



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

**MAGISTRAT
ANTONIO GIOVANNI VELLA**

Seduta tat-28 ta' Frar, 2008

Numru. 95/2007

ILLUM 28 TA' FRAR 2008

**IL- PULIZIJA
SPETTUR GEOFFREY AZZOPARDI**

KONTRA

PAUL VASSALLO

Il-Qorti;

Wara li rat l-imputazzjonijiet migjuba kontra;

Paul Vassallo ta' 46 sena, bin missier mhux maghruf u Mary Vassallo, mwieled fi 22 ta' Mejju 1960 u residenti fil-fond 35, Triq San Pietru u San Pawl, Isla detentur tal-karta ta'

I-identita bin-numru 477560(M)

Kopja Informali ta' Sentenza

Li gie mressaq quddiemha sabiex iwiegeb ghall-imputazzjonijiet;

Talli fi 12 ta' April 2005 u fil-jjem ta' wara , fil Belt Valletta u fi bnadi ohra f'dawn il-Gzejjer, xjentement ilqajt ghandek jew xtrajt hwejjeg, u cioe' zewg telefens cellulari, misruqa, mehuda b'qere jew akkwistati b'reat, sew jekk sar f'Malta jew barra minn Malta, jew, xjentement, b'kull mod li jkun indhalt biex tbieghhom jew tmexxihom;

Rat id-dokumenti kollha ezebiti;

Rat l-atti kollha tal-kawza;

Semghet ix-xhieda prodotta;

Ikkunsidrat:

Il-fatti tal-kaz in ezami huma pjuttost cari u univoci. L-imputat iltaqa' ma' persuna li hu jghid li ma jafhiex, u gie avvicinat minn din l-istess persuna li offrietlu li tbieghlu "mobile phones" ghal prezz irhis u hu accetta. Hu jistqarr li xtara dawn l-apparati cellulari ghax hu ma kellux wiehed, u allura spicca biex xtara tnejn. Hu jichad li kien jaf jew li ssuspetta li dawn setghu kienu misruqa, u ghalhekk qed jipprova jezimi ruhu mir-responsabbilita' kriminali.

Il-Qorti, izda, hija konvinta ferm li l-istess imputat kien jaf x'kien qed jixtri. L-ewwel nett, ma jidhirx li hu kkontestat li dawn iz-zewg "mobile phones" kienu xi darba fil-pussess tal-imputat wara li xtrahom. Dan jirrizulta car kemm mill-istqarrija tal-imputat stess, kif ukoll mix-xiehda moghtija minnu quddiem din il-Qorti. Ghalhekk irid jigi stabbilit biss jekk dan il-pussess tal-oggetti jikkonsistix fir-reat ta' ricettazzjoni. Il-gurisprudenza ormai kopjuza u kostanti tal-Qrati taghna fissret fi kliem car l-elementi ta' dan ir-reat. Fis-sentenza tal-Qorti tal-Appell Kriminali fl-ismijiet "Pulizija vs Richard Spiteri", datata 31 ta' Awwissu 2006, dik il-Qorti qalet hekk:

“Illi kif qalet din il-Qorti diversament preseduta (per V. De Gaetano j., fl- Appell Kriminali: “ Il-Pulizija vs. Emanuel Seisun et.” [26.8.1998]); it-teorija Ingliza “of unlawful possession of recently stolen goods” issib ukoll applikazzjoni fis-sistema legali taghna, ghax in tema ta’ “law of evidence” il-gurisprudenza taghna ssegwi hafna dik Ingliza. Din it-teorija ma hi xejn hlief l-applikazzjoni tal-buon sens ghal cirkostanzi partikolari li jkunu jirrizultaw pruvat, fis-sens li meta jigu ppruvati certi fatti, jawn jistghu wahedhom iwasslu ragjonevolment ghall-konkluzzjoni li persuna partikolari tkun hatja tar-reat ta’ serq tal-oggetti misjba ghandha jew, skond ic-cirkostanzi, tar-reat ta’ ricettazzjoni ta’ dawk l-oggetti.

F’dik is-sentenza din il-Qorti ccitat mill-Archbold: Criminal Pleading, Evidence and Practice, 1997, paras.21-125,21-126):-

“In R.v. Smythe, 72 Cr.App. R & C.A., the court stressed that it is a misconception to think that recent possession is a material consideration only in cases of handling : it adopted the following passage from Cross on Evidence, 5th . ed., p.49 (now 8th . ed.,p.35): “if someone is found in possession of goods soon after they have been missed, and he fails to give a credible explanation of the manner in which he came by them, the jury are justified in inferring that he was either the thief or else guilty of dishonestly handling the goods, knowing or believing them to have been stolen... The absence of an explanation is equally significant whether the case is being considered as one of theft or handling, but it has come into particular prominence in connection with the latter because persons found in possession of stolen goods are apt to say that they acquired them innocently from someone else. Where the only evidence is that the defendant on a charge of handling was in possession of stolen goods, a jury may infer guilty knowledge or belief (a) if he offers no explanation to account for his possession, or (b) if the jury is satisfied that the explanation he does offer is untrue”.

“Every case depends on its own facts. It would be impossible to compile a definitive list of circumstances

which might be relevant. They will include, however, the time and place of the theft, the type of property stolen, the likelihood of it being sold on quickly, the circumstances of the defendant, whether he has any connection with the victim or with the place where the theft occurred, anything said by the defendant and how that fits in or does not fit in with the other available evidence.”

Illi ghalhekk, fid-dawl ta' dawn il-principji ta' dritt, din il-Qorti ma tistax ma tasalx ghal sejbien ta' htija f'dan il-kaz. L-imputat jaghti spjegazzjoni ghal kollox implawsibbli kif gew f'idejh dawn il-“mobile phones” minghajr ma ghaddielu minn mohhu li dawn ma kienux misruqa. Il-Qorti tistaqsi bir-rispett liema persuna tal-affari taghha taccetta li tixtri mill-idejn oggetti bhal dawk minn persuna li ma tafx u li avvicinata fit-triq, minghajr ma biss tissuspetta li tali oggetti setghu gew minn serq? Hu ghal kollox inverosimili li l-imputat ma kienx jaf jew li ma setax ikun jaf li dawk l-oggetti ma kienux gejjin minn serq. L-unika forma ta' spjegazzjoni li jipprova jaghti hi li hu ma kellux “mobile phone” u allura qabad u xtara wiehed, u addirittura ghal wiehed xtara tnejn! Il-Qorti bl-ebda mod ma tista' tara li din l-iskuza fjakka ma tista' qatt tkun kredibbli biz-zejjed biex titwemmen u tiskolpa lill-imputat minn dan ir-reat.

Ghal dawn il-motivi l-Qorti;

Wara li rat l-Artikolu 334 tal-Kap 9 tal-Ligijiet ta' Malta;

Issib lill-imputat hati u ghaldaqstant tikkundah ghal terminu ta' sitt xhur prigunerija sospizi ghal sentejn, ai termini tad-dispozizzjonijiet tal-Artikolu 28A tal-Kap 9 tal-Ligijiet ta' Malta.

Il-Qorti fissret fi kliem car il-portata tas-sentenza lill-imputat.

< Sentenza Finali >

Kopja Informali ta' Sentenza

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