



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

**MAGISTRAT DR.
JACQUELINE PADOVANI**

Seduta tal-31 ta' Jannar, 2012

Numru. 1285/2006

**PULIZIJA
SPETTUR JOSEPH AGUIS
SPETTUR JOHANN J. FENECH
VS
Omisses ZAGHZUGH A
Omisses ZAGHZUGH B
Omisses ZAGHZUGH C**

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputati Zaghzugh A, iben omisses imwieled omisses, residenti omisses u detentur tal-Karta ta' l-Identita' bin-numru omisses.

Zaghzugh B, iben omisses imwieled omisses, residenti omisses u detentur tal-Karta ta' l-Identita' bin-numru omisses;

Zaghzugh C, iben omisses imwieled omisses, residenti omisses u detentur tal-Karta ta' l-Identita' bin-numru omisses;

Zaghzugh A wahdu akkuzat talli fil-5 ta' Dicembru 2006 ghall-habta tal-04.15am mill-hanut Che Sara' Sara' li jinsab fi Triq il-Herba, Zejtun, ikkommetta serq ta' diversi oggetti li l-valur taghhom jeccedu l-LM 500, liema serq huwa aggravat bil-hin, bil-mezz u bil-valur ghad-dannu ta' James Bondin miz-Zejtun;

Akkuzat ukoll talli fil-21 ta' Novembru 2006 ghall-habta tad-21:30hrs mill-MLP Club taz-Zejtun, ikkommetta serq ta' oggetti, u cioe mazz cwievet, li l-valur taghhom jeccedi l-LM50, liema serq hu aggravat bil-hin, ghad-dannu ta' Julian Fenech miz-Zejtun;

Akkuzat ukoll talli fl-istess data, lok u hin, meta sab mazz cwievet li kienu naqsu mill-istess Julian Fenech jew li din kienet tilfet, m'gharrafx lill-Pulizija Ezekuttiva bihom fi zmien tlitt ijiem;

Akkuzat ukoll talli kiser ordni ta' probation imposta fuqu mill-Qorti tal-Minorenni (Malta) Magt. Dr. A. Vella LL.D fl-04 ta' Lulju 2006 liema sentenza saret definittiva;

Zaghzugh C u Zaghzugh B akkuzati f'daqqa talli fil-5 ta' Dicembru 2006 ghall-habta tal-04.15am, b'xi mod li jkun, xjentament, ghenu jew assistew lill-awtur tad-delitt u cioe lil Zaghzugh A fl-atti li bihom id-delitt kien gie ppreparat jew ikkunsmat;

Zaghzugh A u Zaghzugh B akkuzati f'daqqa talli fl-istess data, lok u hin, xjentament laqghu ghandhom jew xtraw hwejjeg misruqa, mehuda b'qerq, jew akkwistati b'reat sew jekk dan sar f'Malta jew barra minn Malta. Jew, xjentament, b'kull mod li jkun, indahlu biex ibighuhom jew imexxuhom meta kienu jafu li l-haga kienet gejjja minn serq.

Kopja Informali ta' Sentenza

Semghet ix-xhieda bil-gurament;

Rat id-dokumenti ezebiti, l-atti kollha tal-kaz;

Rat l-Artikoli elenkati mill-Avukat Generali (a fol 232) taht liema Artikoli din il-Qorti tista ssib htija fl- imputati;

Rat il-verbal tal-7 t'April, 2008 (a fol 231) fejn l-imputati ma sabux ogezzjoni li jigu ggudikati minn din il-Qorti;

Semghet it-trattazzjoni tal-partijiet;

Rat in-nota ta' sottomissjonijiet tal-Kummissarju tal-Pulizija tat-2 ta' Lulju 2009;

Rat in-nota ta' sottomissjonijiet tal-imputat Zaghzugh B tal-21 ta' Lulju 2009;

Rat in-nota ta' sottomissjonijiet tal-imputat Zaghzugh C ta' l-4 ta' Frar 2011 ;

Ikkonsidrat:

Mix-xhieda ta' l-Ispettur Joseph Agius (a fol 33 et seq) jirrizulta illi fil-5 ta' Dicembru 2006, gie mgharraf illi l-imputat Zaghzugh A flimkien maz-zewg ko-imputati kienu gew osservati jghabbu xi kaxxex minn wara hajt u dan fil-hamsa ta' filghodu (5:00am). L-Ispettur Agius xhed illi dan kien insegwitu ta' serqa illi sehhet fil-hanut Che Sara' Sara' fiz-Zejtun.

Illi ghaldaqstant l-Ispettur Agius interroga lill imputat Zaghzugh A li ametta li kien responsabbli ghas-serqa fuq indikata, flimkien ma' Zaghzugh C u Zaghzugh B li zammew ghasa u ghenuh jghabbi ir-res furtiva li nbiet go ghalqa. Ir-res furtiva giet rikavata u ezebita in atti bhala l-ezebit JA.

Twetttuq tfittxijiet fir-residenza ta' l-imputat Zaghzugh C li kienet fin-negattiv, filwaqt li fir-residenza ta' Zaghzugh B

Kopja Informali ta' Sentenza

instabu kwantita zghira tar-res furtiva li giet ezebiti bhala l-ezebit JA 1. L-istqarrija ta' l-imputat Zaghzugh A giet ezebita bhala JA 3, l-isqarrija ta' l-imputat Zaghzugh C giet ezebita bhala JA 4, waqt li l-isqarrija ta' l-imputat Zaghzugh B giet ezebita bhala JA 5.

Mary Anne Zammit, Probation Officer, ikkonfermat illi intavolat denunzia kontra lill-imputat Zaghzugh A quddiem il-Magistrat Vella.

PS 1386 ikkonferma li James Bondin kien irraporta serq bi sgass tal-hanut Che Sara' Sara' fil-5 ta' Dicembru 2006, minn fejn kienu insterqu kwantita ta' sigaretti, *mobile phone top up cards*, u prodotti tat-tabakk. PS 1386 xhed illi dak inhar stess kienet dahhlet telefonata anonima li xi zaghzagh kienu qeghdin izarmaw xi karozzi fi Triq Toni Zaghzugh A, iz-Zejtun, u filfatt, wiehed minn dawn iz-zaghzagh kien l-imputat Zaghzugh A. Fuq struzzjonijiet ta' l-Ispettur Agius, is-Surgent 1386 arrestita lill Zaghzugh A li ammetta ghas-serqa indikata . PS 1386 ikkonferma l-ezebit JA, parti mir-res furtiva u ezebixxa l-okkorrenza DOK PS.

PC 1203 ikkonferma is-serqa tal-hanut Che Sara' Sara' u ikkonferma x-xhieda ta' PS 1386.

Spettur Johann Fenech ikkonferma x-xhieda ta' Spettur Agius u ddikjara li l-valur ta' l-oggetti misruqa kien ta' madwar elfejn u hames mitt lira Maltija (LM 2500) , fi prodotti ta' *mobile cards* u tabakk u hames mitt lira Maltija (LM500) fi flus kontanti . Spettur Fenech ikkonferma it-telefonata anonima li implikat lill Zaghzugh A u l-amissjoni ta' Zaghzugh A ghas-serqa mill-hanut Che Sara' Sara'.

Spettur Fenech xhed illi fil-kors ta' tfittxija fir-residenza ta' Zaghzugh A, il-Pulizija sabu mazz cwievet propjeta' ta' Julian Fenech, sid MLP Club iz-Zejtun . Julian Fenech kien irregistra rapport lill-Pulizija fil-21 ta' Novembru 2006 li filfatt kien tilef mazz cwievet. **Julian Fenech gharaf il-mazz cwievet elevati mill-pusses ta' l-imputat Zaghzugh A bhala propjeta tieghu.** Spettur Fenech ikkonferma l-isqarrija JA 3 , 4 u 5.

Kopja Informali ta' Sentenza

PS 1312 ikkonferma t-tfittxija li wettaq fil-5 ta' Dicembru 2006 fir-residenza ta' l-imputat Zaghzugh B, l-elevar ta' l-oggetti JA 1, u ezebixxa r-ricevuta relattiva DOK PSX (a fol 65).

PC 1050 Simon Marshall ikkonferma r-rapport ta' Julian Fenech fil-21 ta' Novembru 2006 rigwardanti telfa mazz cwievet u ezebixxa l-okkorrenza relattiva (a fol 67).

Mary Anne Zammit (a fol 70) xhedet fil-konfront tad-denunzja ta' l-imputat Zaghzugh A.

Julian Fenech (a fol 72) xhed li kienu insterqulu ic-cwieviet minn gol-bieb ta' l-ufficju ta' l-MLP Club Zejtun fil-21 ta' Novembru 2006 u li ghamel rapport l-Ghassa tal-Pulizija. Iddikjara li hu kellu jbidel xi sallaturi li jammontaw ghall tnejn u tmenin lira Maltija (LM 82).

James Bondin (a fol 80) ikkonferma li **l-imputat Zaghzugh A infurmah li l-oggetti kollha li seraq hu (Zaghzugh A) mill-hanut Che Sara' Sara' kienu gew konsenjati mill-Pulizija.**

Fit-tieni xhieda tieghu Julian Fenech ezebixxa JF 1, 2 ,3 li jammontaw ghall disgha u erbghin lira Maltija u hamsa u sittin centezmu (LM 49.65)

A fol 91 gie ezebit il-process verbal DOK MDX u l-Qorti ikkonfermat l-esperti nominati fl-inkjesta.

Dr. Veronique Dalli (a fol 104) ezebit ir-rapport DOK VD.

PS 171 Karl Glennville ezebixxa ir-relazzjoni tieghu DOK KG kontenenti il-*lifters* DOK KG1 u ritratti KG 2 sa 21.

Martin Bajada (a fol 137) ezebixxa ir-rapport tieghu DOK MB u l-Qorti tigbed l-attenzjoni ghall-messaggi hemm kontenuti (a fol 151 il quddiem).

Spettur Agius (a fol 151) ezebixxi JA 5 sentenza fil-konfront ta' l-imputat Zaghzugh A.

Kopja Informali ta' Sentenza

PS 1374 Edgar Dalli (a fol 190) ezebixxa l-impronti digitali u palmari tat- tliet imputati, li gew ezebity bhala ED 1 sa ED 6.

A fol 191 l-espert Joseph Mallia ha l-konsenja ta' l-impronti digitali ED 1 sa ED 6 u lifters mehuda fl-inkjesta DOK KG1.

PS 1147 ikkonferma r-relazzjoni DOK KG u l-lifters KG 1.

Joseph Mallia (a fol 199) ipprezenta r-relazzjoni tieghu DOK JM u ddikjara **li il-lifters mehuda mix-xena tad-delitt ma kienux tajbin ghall-analizi komparattiv u ghaldaqstant ir-relazzjoni tieghu kienet wahda negattiva.**

Dr. Veronique Dalli kkonfermat ir-relazzjoni taghha u ghamlet xi korrezzjonijiet li jidhru f' a fol 220 u 221.

L-imputati ghazlu li ma jixhdux, u ddikjaraw li ma kellhomx iktar xhieda x'jiproducu.

Ikkonsidrat:

Illi mill-kumpless tal-provi prodotti, jirrizulta illi t-tlett imputati kienu minorenni fid-data tal-akkuzi odjerni u l-istqarrija taghhom tichdu skond il-Ligi u l-prassi ta` dak iz-zmien.

Illi din il-Qorti in vista tal-ahhar Gurisprudenza tal-Qorti Kostituzzjonali ta' Malta, u cioe' **il-Pulizija (Spettur Victor Aquilina vs Alvin Privitera)** deciza fil-11 ta' April 2011, **il-Pulizija Suppretendent NorZaghzugh A Ciappara vs Esrom Pullicino** deciza 12 ta' April 2011 u **il-Pulizija Spettur Victor Aquilina vs Mark Lombardi** deciza fit-12 ta' April 2011 tiddikjara illi l-istqarrija tal-imputati Zaghzugh A, Zaghzugh B u Zaghzugh C, (li ttiehdet skond il-proceduri u prattika adoperata mill-Pulizija ezeukkuttiva fi zmien tat-tehid taghha izda fl-assenza ta' konsulent legali tieghu u minghajr ma ttiehed il-parir tal-istess) **qed jigu imwarrba addirittura** minn din il-Qorti li ser tistrieħ biss

fuq ix-xhieda l-ohra tal-kaz in ezami, u tal-pulizija kull fejn ma ssirx referenza ghall-istess stqarrija tal-imputat, u x-xhieda prodotta mid-difiza. Dan qiegħed isir skond il-pronunzjament tas-sentenza **Cadder (Appellant) v. Her Majesty's Advocate (Respondent) (Svotland) [2010] ESKC 43** "The court should follow any clear and constant jurisprudence of the Strasbourg Court... when faced with a unanimous decision of the Grand Chamber, that was, in itself a formidable reason following it. **Salduz** is a decision of the Grand Chamber, now firmly established in the European Court of Human Rights Case Law..." kif raffermta fil-kawza **I-Pulizija vs Mark Lombardi Op. Cit a fol 2.**

Eliminati mill-provi tal-prosekuzzjoni l-istqarrija tal-imputati, din il-Qorti jibqalha s-sejba tar-res furtiva u l-implikazzjonijiet ta' tali sejba ma' dottrina ta' pussess ricenti:

Illi dawn il-fatturi jinkombu fuq il-Qorti biex tezamina l-applikabilita' o meno tal-kuncett ta' *recent possession* għal kaz in ezami. Dan il-kuncett gie pjenament assorbit fil-gurisprudenza tagħna. In fatti, fl-Appell Kriminali per Imhallel Onor. Vincent De Gaetano LL.D. fl-ismijiet **Pulizija vs. Emanuel Seisun u Puis sive Pio Micallef** jingħad:

*"There appears to have been widespread misunderstanding of the so-called doctrine of recent possession. The "rule" (for it is no more than the application of common sense) is, it is submitted, that where it is proved that premises have been entered and property stolen therefrom and that very soon after the entry the defendant was found in possession of the property, it is open to the jury to convict him of burglary, and the jury should be also directed: see **R. vs Loughlin**, 35 Cr. App.R.65; **R. vs Seymour**, 38 Cr.App.R.68. This of course applies equally to thefts other than in the course of a burglary, whether a pickpocketing or an armed robbery.*

*In **R. vs Smythe**, 72.Cr.App.R.8C.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 are satisfied that the explanation he does offer is untrue.

Every case depends on its own facts. There is no magic in any given length of time. However, it is submitted that in many cases where the only evidence is that of recent possession, it will be impossible to exclude the possibility that the defendant was merely a receiver of the stolen property; in such cases a count of burglary ought not to be left to the jury. However, that applies where recent possession is literally the only evidence. The reality is, that in the great majority of cases there are other pieces of evidence which tend to point the case one way or the other. 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 other available evidence" (Archbold: Criminal Pleading, Evidence and Practice, 1997, paras. 21-125, 21-126);

U aktar 'il quddiem jinghad:

*What constitutes “recent possession” depends upon the nature of the property and the circumstances of the particular case...In **R vs. Smythe**...Kliner Brown J., giving the Court of Appeal’s judgement said: “Nearly every reported case is a decision of fact as an example of what is no more than a rule of evidence.” (para.21-320)”*

Illi jirrizulta ampiament illi r-res furtiva l-ezebit JA giet mghoddija lill-Pulizija minn omm Zaghzugh A fil-5 ta` Dicembru, 2006 (vide a fol. 34) waqt li r-res furtiva JA1 instabet fir-residenza ta` Zaghzugh B fl-istess gurnata.

Illi di piu` James Bondin (a fol. 80 et seq) afferma li l-imputat Zaghzugh A informah li l-oggetti kollha li seraq hu, kienu gew konsenjati lil Pulizija.

Illi apparti dana kollu fir-relazzjoni ta` Martin Bajada (ara Dok. MB a fol. 151 il` quddiem) jirrizultaw diversi messaggi li juru indizzji ciari “*of wrong doing*”.

L-imputati Zaghzugh A u Zaghzugh B ghazlu li ma jaghti ebda spjegazzjoni dwar tal-provenjenza tal-oggetti li jaghmlu parti mir-res furtive, cioe` l-ezebit JA u JA1.

Dawn il-provi ghandhom jigu ezaminati fl-isfond ta` serqa ta` oggetti, kapaci li jibdlu l-idejn f`qasir zmien u cioe` sigaretti, prodotti ta` tabakk, xorb alkoholiku, flus kontanti u top up cards, serqa li giet rapportata fil-5 ta` Dicembru, 2006 fis-7.15 am (ara process verbal a fol. 95 minn sidha James Bondin (ara ukoll fol. 110A).

Fi ftit kliem, din r- res furtiva giet intercettata mill-Pulizija fi temp ta` ftit sieghat mis-serqa tal-hanut Che Sara Sara`.

Huwa diffici li gudikant jigi irrinfaccat b`pussess aktar ricenti ta` res furtiva minn dak li l-Qorti ghandha quddiema fil-proceduri odjerni.

Ghal rigward Zaghzugh C pero`, in vista tal-fatt li l-istqarrija tieghu giet imwarba, li ma nstabet ebda parti mir-res furtiva fil-pussess tieghu jew fir-residenza tieghu , in vista tal-fatt illi r-relazzjoni l-espert Joseph Mallia dwar l-analizi komparattivi ta impronti digitali kienet wahda fin-negattiv, ma jidhirx illi l-prosekuzzjoni rnexxielhom jilhqu l-livell probatorji li trid il-ligi ghal dak li jikkoncerna l-imputat Zaghzugh C.

Ghal rigward tat-tieni akkuza u cioe tas-serq tal-mazz cwievet, din il-Qorti ma tistghax issib htijja fl-imputat, stante li ir-rapport li ghamel Julian Fenech **kien ta' telf** ta' dawn ic-cwievet. Illi kien hemm trapass konsiderevoli ta' zmien bejn it-“telf” u s-“sejba” ta' dawn ic-cwievet u ghaldaqstant din il-Qorti ma jidihrlix illi t-teorija ta' *recent possession* tapplika wkoll ghac cwievet.

Ghar-rigward tat- tielet akkuza, u cioe tal-mazz cwievet li naqas lil Julian Fenech, din l-akkuza tirrizulta ppruvata sodisfacientement mix-xhieda ta` Fenech, r-rapport tieghu, u l-fatt li dawn ma gewx retornati lil pulizija.

Ghal rigward tar-raba' akkuza jirrizulta sodisfacientement pprovat il-ksur ta` ordni ta` *Probation* kontra l-akkuzat Zaghzugh A.

Illi ghal dawn il-motivi, l-Qorti ssib lill-imputat Zaghzugh A hati ta` l-ewwel (1), it-tielet (3), ir-raba (4), mhux hati tat-tieni (2) u s-sitt (6) akkuza li minnhom tilliberah; lil Zaghzugh B hati ta' hames (5) akkuza mhux hati tas-sitt (6) akkuza li minnha tilliberah stante li hija akkuza alternattiva ghal hames (5) akkuza; lil Zaghzugh C ssibu mhux hati tal-akkuzi kollha misjuba fil-konfront tieghu u tilliberah wara li Artikoli 261, 262, 263, 264, 265, 266, 267, 270, 276, 277, 278, 279, 280, 281, 42 (a), 37 Kap 9, Artikoli 7,23 tal-Kap. 446 tqieghed lill-imputat Zaghzugh B taht Ordni ta` *Probation* ghal tmintax (18) -il xahar, tikkundanna lil l-imputat Zaghzugh A ghal tmintax (18) -il xahar prigunerija.

Din il-piena giet akkordata wara li l-Qorti hadet in konsiderazzjoni l-eta` tal-imputati, il-fatt li Zaghzugh B huwa *a first offender*, u l-fatt li minkejja d-diversi

Kopja Informali ta' Sentenza

opportunitajiet mghotija lil imputat Zaghzugh A mill-Qrati Maltin, dan ssokta fi triq tal-kriminalita

Iz-zmien illi l-imputat Zaghzugh A qatta' f'arrest preventiv ghandu jitnaqqas mill-perjodu ta' prigunerija fuq indikata.

Il-Qorti tordna komunika lid-Direttur tal-*Probation Services*.

< Sentenza Finali >

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