



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

**MAGISTRAT DR.
EDWINA GRIMA**

Seduta ta' l-14 ta' Ottubru, 2013

Numru. 36/2007

**Il-Pulizija
(Spettur Ramon Cassar)**

Vs

**Ruth Borda ta' 29 sena bint Carmel Borda u l-mejta
Doris nee' Harmer, imwielda Pieta fit-18 ta' Marzu
1983, detentrici ta' karta ta'l-identita' Maltija bin-
numru 190783(M) u residenti Volendam, Triq A.
Calligari, Zabbar**

u

**Alan Cutajar ta' 35 sena iben Charles u Winifred nee'
Willie, imwieled Pieta' fit-28 ta' Jannar 1997, detentur
tal-karta ta'l-identita' Maltija bin-numru 125977(M) u
residenti fil-fond numru Flat 16, Block 10, Entrance B,
Triq il-Gilju, San Gwann**

Il-Qorti,

Kopja Informali ta' Sentenza

Rat l-imputazzjoni migjuba kontra l-imputati Ruth Borda u Alan Cutajar li permezz taghha huma gew akkuzati talli:

1. fit-08 ta' Novembru 2006 ghall-habta tas-sitta ta' fil-ghaxija f'San Gwann, ikkomettew serq ta' apparat tal-computer u cioe' laptop tal-marka HP minn hanut bl-isem ta' Ultimate sitwat fi Vjal ir-Rihan u dan ghad-detriment ta' Mario Cutajar u/jew ta' persuni ohra;
2. u aktar talli fit-08 ta' Novembru 2006 u fil-jjem ta' wara, f'dawn il-gzejjer, xjentement laqghu ghandhom jew/u xtraw hwejjeg misruqa, mehuda b'qerq jew akkwistati b'reat, sew jekk dan sar f'Malta jew barra minn Malta, jew xjentement, b'kull mod li jkun, indahhlu biex ibieghhhom jew imexxuhom u cioe' laptop tal-marka HP.

U lil Alan Cutajar wahdu talli:

3. Sar recidiv ai termini ta'l-artikoli 49 u 50 tal-Kap.9 ta' Malta

b'sentenza moghtija mill-Qorti tal-Appell nhar it-8 ta' Frar 2005, liema

sentenza hija definittiva u li ma tistax tigi mibdula.

Rat id-dokumenti.

Rat il-kunsens ta'l-Avukat Generali tat-12 ta' Jannar 2007 sabiex dana il-kaz jigi trattat u deciz bil-procedura sommarja minn dina l-Qorti.

Semghet il-provi,

Rat l-atti kollha processwali.

Ikkunsidrat,

Illi l-imputati jinsabu akkuzati li ikkomettew serq ta' *lap top* mill-hanut Ultimate. Illi il-pulizija in sostenn ta'l-akkuzi tressaq *footage* mehud mic-CCTV *camera* tal-hanut liema *footage* l-ufficjali nvestigattivi jiddikjaraw li gharrfu lil malvivalenti li jidher fil-filmata bhala l-imputati. Inoltre anke l-impjegati li kienu fil-hanut fil-jum li fiha sehhet is-serqa

igharrfu liz-zewg imputati bhala l-istess nies li osservaw fil-hanut dak in-nhar ghalkemm ighidu illi huma ma innutawx lill-imputat Ruth Borda idahhal il-lap-top fil-basket tal-karti kif jidher fil-filmat.¹ Fil-fatt l-imputati jigu osservati iduru mal-hanut, imbaghad wara jitolqu 'il barra. Izda wara li jitolqu dawn l-impjegati josservaw illi wiehed mil-*laptop computers* li kien on *display* huwa nieqes. Il-*laptop* huwa tal-marka HP. Ghalhekk dawn jaraw il-filmat ta-CCTV li kellhom gol-hanut u josservaw lill-imputati vicin dana il-*laptop*, imbaghad lill-imputata Ruth Borda tiffghu gol-basket tal-karti li kellha f'idejha. Xi jiem wara impjegati tal-hanut fil-fergha ta' Hal Qormi jergghu josservaw lil dawn it-tnejn minn nies fil-hanut u jaghmlu rapport lill-pulizija. Wiehed mill-impjegati josserva illi l-guvni kellu *tattoo* fuq id-driegh tieghu, kif ukoll ighid illi igharaf lit-tfajla peress illi dina kienet tiffirma parti mill-klikka tal-hbieb tieghu xi snin qabel.² Illi fil-fatt ir-ritratti mehuda ta'l-imputat mill-PS186 Kristian Mintoff jindikaw dina it-*tattoo* fuq driegh l-imputat kif deskritta minn dana ix-xhud.³

Illi r-regoli illi tfasslu f'kawza R vs Turnbull fl-Ingilterra, 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-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

¹ Ara xhieda ta' Mirko Galea a fol.54 u Jonathan Bajada a fol.63

² Ara xhieda ta' Alan Fava a fol.66

³ Ara ritratti esebieti Dokument AC17 a fol.73

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-akkuzati huwa x-xhieda ta'l-impjegati tal-hanut Ultimate u l-video footage Dokument AC10. Illi dina l-Qorti ghalhekk innominat bhala espert lil Dr. Martin Bajjada li wara li jaghmel rikostruzzjoni tax-xena fuq il-post tar-reat jikkonkludi illi n-nies li jidhru fil-filmat jixbhu hafna lill-persuna ta'l-imputati.⁴

Illi fil-ktieb tieghu Cross, On Evidence (6th edition) l-awtur 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 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):

⁴ Ara rapport a fol.112

'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 ...'.

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 il-Qorti kellha okkazzjoni tara l-footage ta-CCTV li gie esebit fl-atti. Illi ma hemmx dubbju illi n-nies li jidhru fil-filmat huma l-imputati. Illi fl-ebda parti mill-filmat ma jidhru l-imputati qed jiehd u il-lap top mertu tal-kawza. Jidhru l-imputati qed iduru fil-hanut, izda imbaghad f'hin minnhom jigi osservat illi fil-basket tal-karti tal-imputata Ruth Borda jidher xi haga sewda li mill-genb tieghu l-oggett jinxtiebah hafna ma' lap top. Inoltre huwa minnu illi fil-bidu tal-filmat fejn l-imputati jigu osservati deklin gol-hanut il-basket tal-karti li ghandha f'idejha l-imputata Ruth Borda jidher vojjt, imbaghad wara jidher mimli kif inghad. Illi ftit tal-hin wara l-impjegati josservaw il-lap top nieqes. Illi ma hemmx indikazzjoni fl-atti ghalhekk jekk kienx wiehed mill-imputati biss li ha dana il-lap top jew it-tnejn minnhom. Illi fl-artikolu 42(d) tal-Kapitolu 9 li jitratta dwar il-komplicita' jinghad fost ohrajn illi l-komplici huwa dak li:

“b'xi mod li jkun, xjentement, tkun għenet jew assistiet lill-awtur jew lill-awturi tad-delitt fl-atti li bihom id-delitt ikun ġie ippreparat jew ikkunsamat; jew (e)tkun xewxet lil haddiehor inkella saħhet il-volonta tieghu sabiex jagħmel id-delitt, jew wegħdet li wara l-fatt tassistieh, tieqaf mieghu jew tikkompensah.”

Illi kif gie deciz f'sentenza mogħthija mill-Qorti ta'l-Appelli Kriminali fl-24 ta' Mejju 2002 fil-kawza Il-Pulizija vs Carmelo Agius et.: ***“Huwa veru li l-presenza ta' persuna fuq il-post tad-delitt u waqt li jkun qed jigi kommess id-delitt tista' tammonta għal komplicita f'dak id-delitt***

kemm il-darba jkun jirrisulta li bejn dik il-persuna u l-awtur tad-delitt kien hemm il-hsieb komuni li jsir dak id-delitt, u li l-presenza ta' dik il-persuna effettivament assistiet lill-awtur, anke jekk biss moralment, biex iwettaq dak id-delitt.”

Illi mill-fattispecje ta' dana il-kaz kif esposti iktar 'il fuq, dan 'l hekk imsejjah “*common design*” bejn iz-zewg imputati jirrizulta. Dana qed jinghad ghaliex mill-imagini li jidhru fil-film, l-imputati huma il-hin kollu flimkien, iduru mal-hanut u josservaw l-affarijiet illi hemm. Illi huma jibqghu flimkien anke meta jidhru hergin mill-hanut issa bir-*res furtiva* u fl-ebda hin wiehed mill-imputati ma jidher qed jallonta ruhu mill-iehor. Inolte anke ix-xhieda ta' l-impjegati stess fil-hanut tal-Ultimate ighidu li josservaw lil dawn it-tnejn minn nies il-hin kollu flimkien fil-hanut u fl-ebda hin ma ighidu illi xi hadd mit-tnejn ghamel xi moviment li bih setghu tawhom x'jifhmu illi kien qed jigri xi haga bejniethom. Di piu' jidher illi ftit tal-granet wara huma regghu marru fil-hanut tal-Ultimate, issa gewwa Hal Qormi, u jibdew iduru mal-hanut bl-istess mod. F'dina l-okkazzjoni l-imputata Ruth Borda jidher illi libbset parrocca, izda wiehed mill-impjegati xortawahda gharafha ghaliex kien jafha personalment xi zmien qabel.

Minn dana kollu ma hemmx dubbju ghalhekk illi l-imputati kienu qed jaghmlu dina s-serqa flimkien u ma hemmx l-icken prova fl-atti li tista' tindika illi dana kien qed isir ad insaputa wiehed ta' l-iehor. Kwindi il-Qorti ser issib htija fil-konfront taz-zewg akkuzati ghar-reati addebtati lilhom.

Illi meta tigi biex tqies il-piena li ghandha tigi inflitta l-Qorti ser tiehu in konsiderazzjoni dak li xehdu il-Probation Officers Antonella Spagnol u Mary Rose Farrugia fir-rigward taz-zewg imputati. Jidher illi ghalkemm l-imputati kellhom fil-passat problema serja ta' vizzju tad-droga, madanakollu jidher illi huma hadu il-kura kollha li kellhom bzonn biex jissuperaw dina l-problema. Kwindi piena karcerarja effettiva f'dana il-kaz ma tkunx idonja.

Illi l-Qorti tal-Appell Kriminali (sede inferjuri) f'sentenza tat-18 ta' Jannar 2001 fil-kawza fl-ismijiet 'Pulizija vs George Farrugia' intqal is-segwenti :-

Apparti li din il-Qorti ma tistax taqbel ma' l-Avukat Generali fejn dan jghid li s-sitwazzjoni ta' l-appellant hija « irriversibbli » - fil-fehma tal-Qorti hija l-mewt biss li ggib stat jew sitwazzjoni ta' irriversibilita' assoluta – anqas ma tista' din il-Qorti tikkondividi l-fehma ta' l-Avukat Generali li Ordni ta' Probation hu indikat biss ghal « first offenders » zghazagh. Anke fil-kaz ta' persuna ta' eta' mhux zghira u li forsi hu recediv, tista' titfacca fil-hajja ta' dik il-persuna « a window of opportunity » li permezz taghha jkun jista' jinkiser ic-ciklu ta' kundanni u ta' prigunerija.”

Ghaldaqstant l-Qorti, wara li rat l-artikoli 284 u 285 tal-Kapitolu 9 tal-Ligijiet ta' Malta, u fil-konfront ta' l-imputat Alan Cutajar l-artikoli 49 u 50 tal-Kapitolu 9 tal-Ligijiet ta' Malta, filwaqt li tastjeni milli tiehu konjizzjoni tat-tieni akkuza billi din hija alternattiva ghall-ewwel imputazzjoni, issibhom hatja tal-ewwel akkuza izda fid-dawl tal-konsiderazzjonijiet maghmula u b'applikazzjoni ta' l-artikolu 7 tal-Kapitolu 446 tal-Ligijiet ta' Malta tqieghed lill-hatja taht ordni ta' probation ghal zmien sentejn mil-lum.

Il-Qorti twissi lill-hatja bil-konsegwenzi skond il-ligi jekk huma jiksru l-ordni imposta fuqhom illum jew jekk jikkomettu reat iehor matul il-perijodu ta' l-ordni.

< Sentenza Finali >

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