kostanti segwew bhala linji gwida r-regoli stipulati mill-Qori tal-Appell Ingliza fil-kaz R vs. Turnbull³.

“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

³ Court of appeal 1977 – QB244

identification is lessened; but the poorer the quality, the greater the danger.”

Illi dina l-Qorti analizzat il-filmat ezebiet minn Fiona Burrows. Mill-istess filmat jirrizulta li ghalkemm il-qua imputat gie osservat fuq hin pjutost twil huwa kien il-hin kollu b'beritta f'rasu, b'nuccali iswed pjutost kbir u cover li jaghti nofs il-warda ta' wiccu, ghonqu u taht geddumtu. Ghal ftit sekondi l-kaccatur in kwistjoni jdur lejn il-camera filwaqt li jnehhi n-nuccali tax-xemx sabiex jimsah il-lenti. Kien f'dawk il-ftit sekondi biss li minn tal-inqas setghu jigu osservati ghajnejn l-imputat.

Illi dina l-Qorti ma ghandhiex ghalxiex tiddubita mill-verzjoni mgħotija minn Fiona Burrows meta hija għarfet lill-qua imputat bhala l-kaccatur li jidher mill-filmat, madanakollu l-grad tal-prova rikjest fil-proceduri kriminali huwa wiehed oneruz. Il-prova tal-identifikazzjoni tal-kaccatur trid necessarjament tigi pruvata sal-livell ta' lill hinn minn kull dubbju ragonevoli. Fic-cirkostanzi partikolari u specifikament imsemmija fil-paragrafu precedenti (fejn wicc il-kaccatur kien kwazi kompletament mgħoti salv għal ftit sekondi), dina l-Qorti ma jidhriliex li l-identifikazzjoni tal-imputat fil-Qorti mix-xhud Fiona Burrows wahedha għandha twassal sabiex il-prosekuzzjoni tilhaq il-grad tal-prova rikjest mill-ligi ta' lil hinn minn kull dubbju dettat mir-raguni. Huwa minnu li fil-filmat issir referenza għall-vettura bin-numru ta' registrazzjoni DBV-194, madanakollu mill-provi ma jirrizulta l-ebda ness car la dirett u lanqas indirett bejn l-imsemmija vettura u l-imputat jew il-mara li tidher flimkien mal-kaccatur fil-filmat. Lanqas ma tressqet l-ebda prova li tidentifika lill-mara (li tidher cara fil-filmat) u n-ness tagħha mal-imputat odjern.

Għaldaqstant għal dawn ir-ragunijiet hawn fuq imsemmija dina l-Qorti hija tal-fehma li l-prosekuzzjoni ma rnexxiliex tipprova sal-grad rikjest mill-ligi l-identifikazzjoni tal-imputat bhala l-kaccatur li jidher fil-filmat ezebiet.

Decide:

Għal dawn il-mottivi, dina l-Qorti wara li rat l-artikoli rilevanti tal-ligi, qeghda tillibera lill-qua imputat, **Matthew Galea** mill-imputazzjonijiet kollha dedotti fil-konfront tieghu.

MAGISTRAT DR. ELAINE MERCIECA BA. LL.D.

Christine Farrugia
Deputat Registratur