



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

**MAGISTRAT  
ANTONIO GIOVANNI VELLA**

Seduta tas-17 ta' Ottubru, 2013

Numru. 782/2012

**Il-Qorti;**

Wara li rat l-imputazzjonijiet migjuba kontra:

Gilbert Farrugia ta` 28 sena, bin George u Carmela xebba Buttigieg, imwield Pieta` fis-6 ta` Marzu 1982 u residenti Coral Crt, Yan, Triq San Gorg, Ghaxaq u dentur tal-karta tal-identita` numru 150782M

Talli;

- 1) F`Malta, xjentament laqgha ghandu jew xtara hwejjeg misruqa, mehuda b`qerq, jew akkwista b`reat, sew jekk dan isir f`Malta jew barra minn Malta, jew xjentament kull mod li jkun, indahal biex ibieghhom jew imexxihom, u cioe` Iphone 4.
- 2) U aktar talli fl-istess data, lok, hin u cirksotanzi, meta sar jaf li xi oggetti li kienu fil-pusess tieghu kienu

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misruqa, mehuda b`qerq jew akkiwsta b`reat, naqas milli jgharraf lill-Pulizija b`dan il-fatt, fi zmien preskritt mill-Ligi.

Rat id-dokumenti kollha ezebiti;

Rat l-atti kollha tal-kawza;

Semghet ix-xhieda prodotta;

### **Ikkunsidrat:**

Illi l-fatti li taw lok ghal din il-kawza kienu s-segwent. F'Ottubru tas-sena 2010 kien insteraq 'mobile phone' tad-ditta iPhone minn hanut gewwa l-Belt, u sar rapport lill-Pulizija. Mill-investigazzjonijiet illi saru, ma giex identifikat il-halliel li ha t-telefon cellulari. Sussegwentement, mill-IMEI number tal-istess apparat, gie innotat li dan kien gie irregistrat f'isem l-imputat. Il-Pulizija baghtet ghalih, u ttiehdet stqarrija esebita fl-atti. Minn din jirrisulta li l-imputat kien xtara l-'iPhone' mill-idejn ghall-prezz ta' mitejn Ewro. Wara ftit taz-zmien li uzah, bieghu ghal mitejn u hamsin Ewro minn fuq is-sit elettroniku Maltapark. Ma kienx jaf l-isem minn ghand min xtrah, u kien induna li l-'mobile' kien 'blocked', u ghalhekk kien biddel is-sim car tieghu li kien tat-tip 'microsim' sabiex ihaddmu. Hu jghid li ma kienx jaf li kien misruq, u ma kienx jaf li gdid kien jiswa' madwar sitt mija w hamsin Ewro. Ghalhekk il-Prosekuzzjoni ressqitu fuq ricettazzjoni u saret din il-kawza.

Il-fatti tal-kaz m'humieq kontestati mid-difiza. Hija kontestata biss ix-xjenza li l-oggett kien wiehed misruq. Mill-provi prodotti, il-Qorti hi tal-fehma li l-imputat kien jaf ezatt x'inhu jaghmel. Xtara telefon mill-idejn ghal prezz, u rega' bieghu ghal prezz oghla. Xtrah minn xi hadd li jghid li ma jafx min hu. Kien jaf li kellu jibdillu l-microsim card biex ihaddmu, u nduna li l-'mobile' kien 'blocked'. L-

imputat gia' kellu apparat iehor tieghu tad-ditta Samsung, u ma ta ebda raguni ghalfejn ghazel li jixtri 'mobile' iehor.

Illi l-gurisprudenza f'din il-materja hi kopjuza ferm. Kif gie ritenut fil-kawza fl-ismijiet "Pulizija v. Darren Debono", deciza mill-Qorti tal-Appelli Kriminali fil-15 ta' Jannar 2009;

"Illi skond il-gurisprudenza sabiex persuna tinstab hatja ta' ricettazzjoni hu mehtieg li jikkonkorru is-segwenti tlitt rekviziti u cioe' :

1. il-provenjenza lilegittima tal-oggett in kwistjoni ossia li jkun insteraq, jew gie mehud b' qerq jew akkwistat b' reat iehor;
2. l-akkuzat irid ikun laqa' ghandu jew xtara tali oggett li ghandu provenjenza lilegittima w
3. fil-mument tal-akkwist, l-akkuzat kien jaf bil-provenjenza lilegittima tal-oggett in kwistjoni (ara App. Krim "**Il-Pulizija vs. Bugelli**" [24.1.1942]; "**Il-Pulizija vs. Giovanni Grima**" [25.10.2002])

L-element formali ta' dar-reat hu li l-akkuzat kien konsapevoli tal-provenjenza illecita tal-oggett suggett tar-ricettazzjoni. Dan ir-rekvizit jista' jigi pruvat kemm minn provi diretti kif ukoll minn provi indizjarji. Hekk fl-Appell Kriminali "**Il-Pulizija vs. John Briguglio**" [24.6.1961] (per Harding J.) kien gie ritenut li :-

*"Min jakkwista oggett taht cirkostanzi li fihom imissu jissuspetta li dak l-oggett kellu provenjenza illegittima, u ntant ma jaghmel xejn biex jikkontrolla dik il-provenjenza, u jaghalaq ghajnejh, huwa hati ta' din in-negligenza u kwindi ta' ricettazzjoni."*

Gie ukoll ritenut li dan l-element formali tar-reat in dizamina ikun jissussisti anki jekk l-akkuzat ikun irceva jew xtara l-oggett fil-waqt li jkollu jew inkella imissu kellu suspett li l-persuna li taghtu dak l-oggett setghet giet f' pussess ta' dak l-oggett b' mod illecitu w b' dana kollu xorta jilqa' ghandu jew jixtri tali oggett minghajr ma

jagħmel xejn biex jivverifika u jaccerta ruhu li l-pussess ta' dik il-persuna l-oħra kien wiehed legittimu u mhux kif kien qed jissuspetta hu. (ara App. Krim. "**Il-Pulizija vs. J. Briguglio**" [24.6.1961]; "**Il-Pulizija vs. John Dimech**" [24.6.1961]; "**Il-Pulizija vs. George Tabone**" [24.6.1961] u "**Il-Pulizija vs. Tancred Borg**" [26.10.1998])

S' intendi ix-xjenza mehtiega fir-ricettatur tirrigwarda l-provenjenza kriminuzza generika u ma tirreferix għad-dettalji specifici tar-reat principali. (Ara App. Krim. "**Il-Pulizija vs. Joseph Piscopo**" [21.3.1953]; "**Il-Pulizija vs. Nazzareno Zarb**" [16.12.1998] u oħrajn)

Kif jgħid il-KENNY :

*"The knowledge : The prisoner must have received the stolen goods with knowledge then of their having been stolen.. Such knowledge may be presumed prima facie if he knew of circumstances so suspicious as to convince any reasonable man that the goods had been stolen - e.g. ...when an unlikely vendor offers them for an unlikely price ... His subsequent conduct may be evidence of such knowledge - e.g. .. selling them surreptitiously ... or making no written entry of having bought them."*

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 tagħna, għax in tema ta' "*law of evidence*" il-gurisprudenza tagħna ssegwi hafna dik Ingliza. Din it-teorija ma hi xejn hlief l-applikazzjoni tal-buon sens għal cirkostanzi partikolari li jkunu jirrizultaw pruvati, fis-sens li meta jigu ppruvati certi fatti, dawn jistgħu wahedhom iwasslu ragjonevolment għall-konkluzzjoni li persuna partikolari tkun hatja tar-reat ta' serq tal-oggetti misjuba għandha 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**, 5<sup>th</sup>. ed., p.49 (now 8<sup>th</sup>. 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." (ara ukoll f' dan is-sens : "**Il-Pulizija vs. Carmel Debono**" [1.11.1996], "**Il-Pulizija vs. Richard Spiteri**" [31.8.2006] u ohrajn)."*

Ghalhekk, fil-fehma tal-Qorti u fid-dawl ta' dan l-insenjament tal-Qrati taghna, huwa evidenti li l-imputat kien jaf ezatt x'inhu jaghmel. Huwa indikattiv li l-istess

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'mobile' bieghu ghal aktar flus milli xtrah, apparti l-kunsiderazzjonijiet l-ohra kollha. Anke l-fatt li xtrah hekk mill-idejn ghal anqas minn terz tal-prezz tieghu minn hanut messu daqqlu l-qanpiena tal-allarm. Jidher izda li l-imputat ghazel li jaghlaq ghajnejn u jibqa' ghaddej, forsi ma tafx kif tighi tajba. Fid-dawl ta' dawn il-provi, il-Qorti ser issib lill-imputat hati ta' ricettazzjoni.

### **Ghal dawn il-motivi l-Qorti;**

Wara li rat l-Artikoli 334 , 334A tal-Kapitolu 9 tal-Ligijiet ta` Malta;

Din il-Qorti issib lill istess imputat Gilbert Farrugia hati ta` l-akkuzi kontra tieghu u ghal daqstant qeghda tikkundanah ghall-piena ta' sitt (6) xhur prigunerija sospizi ghal tlitt snin ai termini tal-Artikolu 28A tal-Kap 9 tal-Ligijiet ta` Malta.

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

**ANTHONY J. VELLA BA, LL.D., MA  
MAGISTRAT**

**< Sentenza Finali >**

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