



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

**MAGISTRAT DR.
EDWINA GRIMA**

Seduta tad-29 ta' April, 2010

Numru. 302/2009

**Il-Pulizija
(Spettur Josric Mifsud)**

VS

**Fabio Schembri ta' 22 sena bin Anthony u Lorenza
nee' Sciberras imwieled Rabat, Ghawdex nhar il-20 ta'
Mejju 1987, residenti fil-fond Harmony, Triq Santa
Dminka, Rabat, Ghawdex u detentur tal-karta ta' l-
identita' numru 19187(G)**

Il-Qorti,

Rat l-akkuza kontra 'l hawn fuq imsemmi Fabio Schembri li gie akkuzat talli fit-18 ta' April 2009 ghall-habta ta' bejn l-erbgħa (16:00hrs) u l-hamsa u nofs (17:30hrs) ta' wara nofsinhar, gewwa limiti ta' San Dimitri, Għarb, f'Għawdex, matul l-istagun magħluq għall-kacca tal-għasafar minn fuq

Kopja Informali ta' Sentenza

I-art, ikkaccja jew ipprova jikkaccja ghal xi ghasfur, jew gar munizzjoni jew arma tan-nar barra mill-ghata taghha;

Akkuzat ukoll talli fl-istess data, lok u cirkostanzi zamm jew gar arma tan-nar li kienet ikkargata, jew bl-iskratacc fil-komportament tal-arma, jew barra l-ghata taghha, jekk mhux f'post fejn huwa permess l-isparar fuq il-kacca;

Akkuzat ukoll talli fl-istess data, lok u cirkostanzi kellu fil-pussess tieghu tjur imharsa bil-ligi;

Akkuzat ukoll talli fl-istess data, lok u cirkostanzi kellu arma tan-nar li kellha kompartment li jiehu aktar minn zewgt iskratacc fil-magazine;

Akkuzat ukoll talli fl-istess data, lok u cirkostanzi naqas li jikkonforma ruhu ma' xi disposizzjoni ta' dawn ir-regolamenti jew naqas milli jikkonforma ruhu mal-kundizzjonijiet ta' xi ordni moghtija legittimament skond xi disposizzjoni ta' dawn ir-regolamenti jigifieri l-Avviz Legali 79 tal-2006 kif sussegwentement emendat;

Akkuzat talli fl-istess data, lok u cirkostanzi kiser xi restrizzjoni, projbizzjoni jew htiega mposta minn jew taht l-A.L. 79 tal-2006 kif sussegwentement emendati;

Akkuzat ukoll talli fl-istess data, lok u cirkostanzi agixxa bi ksur ta' xi disposizzjoni ta' dawn ir-regolamenti;

Akkuzat ukoll talli fl-istess data, lok, perjodu u cirkostanzi kkonfoffa jew ittanta, jew ghen, hajjar, ta parir jew flus lil xi hadd iehor jikser xi disposizzjoni bhal daww (inkluza ordni legittimament moghtija skond xi disposizzjoni ta' dawn ir-regolamenti), jew biex jikser xi restrizzjoni, projbizzjoni jew htiega mposta minn jew taht ir-regolamenti tal-A.L. 79 tal-2006 kif sussegwentement emendat;

Akkuzat ukoll talli fl-istess data, lok u cirkostanzi kellu fil-pussess tieghu arma tan-nar kif ukoll munizzjoni minghajr licenzja tal-Kummissarju tal-Pulizija, bi ksur tal-artikolu 5(1) tal-Kapitolu 480, tal-ligijiet ta' Malta;

Kopja Informali ta' Sentenza

Akkuzat ukoll talli fl-istess data, lok u cirkostanzi bhala pussessur ta' licenzja taht l-artikolu 27(1) tal-Kap 480 naqas li jhares il-kundizzjonijiet imsemmija f'dik il-licenzja;

Akkuzat ukoll talli fl-istess data, lok, hin u cirkostanzi halla arma tan-nar u/jew munizzjon b'tali mod li gie f'idejn haddiehor;

Akkuzat ukoll talli fl-istess data, lok, hin u cirkostanzi f'lok pubbliku, libes maskra jew biddel is-sura tieghu, meta ma kienx fi zmien u bil-mod li tippermetti l-ligi;

Akkuzat ukoll talli fl-istess data, lok, hin u cirkostanzi bhala ufficjal jew impjegat pubbliku sar hati ta' reat li hu kellu jissorvelja biex ma jsirx jew minhabba l-kariga tieghu kellu d-dmir li jimpedixxi u dan bi ksur tal-Artikolu 141 tal-Kap 9 tal-Ligijiet ta' Malta;

Il-Qorti giet mitluba li barra l-piena skond il-ligi tordna s-sospensjoni tal-licenzji tal-kacca tal-imputat ghal mhux anqas minn sena kif ukoll tikkonfiska l-oggetti esebiti;

Rat id-dokumenti esebiti;

Semghet il-provi;

Semghet it-trattazzjoni.

Ikkunsidrat:

Illi l-Prosekuzzjoni qieghda tistrieħ principalment fuq ix-xhieda moghtija mill-esponenti tal-BIRDLIFE li kienu qed josservaw dana l-incident, liema xhieda hija imsahha b'video footage li ttiehed mill-istess xhieda ta' dak kollu li kienu qed jaraw quddiemhom. Irid jigi rilevat illi dawn x-xhieda kienu jinstabu hdejn il-Fanal ta' Gordan u isostnu illi lil dawn iz-zewgt irgiel huma rawhom iktar 'l isfel fil-wied madwar kilometru jew tnejn il-boghod minnhom. Isostnu illi huma kienu attrezzati b'apparat li seta jigbed minn distanza - kellhom binoklu kull wiehed, video camera u telescope li kapaci jibged immagini minn distanza konsiderevoli. Id-difiza tishaq illi dawn ix-xhieda ma

jaqblux bejniethom ghar-rigward ta' xi dettalji ta' dak li kienu qed jaraw, illi huma kienu f'distanza imbieghda mix-xena tar-reat, kif ukoll isostni illi l-video footage mehud huwa wiehed interrott, m'huwiex car fil-maggior parti tieghu u li ghalhekk ma jindikax illi l-persuni li jidhru fih huwa l-imputat u siehbu.

Illi qabel xejn jigi rilevat illi dana l-filmata huwa essenzjalment maqsum f'zewg partijiet. Fl-ewwel parti tieghu jidhru zewgt irgiel mghammdin, lebsin balaklava bajda, wiehed minn dawn l-irgiel jidher illi ghandu arma tan-nar f'idejh u li f'hin minnhom jidher qieghed jispara xi tiri b'dina l-arma tan-nar. Wara ftit l-istess irgiel jidhru ser jitolqu minn fuq il-post ghaliex wiehed minnhom jidher qieghed jahbi l-arma taht il-gakketta tieghu. F'dana l-mument il-filmata huwa interrott sabiex imbaggad jidhru zewgt irgiel vicin vettura tal-pulizija, qeghdin ikellmu xi pulizija u jiddiskutu magghom. Dawn iz-zewgt irgiel issa m'humix mghammdin iktar u jidher ghalhekk wicchom. Illi d-difiza fl-ebda hin ma tikkontesta l-fatt illi dawn iz-zewgt irgiel li jidhru fl-ahhar parti tal-filmata huma l-imputat u siehbu Raymond Cauchi. Id-difiza madanakollu tishaq illi z-zewgt irgiel li jidhru mghammdin fl-ewwel parti tal-filmata m'humix l-imputat u dana Raymond Cauchi.

Illi ghalhekk abbazi ta' dan il-prosekuzzjoni ressqet il-kaz taghha fil-konfront tal-imputat. L-imputat min-naha tieghu dejjem cahad l-involvement tieghu ghalkemm jammetti illi f'dik il-gurnata u f'dak l-istess hin huwa kien hareg ghal passiggjata ma' siehbu Raymond Cauchi u li aktar tard huma gew imwaqqfa mill-pulizija, kif jidher fl-ahhar parti tal-filmata.

Illi d-difiza tressaq is-segwenti argumenti:

1. Illi x-xhieda li gew prodotti mill-prosekuzzjoni kienu kollha esponenti tal-BirdLife u ghalhekk ix-xhieda taghom kienet mimlija pregudizzji stante illi wiehed mill-ghanijiet ta' dina l-organizazzjoni hija proprju illi tghasses il-kacca illegali u ghalhekk ix-xhieda kellhom kull interess illi jkun hemm kundanna fil-konfront tal-imputat. Ghaldaqstant ix-xhieda taghom ma hijiex wahda

oggettiva izda studjata u intiza sabiex twassal biss ghal kundanna.

2. Illi l-filmata (fl-ewwel parti tieghu) juri zewgt irgiel li fl-istatura taghhom jistghu jixbhu diversi irgiel ohra u li ma hemm xejn partikolari li tista' twassal ghal xi identifikazzjoni. L-irgiel huma mghammda u ghalhekk wiehed lanqas jista' jara l-fisjonomija taghhom.

3. Il-hwejjeg li jidhru lebsin dawn l-irgiel huma pjuttost hwejjeg komuni, gakketta blu u hwejjeg camouflage, li jilbsu diversi kaccaturi u anke nies ohra li m'humieq.

4. Illi meta l-imputat u siehbu Cauchi gew intercettati mill-pulizija huma ma kellhomx armi tan-nar u lanqas kienu lebsin balaklavi kif kellhom iz-zewgt irgiel l-ohra li jidhru fil-bidu tal-filmata.

5. Il-mutur li kienu rekbin l-imputat u siehbu meta gew intercettati mill-pulizija ma huwiex l-istess wiehed illi allegatement ix-xhieda tal-BirdLife raw lis-suspettati jirkbu peress illi dana gie deskritt bhala mutur blu li kellu id-dwal mixghula mentri dak li kienu rekbin l-imputat u siehbu kien abjad u ma kellux dwal mixghulin.

Illi ghaldaqstant il-Qorti trid tifli bir-reqqa dina l-evidenza sabiex tara jekk huwiex possibbli illi issir identifikazzjoni o meno tal-imputat u siehbu Cauchi maz-zewgt irgiel li jidhru fil-bidu tal-filmata u li x-xhieda okulari jikkontendu illi huma l-istess zewgt irgiel. Dana qed jinghad ghaliex f'dina l-kawza l-identifikazzjoni li trid issir m'huwiex bejn il-persuna li tidher fil-filmata u l-persuna tal-akkuzat. L-identifikazzjoni li trid issir f'dana l-kawza huwa bejn iz-zewgt irgiel li jidhru fl-istess filmata u cioe' bejn ir-ragel li jidher fil-bidu tal-filmata li qed igorr l-arma tan-nar u r-ragel li jidher fl-ahhar tal-filmata vicin l-ufficjali tal-pulizija illi bhala fatt mhux ikkontestat huwa definittivament il-persuna tal-imputat. Id-difiza hawnhekk isostni illi fil-gudizzju taghha l-Qorti ghandha issegwi r-regoli illi tfaslu f'kawza R vs Turnbull fl-Ingilterra, li ghalkemm ma jikkostitwixxu l-ebda regola taht il-ligi Maltija, madanakollu huma linji gwida fil-kawza tal-identifikazzjoni tal-persuna akkuzata. Illi dana gie ukoll sottolinjat f'sentenza moghtija mill-Qorti tal-Appelli Kriminali fl-ismijiet Il-Pulizija vs Stephen Zammit (deciza 16 ta' Lulju 1998) fejn il-Qorti tat esposizzjoni tar-regoli Turnbull fid-decizzjoni taghha:

“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 mressqa mill-prosekuzzjoni ghar-rigward tal-identifikazzjoni tal-persuna tal-akkuzat huma x-xhieda tal-voluntiera mal-Birdlife u l-video footage Dokument CD. Illi x-xhud Daniel Muscat jidentifika lill-persuna intercettata mill-pulizija bhala l-istess persuna li iktar kmieni huwa jara mghammad, igorr arma tan-nar u jispara. Isostni illi huwa baqa' jsegwi lil dina l-persuna sakemm twaqqaf mill-pulizija u ghalhekk huwa cert li dana huwa l-istess bniedem. Dana jghidu f'iktar minn darba fil-kors tax-xhieda tieghu. Huwa konvint minn dana ghaliex ighid illi huwa baqa' jsegwi lill-persuni mghammada u ghalkemm ma setax jara l-irjus taghom il-hin kollu minhabba li bdew jitghattew f'xi hin bil-hitan tas-sejjegh u xi sigar u haxix iehor madanakollu jibqa jsostni illi huwa qatt ma tilifhom mill-vista tieghu rahom meta imbaghad rikbu fuq il-mutur u ghalkemm ma setax jara lilhom il-hin kollu jsostni illi peress illi l-mutur kellu d-dawl tieghu mixghul, hu seta' jibqa jsegwi l-kors li kien qed jaghmel dana l-mutur sakemm twaqqaf mill-pulizija. Illi mbaghad il-prosekuzzjoni esebiet il-filmat ta' dak illi jixdu dwaru dawn ix-xhieda, prova li hija imsejha bhala Real Evidence fil-gurisprudenza Ingliza. Hanhwekk hija l-Qorti li hija msejha 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 jghid:

'Most discussion has hitherto centred 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'. ...

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'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 ...'.

lkompli:

'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 lill-kawza odjerna hija kaz fl-Ingilterra R vs Murphy and Maguire (1990). Dana kien jitratta dwar filmat li ngibed 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.”

Illi dana kollu qed jinghad ghaliex il-Qorti ezaminat bir-reqqa l-filmat esebit fl-atti tal-kawza Dokument CD1. Illi minn ezami wahdu ta' dana d-dokument jemergu divesi fatturi. Illi f'dana l-filmat jidhru zewgt irgiel li ghalkemm huma mghammdin, madankollu huma evidenti diversi karatteristici taghhom. Illi dawn iz-zewgt irgiel jidhru illi huma ta' statura differenti u cioe' illi wiehed minnhom huwa itwal mill-iehor. Illi l-hwejjeg taghhom jidhru cari. Wiehed minnhom huwa liebes gakketta blu, l-ghonq blu ftit iktar car u flokk minn that qisu hadrani b'xi kliem jew mottiv fuq quddiem. Liebes ukoll qalziet camoufflage. Illi r-ragel l-iehor huwa liebes gakketta camoufflage u flokk skur x'aktarx iswed minn taht. Illi l-irgiel li mbaghad jigu intercettati mill-pulizija huma tal-istess statura bhat-tnejn li jidhru ftit qabel u huma lebsin **I-istess hwejjeg identici** bhat-tnejn ta' qabel.

Illi dana kollu huwa issostanzjat imbaghad bix-xhieda tal-esponenti tal-BirdLife u cioe' ta' Daniel Muscat, Kim Little, Robert Cook u Neil Wright li segwew dina x-xena b'apparat appozitu li kapaci jigbed moviment minn distanza konsiderevoli kif jixhdu l-istess xhieda. Dawn ix-xhieda jisosstanzjaw ghalhekk dak illi l-Qorti tosserva fuq il-filmat esebit. Huma jikkonfermaw kemm l-istatura ta'

dawn l-irgiel, kif ukoll l-ilbies li kienu lebsin. Illi ghalkemm huma jammettu illi kien hemm xi hin fejn huma tilfu lil dawn iz-zewgt irgiel mill-vizwali taghhom, madanakollu kollha kemm huma jaqblu meta jghidu illi ma kien hemm l-ebda attivita umana ohra fl-akwati ghajr ghal truck li kien miexi bil-mod u persuna li kienet qed tosserva xi pjanti iktar 'il boghod. Fil-fatt dana s-“slow moving truck” jissemma ukoll mill-pulizija li intercettaw lill-imputat u lil siehbu li jghidu illi hekk kif gew wicc imb'wicc ma' dana t-truck minn warajh tfacca l-mutur in kwistjoni. Dana wkoll huwa ikkorroborat mix-xhieda ta' Daniel Muscat meta jghid:

“So the only activity there was in the area, that I am aware of, was the two gentlemen¹ on the motor bike, and a small moving truck that was moving along the road that was moving in front of them. The truck was already driving along the road, and when they came downhill and turned right it was in front of them. So when the police intercepted them there. That is the only activity that I am aware of.”

Il-PC 534 Joseph Cini ighid: Kif irriversjajna Itqajna ma' tractor li kien ghaddej bit-tiben u kif qbizna it-tractor sibna ma' wiccna l-mutur.” Jikkonferma dana wkoll il PC 42 Paul Said.

Dana kollu ghalhekk isahhah il-konvinzjoni ta' dina l-Qorti li z-zewgt irgiel intercettati mill-pulizija ma kinux hlief l-istess zewgt rigiel mghammda li gew osservati jikkaccjaw ftit tal-hin qabel. Illi anke l-okkorenza li saret mis-Surgent 559 a tempo vergine tindika illi z-zewgt irgiel li gew osservati fuq il-mutur kienu proprju l-imputat u siehbu. Dana qed jinghad ghaliex fix-xhieda li l-istess surgent jaghti quddiem il-Qorti huwa ma jsemmix xi dettalji li jidhru fuq dana r-rapport fejn hemm imnizzel testwalment:

“The Gozo police received information through a telephone call that there were two hunters both wearing a

¹ Illi fix-xhieda hawnhekk jissemmev two germans on a motorbike, izda il-Qorti semghet personalment ix-xhieda moghtija mix-xhud on tape u jisntema car illi x-xhud hawnhekk qed isemmi two gentlemen u mhux two germans!

*blue jacket and a green trousers and a white hood on their head opposite the San Dimitri Chapel l/o Gharb. The informer also stated that they were on a motorcycle. The ALE police went immediately on spot and **when the police arrived near the chapel, two males riding a motorbike and wearing a blue top and a green trousers were noted driving away towards the village. The police immediately drove in their same direction and at the passage leading towards Wied il-Mielah l/o Ghasri, the police met the two suspects who were stopped on the side of the passage near their bike.*** Illi dana r-rapport ikompli jghid illi meta mitkellma dawn it-tnejn minn nies **ammettew li kienu qeghdin hdejn il-kappella**, izda cahdu li kellhom armi. Haga illi l-istess surgent ma jindikax fix-xhieda tieghu, izda jindika partikolaritajiet ohra fosthom illi huma ircevew istruzzjonijiet ohra u biddlu d-direzzjoni u li l-persuni rekbini il-mutur li huma raw kellhom il-crash helmets u l-imputat u siehbu ma kellhomx, li m'humieq indikati fl-okkorenza! Illi s-surgent hawnhekk jindika zewg fatturi importanti li ma jsemmix fix-xhieda tieghu u cioe' l-hwejjeg li osserva li kienu lebsin l-irgiel fuq il-mutur u l-ammissjoni taghhom meta waqqfuhom illi huma kienu qeghdin hdejn il-kappella u cioe' fl-istess post fejn kienu lemhuhom ix-xhieda okulari.

Illi ghar-rigward tal-argumenti sollevati mid-difiza jigi rilevat illi:

1. Illi x-xhieda esponenti tal-Birdlife Malta kienu biss voluntiera li gew Malta sabieq josservaw l-ghasafar. Huwa minnu illi l-ghan ta' dina l-organizazzjoni hija li trazzan il-kacca illegali u tirraporta dawna l-fatti lill-pulizija. Bl-istess argument allura, anke l-pulizija li jixhdu f'kull kawza kriminali jista' jinghad illi ghandhom ukoll dan il-pregudizzju stante illi l-ghan taghhom ukoll huwa li titwaqqaf l-illegalita. Dana l-argument bir-rispett ma jrreggix. Ix-xhieda jixhdu biss ghar-rigward ta' dak illi raw u osservaw huma f'dak il-hin, liema fatti fil-maggior parti taghhom jidhru fil-filmat esebit fl-atti tal-kawza.

2. Illi ghalkemm id-difiza ssostni illi l-istatura ta' dawn l-irgiel hija wahda komuni, kif ukoll huma komuni l-hwejjeg li

kienu lebsin l-imputat u siehbu, madanakollu huwa ghal kollox inverosimili illi fl-istess gurnata, fl-istess hin u fl-istess post ikun hemm zewgt irgiel ohra lebsin identiku u tal-istess statura wkoll rekbin mutur, meta x-xhieda jaqblu bejniethom illi ma gietx osservata attivita umana ohra fl-akwati. Illi fil-fatt dana kollu huwa wkoll issostanzjat mill-ufficali tal-pulizija li kienu qed jinvestigaw dana r-rapport li imkien fix-xhieda tagghom ma jghidu illi ltaqghu ma xi nies ohra jew irgiel ohra li kienu lebsin identiku bhall-imputat u siehbu.

3. Illi l-Qorti ma tara l-ebda inkonsistenza fix-xhieda moghtija minn Daniel Muscat. Illi l-Qorti semghet ir-recording tax-xhieda moghtija viva voce mill-istess Muscat minn fejn l-inkonsistenzi indikati mid-difiza li kienet prezenti meta nstema dana x-xhud ma jirrizultawx. Minn imkien ma jirrizulta per ezempju illi x-xhud isemmi xi nies ta' nazzjonalita' Germaniza. Fil-fatt fejn fit-traskrizzjoni tax-xhieda hemm innizzel illi dawn kienu "germans" fil-fatt ix-xhud qed ighid "gentlemen". Ghar-rigward tal-filmata jindika car u tond illi l-filmata m'huwiex wiehed kontinwu u jghid illi huwa maqsum essenzjalment f'zewg bicciet. Fejn fix-xhieda jsemmi filmata kontinwu hawnhekk huwa qieghed igib distinzjoni bejn filmata u slides. Ix-xhud jixhed ezattament dak li jidher fuq il-filmata u dana qabel ma l-filmata gie muri fil-Qorti fil-kors tax-xhieda tieghu. Dana x-xhud jixhed ftit granet wara li kien sehh il-kaz u ghalhekk certament kien jiftakar iktar b'mod car dak li gie osservat mix-xhieda l-ohra li xehdu warajh.

4. Kif inghad iktar 'il fuq ix-xhud Daniel Muscat kien cert illi l-persuna illi huwa josserva tispara huwa l-istess persuna illi gie intercettat mill-pulizija. Ghalhekk m'huwiex minnu dak li sosstni d-difiza fit-trattazzjoni taghha illi dana x-xhud ma kienx cert. Ix-xhud qal illi ma setax ikun cert illi dik il-persuna li josserva fil-filmata huwa l-persuna tal-akkuzat li kien qed jara fl-awla ghalkemm ighid illi l-persuna kien jixbhu. Dana l-fatt mhux kontestat mid-difiza u cioe' illi l-akkuzat huwa l-istess bniedem intercettat mill-pulizija.

5. Illi huwa minnu illi l-istess Daniel Muscat isemmi persuna ohra li kienet magghom bl-isem ta' Gilbert li ma giex prodott bhala xhud, izda mix-xhieda tal-istess Muscat jidher illi dana Gilbert kien il-persuna li kien qieghed

icempel lill-pulizija sabiex jirraporta dana l-fatt u ma kienx qieghed izomm dawn in-nies taht osservazzjoni bhax-xhieda l-ohra li taw ix-xhieda tagghom quddiem il-Qorti.

Illi finalment anke x-xhieda stess tal-imputat hija wahda inverosimili. Fl-ewwel lok, l-imputat jaghti verzjoni differenti lill-ufficjali tal-pulizija meta gie intercettat minn dik li jaghti quddiem il-Qorti. Il-kuntistabbli 42 Paul Said ighid illi l-imputat qalilhom illi kienu hemmhekk josservaw xi ghasafar. Illi meta jixhed quddiem il-Qorti l-imputat ighid illi huwa hareg ghal passiggjata ma' Cauchi u jindika l-post fejn hareg jippassiggja lill-Qorti fl-access li sar fuq il-post fejn jindika illi allegatement huwa kien 'il boghod hafna mill-fanal ta' Gordan u li minn dana l-lok il-fanal lanqas biss kien jidher. Illi hawnhekk il-Qorti tirrimarka illi huwa inverosimili illi l-imputat hareg jippassiggja fil-post indikat lill-Qorti fl-access. Fl-ewwel lok, fil-lokalita indikata huwa difficli illi wiehed imur semplicement biex jippassiggja. Illi fil-post indikat mill-imputat jidher illi kien hemm eghlieqi li kienu mizrugha u ghalhekk huma tal-privat. Illi mbaghad l-imputat ighid illi hu u siehbu kienu rekbin il-mutur minghajr *crash helmet* ghaliex fil-ftit hin li dawn kienu qed jippassiggjaw insterqulhom jew xi hadd hbihomlhom u kien ghalhekk illi huma qabbd u triq fl-eghlieqi u ma uzawx triq pubblika. Illi dana kollu huwa inverosimili u l-Qorti ma temmnux! Inoltre l-imputat ighid illi l-gakketta blu li kellu li kienet tixbah il-gakketta li tidher fil-film huwa remieha hekk kif huwa ra l-film fuq il-*YouTube* ghaliex beza illi jahsbu li kien hu l-istess persuna li jidher qieghed jikkaccja fil-film. Illi huwa fatt mhux kontestat finalment illi l-imputat huwa diletant tal-kacca u ghalhekk huwa kapaci juza arma tan-nar u kapaci jikkaccja.

Illi meta wiehed ihares lejn l-akkuzi jirrizulta illi l-imputat qed jigi akkuzat b'mhux inqas minn tlettax-il akkuza li hafna minnhom ma jirizultawx mill-provi akkwiziti. Illi huwa fatt mhux ikkontestat illi fil-jum tal-kummissjoni ta' dana ir-reat u cioe' fir-rebbiegha tas-sena 2009 l-istagun tal-kacca kien maghluq. Illi gie stabbilit illi l-imputat kien qieghed

ghal kacca meta kien jaf illi l-istagun kien maghluq. Madankollu ma jirrizultax mill-provi liema kienet l-arma tan-nar li kienet qed tintuza mill-imputat stante illi l-arma tan-nar qatt ma instabet u s-Surgent 559 ighid illi meta ghamel it-tfittxija fir-residenza tal-imputat ighid illi l-armi tan-nar illicenzjati f'ismu nstabu kollha maqfula d-dar f'posthom u ghalhekk l-akkuzi li jaqghu taht il-Kapitolu 480 tal-Ligijiet ta' Malta ma gewx sufficjentement ippruvati. Ghalhekk lanqas ma tista' tirrizulta r-raba akkuza u cioe' l-akkuzi illi l-arma tan-nar kellha kompartment li kapaci zomm iktar minn zewgt iskratacc fil-magazine taghha. Illi lanqas ma nstabu xi tjur fil-pussess tal-imputat u ghalhekk it-tielet akkuza ma tirrizultax ippruvata. Illi hafna mill-akkuzi l-ohra huma wkoll repetizzjoni ta' xulxin bhall-hames, is-sitt u s-seba' akkuzi. Illi it-tmien akkuza wkoll ma tistax tirrizulta peress illi minn imkien mill-provi ma jirrizulta kif l-imputat u Raymond Cauchi spicaw flimkien ghal kacca. Illi billi l-arma tan-nar li kellu fil-pussess tieghu l-imputat qatt ma instabet u ghalhekk ma jirrizultax mill-provi x'sar mill-istess jew liema kienet dina l-arma tan-nar kwindi id-disa', l-ghaxar u l-hdax il-akkuzi wkoll ma gewx ippruvati fil-grad rikjest mill-ligi. Illi t-tnax il-akkuzi tirrizulta ampjament ippruvata billi kif inghad iktar 'il fuq il-persuna mghamma kienet minghajr dubbju l-persuna tal-imputat. Finalment ghar-rigward tal-ahhar akkuza gie ippruvat illi l-imputat huwa kuntistabbli tal-pulizija bin-numru 555 – fatt mhux ikkontestat mid-difiza u ghalhekk l-ahhar akkuza tirrizulta ippruvata wkoll u ghalhekk il-piena stabbilita mill-ligi ghandha tizdied bi grad.

Illi meta tigi biex tikkunsidra l-piena li ghandha tigi inflitta f'dana l-kaz il-Qorti sejra tiehu in konsiderazzjoni diversi fatturi. Il-Qorti ma tistax tinjora l-fatt illi l-imputat huwa kuntistabbli tal-pulizija u ghalhekk kien fid-dmir li jara illi dawn it-tip ta' reati ma jsehhux. X'aktarx li kienet minhabba f'din ir-raguni illi huwa ddecieda johrog ghal-kacca mghammad. Illi madanakollu l-imputat ghadu zghir. Huwa guvni ta' tnejn u ghoxrin sena li kien ilu fil-korp tal-pulizija madwar sentejn. Huwa minnu illi l-imputat zbalja fil-kummissjoni ta' dana r-reat madanakollu l-Qorti hija tal-fehma illi l-imputat ghandu jinghata opportunita ohra u ma

Kopja Informali ta' Sentenza

jergax jaghmel l-istess zball mghomi bin-namur li ghandu ghall-kacca.

Ghaldaqstant, il-Qorti wara li rat l-artikoli 141, 338 (n) u 31(f) u 17(h) tal-Kapitolu 9 tal-Ligijiet ta' Malta u Regolament 18 (1)(a), 17, 27(1)(a)(b)(c) tal-Avviz Legali 79 tal-2006 kif sussegwentement emendat bl-Avviz Legali 280 tal-2007 filwaqt li tillibera lill-imputat mit-tielet, ir-raba, it-tmien, id-disgha, l-ghaxar, il-hdax l-akkuza migjuba fil-konfront tieghu, issibu hati tal-kumplament tal-akkuzi u tikkundannah ghal xahar prigunerija, izda fid-dawl tal-konsiderazzjonijiet hawn fuq maghmula u b'applikazzjoni tal-artikolu 28A tal-Kapitolu 9 tal-Ligijiet ta' Malta dana l-perijodu ta' prigunerija qed jigi sospiz ghal zmien sena mil-lum.

Il-Qorti twissi lill-hati bil-konsegwenzi skond il-ligi jekk huwa jikkommetti reat iehor matul il-perijodu operattiv ta' din is-sentenza.

Finalment il-Qorti qieghda tordna s-sospenzjoni tal-licenzja tal-kacca tal-hati u dana ghal zmien sena mil-lum.

< Sentenza Finali >

-----TMIEM-----