



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

**MAGISTRAT DR.
EDWINA GRIMA**

Seduta tal-11 ta' Dicembru, 2013

Numru. 1349/2010

**-Pulizija
(Spettur Nikolai Sant)**

vs

**Hubert Gatt ta' 25 sena iben Anthony u Maria Dolores
nee' Debono, mwieled Pieta' nhar il-10 ta' Ottubru
1988 residenti fil-fond no.222, Flat no.4, Triq San
Albert, Gzira u detentur tal-karta ta' l-identita' numru
477988(M)**

Il-Qorti,

Rat l-akkuza kontra 'l hawn fuq imsemmi Hubert Gatt li gie akkuzat talli minn gewwa l-hanut bl-isem ta' 'Mincott Pet Shop' li jinsab gewa Triq ta' Cieda, San Gwann nhar is-16 ta' Novembru 2010 u nhar id-19 ta' Novembru 2010 ikkometta serq ta' ghasafar a detriment ta' Anthony Calleja u/jew persuni ohra, liema serq huwa aggravat bil-valur.

Kopja Informali ta' Sentenza

Rat id-dokumenti esebiti;

Rat il-kunsens ta' l-Avukat Generali tal-20 ta' Dicembru 2010 sabiex dana il-kaz jigi trattat u deciz bil-procedura sommarja minn dina l-Qorti.

Semghet il-provi;
Semghet trattazzjoni.

Ikkunsidrat:

Illi il-Prosekuzzjoni f'dina il-kawza qieghda tistrieħ principalment fuq filmat meħud minn CCTV footage li gie elevat mill-hanut fejn allegatament seħhet is-serqa mertu ta' dina il-kawza. Illi qabel xejn jigi rilevat illi dana il-film tal-jirreferi biss għal gurnata tad-19 ta' Novembru 2010 għalkemm il-Prosekuzzjoni tezebixxi stills mill-footage tal-granet tal-15 ta' Novembru, s-16 ta' Novembru 2010, it-18 ta' Novembru 2010 u id-19 ta' Novembru 2010. Provi oħra fl-atti li jimplikaw lill-imputat f'dina is-serqa ma hemmx. Illi fuq rapport magħmul minn Anthony Calleja sid il-hanut bl-isem Mincott, il-pulizija accedew fuq il-post fejn sabu lill-imputat flimkien ma' sid il-hanut li beda jallega illi l-imputat kien seraqlu erba' għasafar u cioe' griedel u dana fuq medda ta' jumejn. Sid il-hanut jallega illi fis-16 ta' Novembru l-imputat kien seraqlu l-ewwel zewgt igriedel u sussegwentement irritorna jumejn wara u seraqlu tnejn oħra. Dana innotah qed jagħmlu minn fuq il-filmati tal-camera u mhux għax rah jagħmel dan. L-imputat jigi arrestat mill-pulizija u issirli tfittxija fir-residenza tiegħu fejn fuq il-bejt tal-blokk ta' l-appartamenti fejn jirrisjedi instabu zewg gageg b'zewgt vrieden u zewgt igriedel fihom. Dawn instabu f'basket mohbi wara it-tank ta' l-ilma. L-għasafar gew elevati mill-pulizija, izda mill-provi akkwiziti fl-atti jirrizulta illi dawn l-għasafar gew identiikati mill-parti leza bhala l-istess għasafar li kienu insterqulu u għalhekk gew ritornati lilu. Sfortunatament għalhekk il-*corpus delicti* qatt ma gie esebiet in atti u l-Qorti għalhekk ma għandha l-ebda prova li tista' tindika illi l-għasafar misjuba għand l-imputat kienu verament dawk misruqa għajr għal dak li ighid Anthony Calleja. Illi dawn l-għasafar lanqas biss gew

iffotografati sabiex b'hekk ikun hemm prova ta' dak li instab ghand l-imputat u kwindi il-Qorti lanqas tista' tinvoka t-teorija elaborata minn giurisprudenza u awturi inglizi dwar "***the unlawful possession of recently stolen goods***" jew 'l hekk imsejja "***theory of recent possession***". Din it-teorija giet applikata anke minn giurisprudenza taghna u dana peress illi kif inghad f'diversi sentenzi din it-teorija mhi xejn ghajr l-applikazzjoni tal-*"buon sens"* ghac-cirkostanzi partikolari li jkunu jirrizultaw pruvati; fis-sens li meta jigu ppruvati certi fatti dawn jistghu wahedhom iwasslu ragjonevolment ghal konkluzzjoni li persuna partikolari tkun hatja tar-reat ta' serq tal-oggetti misjuba ghandha jew, skond ic-cirkostanzi, tar-reat ta' ricettazzjoni ta' dawk l-oggetti.

Illi mit-tfittxija li saret mill-pulizija fir-residenza ta'l-imputat irrizulta illi l-imputat kellu fil-pussess tieghu diversi tipi ta' ghasafar, izda erba' minnhom instabu fuq il-bejt mohbija wara it-tank ta'l-ilma gewwa basket. Illi fix-xhieda tieghu l-imputat ighid illi huwa kien itella' dawn l-ghasafar fuq il-bejt ghax-xemx u dana ghax kienu draw joqghodu f'dana il-post. Izda il-Qorti qajla temmnu lill-imputat stante illi certament maghluqin f'basket dawn l-ghasafar ma tantx setghu igawdu x-xemx! Fi kwlaunkwe kaz dawn l-ghasafar qatt ma gew esebieti in atti u l-Qorti ghalhekk ma tistax tistabilixxi b'certezza morali illi dawk l-ghasafar li instabu ghand l-imputat u li gew ritornati lill-parti leza kienu l-istess ghasafar li insterqu fil-granet indikati fl-akkuza. Illi l-Ufficjal Prosekutur fix-xhieda tieghu ighid illi Calleja kien gharaf dawn l-ghasafar peress illi kellhom origini taljana. Ighid ukoll li Calleja gharafhom mill-kuluri li kellhom u anke peress illi f'Malta dawn it-tip ta' griedel ma humiex komuni u ghalhekk seta igharafhom li huma tieghu. Illi meta jaghti ix-xhieda tieghu fil-Qorti, madanakollu Calleja ma jipproduci l-ebda dokument in sostenn ta' dak li qed ighid. La jezebixxi xi ricevuta, la xi certifikati u lanqas ritratti li jindikaw lill-Qorti il-kwalita' ta'l-ghasafar li insterqulu. Ukoll ghalkemm isostni illi l-valur taghhom kien ta' madwar €200 il-wiehed, madanakollu ma iressaq l-ebda prova biex jindika il-valur ta'l-istess.

L-imputat minn naha tieghu dejjem cahad illi huwa seraq xi ghasafar minn ghand il-parti leza kemm meta jirrilaxxa l-istqarrija tieghu u anke meta jaghti ix-xhieda tieghu fil-Qorti. Huwa ma jichadx illi kien prezenti fil-hanut ta' Calleja u lanqas jichad illi l-persuna li tidher fil-film huwa hu stess. Isostni illi kien mar fil-hanut ta' Calleja sabiex ibieghhlu xi ghasafar (zebri). Kien ftiehem ma' Calleja dwar il-prezz u ghalhekk hallielu l-ghasafar fil-gageg. Ighid illi l-ghada mar ghandu sabiex ihallsu izda Calleja qallu li il-persuna li kellu jixtriehom ma kienx mar ghalihom. L-ghada rega mar izda Calleja ma kienx hemm u ghalhekk qaghad jistennieh sakemm jigi, meta f'hin minnhom wasslu il-pulizija u arrestawh. Ighid illi huwa dahal hdejn il-gageg tal-ghasafar sabiex jara jekk l-ghasafar tieghu kenux ghadhom hemm u sabiex ighoddom. Isostni illi huwa jidher qed igholli idejh hdejn il-gageg sabiex ighoddom u mhux biex jisraq u jichad illi f'xi hin huwa fetah xi gagga. Calleja, in kontro-ezami, jammetti illi huwa kien ghamel negozju ma'l-imputat dwar il-bejgh ta' xi ghasafar u jammetti ukoll illi huwa kien ghadu ma hallsux ghal bejgh ta' dawn l-ghasafar madanakollu isostni illi wara li dahal l-imputat fil-hanut huwa sab l-ghasafar neqsin u ghalhekk kien iddecieda jara il-film tal-camera li kellu fil-hanut fejn osserva lill-imputat qed jiehu xi haga mill-gageg tal-ghasafar.

Illi ghalhekk jifdal biss bhala prova il-film esbiet in atti tal-jum tad-19 ta' Novembru 2010. Illi fir-regoli illi tfasslu f'kawza R vs Turnbull fl-Ingilterra, li ghalkemm ma jikkostitwixxu l-ebda regola taht il-ligi Maltija, 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-decizjoni 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 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 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):

'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 fil- kaz fl-Ingilterra R vs Murphy and Maguire (1990) l-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 fil-kaz in dizamina ma tqumx il-kwistjoni dwar l-identifikazzjoni tal-persuna ta’l-akkuzat fil-filmat esebiet (li d-difiza ma ikkontestatx il-validita tieghu u anke ezentat lill-prosekuzzjoni milli tressaq il-prova dwar l-awtenticita ta’l-istess u tal-istills esebieti fl-atti.). L-imputat stess ma jinnegax illi huwa il-persuna li tidher f’dana il-filmat u jipprova jaghti spjegazzjoni ta’ dak illi jidher li qed jaghmel fih. Illi l-Qorti ezaminat dana il-filmat bir-reqqa. L-imputat jidher jagixxi b’mod suspettuz fejn jidher ihares u imbaghad idahhal idejh fil-gagga u wara ftit johrog idu u idahhal xi haga fil-but tal-qalziet. Jerga’ jaghmel l-istess movimenti ghat-tieni darba fejn imbaghad idur daru lejn il-camera, jimxi iktar ‘il gewwa fil-hanut, idahhal xi haga taht hwejjgu u imbaghad idur lura jirranga il-gakketta u inizzilha ‘l isfel u johrog jimxi ‘il barra. Illi dawn il-

movimenti ma jikkombaccjawx ma' dak illi l-imputat ighid li ghamel meta dahal fil-hanut. Huwa isostni illi fl-ebda hin ma fetah il-gageg u mar vicin u gholla idejh sabiex ighodd l-ghasafar fil-gagga. Ma jaghtix imbaghad spjegazzjoni tal-movimenti l-ohra li jidher illi qed jaghmel fil-filmat u ta' dak illi jidher li qed idahhal fil-but tal-qalziet u taht hwejjgu. Dana iwassal il-Qorti ghal konkluzjoni wahda u cioe' illi dak li jidher fil-filmat mhu xejn ghajr it-tehid mill-imputat ta' zewg ghasafar li kien hemm fil-gageg. Il-Qorti tista' tasal ghal dina l-konkluzjoni fuq dak li issostni il-parti leza, u cioe' illi huwa sab zewg ghasafar neqsin minn dawn il-gageg wara li dahal hemm gew l-imputat.

Illi kif diga inghad ma ingiebet l-ebda prova mill-prosekuzzjoni tal-valur tal-ghasafar mehuda mill-imputat u ghalkemm il-parti leza issostni illi dawn kienu griedel rari, madanakollu l-Qorti ma tistax b'dina is-sempli asserrzjoni tasal biex tistabbilixxi il-valur taghhom. Ghaldaqstant billi dina l-prova hija nieqsa, il-Qorti ser issib htija biss ghar-reat tas-serq semplici minghajr l-aggravju tal-valur.

Illi meta tigi biex tqies il-piena li ghandha tigi inflitta, il-Qorti ser tiehu in konsiderazzjoni l-fedina penali kwazi nadifa ta'l-imputat u il-fatt illi piena karceraja effettiva f'dana l-kaz ma hijiex idonja billi l-imputat, li ma jidhirx li ghandu xi karattru refrattarju, ghandu jinghata opportunita ohra sabiex jaghraf l-izball li ghamel u ma jergax ixellef difreigh mal-gustizzja.

Ghaldaqstant il-Qorti wara li rat l-artikoli 284 u 285 tal-Kapitolu 9 tal-Ligijiet ta' Malta issib lill-imputat hati tal-akkuza migjuba fil-konfront tieghu, izda mhux aggravat bil-valur u tikkundannah ghal perijodu ta' xahrejn prigunerija, li fid-dawl tal-konsiderazzjonijiet maghmula u b'applikazzjoni ta'l-artikolu 28A tal-Kapitolu 9 tal-Ligijiet ta' Malta dana il-perijodu ta' prigunerija qed jigi sospiz ghal zmien sena mil-lum.

Il-Qorti twissi lil hati bil-konsegwenzi skond il-ligi jekk huwa jikkometti reat iehor matul il-perijodu operattiv ta' dina is-sentenza.

Kopja Informali ta' Sentenza

< Sentenza Finali >

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