MALTA

QORTI TAL-MAGISTRATI (MALTA)

BHALA QORTI TA' GUDIKATURA KRIMINALI

MAGISTRAT DR.

CONSUELO-PILAR SCERRI HERRERA

Seduta tat-3 ta' April, 2014

Numru. 251/2014

Il-Pulizija

(Spettur Trevor Micallef)

vs

DANNY CAMILLERI

Il-Qorti,

Rat li l-imputat **DANNY CAMILLERI,** iben Patrick u Mary nee' Grech, imwieled fit-2 ta' Awissu 1996, Pieta', residenti Marjess, Triq Sant'Antnin, Marsaxlokk u detentur tal-karta tal-identita' bin-numru 331296(M) gie mressaq quddiemha u akkuzat talli fit-13 ta' Marzu 2014 ghal habta tat-tlieta u nofs ta' filghodu (3.30 a.m) f'dawn il-Gzejjer ikkommetta serq ta' mobile phone u gakketta ghad-detriment ta' Mattia Savio Ferrara u/jew persuni ohra liema serq huwa aggravat bil-'hin'.

U aktar talli f'Malta xjentement laqa' ghandu jew xtara 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, indahal biex ibieghhom jew imexxihom.

Rat id-dokumenti esebiti mill-Prosekuzzjoni fosthom okkorrenza, stqarrija, estratt mill-att tat-twelid tal-imputat, fedina penali, kunsens tal-Avukat Generali u l-karta tal-identita' tal-imputat.

Semghet lix-xhieda mressqa mill-Prosekuzzjoni u cioe' lil-parte civile Mattia Savio Ferrara fejn xehed bil-lingwa Taljana li giet tradotta ghall-Malti mill-Qorti nhar it-13 ta' Marzu 2014. Ix-xhud iddikjara li nhar it-12 ta' Marzu, 2014 ghal habta tas-siegha ta' filghodu huwa kien hdejn l-istabbiliment Hugos. Hu kien mar hemmhekk sabiex jizfen u jiehu pjacir. Filfatt huwa pogga l-gakketta tieghu li kellu l-mobile go fih fuq kaxxa li hemm fl-istabbiliment u resaq ftit passi l-boghod mill-gakketta. Huwa stqarr illi kien wahdu. Ix-xhud spjega li wara xi tliet sieghat huwa mar sabiex jigbor il-gakketta tieghu izda la

sab il-gakketta u lanqas il-mobile phone. Huwa beda jfittex il-gakketta u peress li ma sabhiex qata' qalbu li ser isibha u telaq lejn id-dar minghajr il-gakketta.

Ix-xhud tenna li huwa u sejjer lejn id-dar, ra lill-imputat odjern li gharfu prezenti fl-Awla li kien liebes il-gakketta tieghu. Ghalhekk mar fuqu u hadlu l-gakketta pero' fil-gakketta ma kienx hemm il-mobile phone tieghu. Huwa tenna li fejn kien ghaddej l-imputat kien hemm il-pulizija u fil-fatt ix-xhud spjega lill-pulizija dak li kien effettivament gara. Ix-xhud mar mal-pulizija sabiex ifittxu pero' ma sabux ghalkemm ra li kien hemm il-hbieb tieghu. Huwa ndika lill-pulizija min kienu l-hbieb tieghu u dawn il-hbieb tieghu cemplulu dak il-hin stess quddiemu. Xi zewg minuti jew tlieta waqt li huwa kien ghadu fuq il-post, rega' mar l-imputat. Dak il-hin huwa kkonferma mal-pulizija li l-imputat odjern kien liebes il-gakketta tieghu.

Il-mobile tax-xhud kien tal-ghamla LG u kien xtrah second hand ghal mija u tmenin ewro xi sena ilu. Ix-xhud stqarr li llum il-gurnata xtara mobile phone iehor peress illi kellu bzonn jikkomunika mal-genituri tieghu u kien ser jirritorna lura lejn Sqallija dakinhar stess li tela' jixhed. Huwa jahseb li l-gakketta fil-fatt kien xtraha xi sebghin ewro (€70) u jahseb li ilha ghandu xi sena wkoll. L-incident filfatt sehh dakinhar li xehed ix-xhud, filghodu stess ghal habta tal-hamsa ta' filghodu fit-13 ta' Marzu 2014.

Ix-xhud sosta li lill-imputat ma rahx jiehu l-gakketta, pero' x-xhud kien fl-istess stabbiliment, kien qed jizfen u ma sabx aktar il-gakketta. Mistoqsi mill-Qorti jekk rax lill-imputat fil-hanut in kwistjoni wiegeb li le ma rahx fl-ebda hin. Filfatt meta huwa ltaqa' mal-imputat dar fuqu u qallu 'hey, din il-gakketta tieghi' u nehhihielu x-xhud stess, nehhielu z-zip u ha l-gakketta minn fuqu. Huwa ddikjara li fl-ebda hin ma rreagixxa l-imputat. Ix-xhud stqarr li meta l-imputat kien mar lura u huwa identifikah, l-imputat kien mar fil-kumpanija tal-pulizija. Ix-xhud gharaf il-gakketta peress li l-buttuni taghha ghandhom speci ta' habel maghhom, din hija *daffle coat*. Il-gakketta in kwistjoni li x-xhud urieha lill-Qorti filfatt ghandha l-habel mal-buttuni u din huwa kien xtraha minn Caltanizetta. Il-marka tal-gakketta hija Wilfield. Huwa kkonferma li meta effettivament kien mar l-imputat, il-gakketta diga' kienet f'idejh. Meta x-xhud ha l-gakketta, missha u qal 'ara t-telephone ma ghadux hawn'. Huwa kkonferma li t-telefon tieghu kien fil-gakketta meta huwa halliha hemm. Ix-xhud tenna li l-istabbiliment Hugos huwa pjuttost kbir, filfatt huwa akbar mill-Awla tal-Qorti. Filfatt kien hemm hafna nies fl-istabbiliment il-gurnata ta' qabel bil-lejl.

Rat illi d-difiza ezentat lill-Prosekuzzjoni milli tressaq lis-segwenti xhieda: PS 848 Lawrence Gabriele, PS 1245 Klaus Mifsud, PS 1154 Christopher Schembri.

Semghet lil **PS 340 Leeroy Balzan** jixhed fis-seduta tas-27 ta' Marzu 2014 fejn ikkonferma li dakinhar tal-14 ta' Marzu 2014 waqt li kien xoghol overtime f'Paceville flimkien ma' PC 1111 Braden Borg u PC 106 Clayton Abela, innutaw zewg persuni jillatikaw bejniethom u f'hin minnhom wiehed minn dawn il-persuni ta l-gakketta li kien liebes lill-persuna l-ohra. Huwa gharaf lill-imputat odjern bhala l-persuna li dakinhar kienet liebsa l-gakketta mertu tal-kawza. Huwa jaf li l-persuna l-ohra kienet ta' nazzjonalita' Taljana.

Ix-xhud tenna li l-persuna ta' nazzjonalita' Taljana giet mitkellma minnhom u qalilhom li kellu mobile phone f'din il-gakketta li kienet proprjeta' tieghu. Dak il-hin is-Sur Camilleri telaq 'l hemm izda wara ftit minuti sabuh u ghamlu tfittxija fuq il-persuna tieghu pero' irrizultat fin-negattiv ghal tfittxija ta' dan il-mobile. Sussegwentament huma ghalhekk arrestaw lill-imputat bhala s-Sur Camilleri. Huwa jaf li f'hin minnhom kienu gew shab l-imputat hdejn il-vann liema hbieb kienu fi stat ta' sokor. Dak il-hin huma ghamlu tfittxija wkoll fuq il-persuna taghhom u wkoll irrizultat fin-negattiv.

Huma nizlu l-ghassa u ghaddew lis-sur Camilleri lis-superjur taghhom ghal aktar investigazzjoni. L-imputat kien telaq minn ma genbhom ghal perjodu ta' xi ghaxar minuti. Pero' marru jfittxuh ghax qalulhom li kien niezel fid-direzzjoni l-isfel u sabuh fi Triq Santu Wistin hdejn Hugos. Hemmhekk ix-xhud spjega li tellawh hdejn il-vann u ghamlulu tfittxija li rrizultat fin-negattiv. Huwa kien tkellem mat-Taljan proprju dak il-hin li kien qieghed jillatika mal-imputat dwar il-gakketta. Ix-

xhud spjega li huma kienu cemplu lil shab l-imputat u qalulu sabiex imur hdejhom u huma u nezlin biex ifittxuh kien gej fid-direzzjoni taghhom. Jiftakar li dakinhar l-imputat kien liebes T-shirt iswed u xi jeans.

Mistoqsi min qalilhom li l-mobile kien nieqes wiegeb li naturalment huma qaghdu fuq ix-xhieda tat-Taljan. It-Taljan infurmahom li kien halla l-gakketta tieghu wahedha f'xi hin fl-istabbiliment Hugos. Ix-xhud iddikjara li kien staqsa lill-imputat minnufih jekk kellux il-mobile tat-Taljan. Mistoqsi jekk kienx aggressiv mieghu wiegeb li l-imputat ma riedx jersaq lejn il-vann u ghalhekk kellu juza daqsxejn ta' forza mieghu fis-sens li gibduh lejn il-vann. Huwa kien zammu minn idejh u idderigieh lejn il-vann. Huwa cahad li qabdu minn ghonqu. Ix-xhud kull ma ra huwa lit-Taljan jipprova jnezza l-gakketta minn fuq l-imputat u sussegwentament ra lill-imputat inehhi l-gakketta u jghaddihielu.

Semghet lil **PC 106 Clayton Abela** jixhed fl-istess seduta tas-27 ta' Marzu, 2014 fejn iddikjara li fil-lejl ta' bejn it-13 u l-14 ta' Marzu, 2014 huwa kien stazzjonat Paceville flimkien ma' PC 1111 Braden Borg u ma' PS 340 Leeroy Balzan Engerer u kien hemm ukoll Maggur maghhom. Huwa jaf li f'xi hin waqt li kienu Paceville raw guvni ta' nazzjonalita' Taljana li rrizultalu li kien Mattia Savio Ferrara u rah jargumenta mal-imputat u rah inehhilu l-gakketta. Wara dan it-Taljan kien mar fuq ix-xhud u qallu li dan kien seraqlu l-gakketta. L-individwu kien ma' tnejn ohra li kienu jidhru li kienu fis-sakra. Meta dawn gew

it-Taljan qallu li kien hadlu l-mobile li kien fil-gakketta. Ix-xhud imbaghad ghaddieh lis-surgent.

PC 1111 Braden Borg xehed fis-27 ta' Marzu, 2014 fejn iddikjara li fit-tlieta u nofs ta' filghodu kien ra lil Danny Camilleri li kien liebes il-gakketta. Din kienet gakketta sewda u kienet tinqafel bil-buttuni qishom tal-injam. F'certu hin jaf li dan kien qieghed jitkellem mal-maggur. Daqshekk kull ma ra x-xhud.

Maggur Mario Rotin xehed fis-27 ta' Marzu, 2014 u ddikjara li huwa ra lill-imputat u lit-Taljan jargumentaw u firidhom. It-Taljan kien beda jghajjat li l-imputat kien seraqlu l-gakketta. L-imputat dak il-hin nehha l-gakketta u tahielu lura. It-Taljan pogga jdejh fil-but tal-gakketta u beda jallega li l-imputat kien seraqlu l-mobile. Sussegwentament jaf li kien mar is-surgent u tah over lilu ghax huwa baqa' sejjer fuq glieda li kien hemm hdejn il-Havana.

Semghet lid-difiza tghid li l-imputat ma kienx ser jixhed.

Semghet lill-partijiet jittrattaw il-kawza u dan fis-seduta tas-27 ta' Marzu 2014 u l-prosekuzzjoni tghid li hija rnexxielha tipprova l-kaz taghha u dan ghaliex ressqet lill-allegat derubat Mattia Savio Ferrara jixhed u jghid li ftit wara li nnota li kienet insterqitlu l-gakketta tieghu huwa ra lill-imputat liebes din il-gakketta miexi fit-triq biha u meta avvicinah, dan kien lest li jinzaha u jghaddiha lura lilu. Il-Prosekuzzjoni

sostniet li ghalhekk in vista ta' din il-prova biss l-imputat ghandu jinzamm hati ta' serq tal-gakketta u tal-mobile phone li kien go fiha.

Id-difiza minn naha l-ohra sostniet li effettivament l-imputat ghandu jigi liberat ghaliex il-Prosekuzzjoni indikat il-jum il-hazin fl-akkuza taghha u dan ghaliex hija akkuzat lill-imputat li seraq il-gakketta fit-13 ta' Marzu 2014 ghall-habta tat-3.30 a.m meta mill-okkorrenza u mix-xhieda tal-vittma stess jirrizulta li effettivament l-allegat serq sar fl-14 ta' Marzu 2014 fis-sighat bikrin ta' filghodu. Bla pregudizzju ghal din l-eccezzjoni d-difiza sostniet li l-imputat ma jistax jinsab hati ta' serq tal-mobile u dan ghaliex ma jirrizulta minn imkien li fl-ewwel lok verament fil-gakketta kien hemm mobile u fit-tieni lok li l-imputat seraq il-gakketta bil-mobile go fih.

Ikkunsidrat:

Dwar il-fatti ma jidhirx li huma kontestati fis-sens li l-allegat vittma Mattia Savio Ferrara jghid li huwa mar gewwa stabbiliment ta' divertiment gewwa Paceville bejn il-lejl tat-12 u t-13 ta' Marzu 2014 u f'xi hin fis-sieghat bikrin tat-13 ta' Marzu 2014 nehha l-gakketta minn fuqu. Huwa halla din il-gakketta fuq banketta f'kantuniera f'dan l-istabbiliment 'unattendend'. Xi sieghat wara meta rritorna sabiex jigbor il-gakketta innota li ma kienitx ghada hemm izda b'xortih meta hareg mill-istabbiliment innota lill-imputat liebes il-gakketta. Jghid li l-imputat nehha l-gakketta u tahielu minnufih. Bhala fatti dawn mhumiex kontestati.

Illi ghalhekk din il-Qorti ghandha l-ewwel nett titratta l-eccezzjoni dwar il-jum zbajlat kif indikat mill-Pulizija fix-xhieda taghhom stante li ma taqbilx mal-gurnata indikata fl-akkuza, fl-okkorrenza u fix-xhieda moghtija mil-vittma.

Illi jirrizulta mill-atti illi hemm diskrepanza dwar id-data meta effettivament sehhet is-serqa tal-gakketta. Dan qed jinghad ghaliex filwaqt li l-vittma Mattia Savio Ferrara kien konsistenti fix-xhieda tieghu u spjega fl-aktar dettall dak li kien gralu, u cioe' li l-imputat kien liebes il-gakketta tieghu dakinhar stess filghodu, uhud mill-ufficjali tal-Pulizija xehdu illi dan l-incident sehh fis-sieghat bikrin tal-14 ta' Marzu 2014. Illi ma hemmx dubju li din id-data moghtija minnhom giet moghtija bi zball, u dan ghaliex kif jirrizulta mill-okkorrenza esebita fl-atti dawn l-istess ufficjali u cioe' PC 106, PC 1111 u PS340 kienu kollha nvoluti fl-investigazzjoni odjerna tant li huma mnizzlin bhala officers involved in the incident. Illi f'din l-istess okkorrenza jirrizulta illi l-incident tabilhaqq sehh fit-13 ta' Marzu 2014 fit-3.30am kif effettivament hemm indikat fil-komparixxi u ghalhekk il-Qorti hija propensa temmen l-allegat vittma Mattia Savio Ferrara illi huwa sab il-gakketta tieghu fuq il-persuna tal-imputat dakinhar tat-13 ta' Marzu 2014.

Illi l-Qorti ssib illi x-xhieda moghtija minn Mattia Savio Ferrara kif korroborata mill-jum indikat fl-okkorrenza u fl-akkuza hija korretta u ghalhekk qieghda tichad id-difiza sollevata mill-imputat illi huwa

ghandu jigi lliberat peress li kien hemm diskrepanza fil-jum indikat mill-Pulizija.

Dwar il-mertu, il-Qorti tinnota li l-akkuzi moghtija mill-Prosekuzzjoni huma alternattivi ghal xulxin u cioe' dik ta' serq u dik ta' ricettazzjoni. Id-difiza sostniet li verament hadd ma ra lill-imputat jisraq il-gakketta u l-vittma Mattia Savio Ferrara stqarr li kien hu li halla l-gakketta tieghu wahedha mhux taht sorveljanza waqt li kien fl-istabbiliment ta' divertiment gewwa Paceville u li kien f'dak il-hin li l-gakketta kienet wahedha li nsterqet. Il-Qorti tghid li d-difiza ghandha ragun meta tghid li hadd ma ra lill-imputat jisraq il-gaketta pero' jirrizulta bic-car, u dan mhux kontestat lanqas mill-imputat stess, li ftit ta' hin wara li l-allegat vittma nduna li nsterqitlu l-gakketta dan ra lill-imputat liebes din l-istess gakketta u gieghlu jinzaha u jatihielu u l-imputat hekk ghamel bla kliem u bla oppozizzjoni kif del resto ikkonfermaw l-ufficcjali tal-pulizija apparti l-vittma stess.

Punti legali:

<u>L-elementi tar-reat ta' ricettazzjoni</u>

Il-Qorti hawn ser ticcita x'intqal mill-Qorti tal-Appell Kriminali preseduta mill-Imhallef Dr Joseph Galea Debono, fis-sentenza '**Il-Pulizija vs Darren Debono'** tal-15 ta' Jannar, 2009. F'dik is-sentenza ntqal dan li gej:

‘Illi skont il-gurisprudenza sabiex persuna tinstab hatja ta' ricettazzjoni hu mehtieg li jikkonkorru s-segwenti tliet rekwiziti u cioe':

1. *il-provenjenza llegittima 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 llegittima; u*
3. *fil-mument tal-akkwist, l-akkuzat kien jaf bil-provenjenza llegittima 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-rekwizit 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 jaghlaq ghajnejh, huwa hati ta' din in-negligenza u kwindi ta' ricettazzjoni*."

Gie wkoll ritenut li dan l-element formali tar-reat in dizamina ikun jissussisti anki jekk l-akkuzat ikun ircieva jew xtara l-oggett filwaqt li jkollu jew inkella jmissu kellu suspett li l-persuna li taghtu dak l-oggett setghet giet f'pussess ta' dak l-oggett b' mod illecitu u b'dana kollu xorta jilqa' ghandu jew jixtri tali oggett minghajr ma jaghmel xejn biex jivverifika u jaccerta ruhu li l-pussess ta' dik il-persuna l-ohra kien wiehed legittimu u mhux kif kien qed jissusspetta 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

kriminuza generika u ma tirreferix ghad-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 ohrajn)

Kif jghid 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."

Id-*Doctrine of recent possession*

In vista tal-akkuza ta' serq din il-Qorti taghmel referenza ghat-teorija kif gja indikata kif komunement maghrufa u cioe' dok ta' 'recent possession'. Ghalhekk il-Qorti gharblet ukoll dan il-kuncett permezz ta' referenza ghall-kazistika Maltija u barranija kif jidher hawn taht.

Fid-decizjoni moghtija mill-Imhallef l-Onor.Vincent De Gaetano fis-26 t'Awwissu 1998 fl-ismijiet '**Il-Pulizija vs Emanuel Seisun u Pius sive Pio Micallef**' intqal dan li gej:

'It-teorija (theory of unlawful possession of recently stolen goods) mhix xejn hlief l-applikazzjoni tal-bon sens ghall-cirkostanzi partikolari li jkunu jirrizultaw ippruvati fis-sens li meta jigu ppruvati certi fatti dawn jistghu wahedhom iwasslu ragonevolment ghall-konkluzjoni li persuna partikolari tkun hatja tar-reat ta' serq tal-oggetti misjuba ghandha jew, skont ic-cirkostanzi, tar-reat ta' ricetazzjoni ta' dawk l-oggetti.' (Volum LXXXII 1998 Part IV).

Fl-istess sentenza l-Qorti kkwotat estensivament mill-Archbold: Criminal Pleading, Evidence and Practice 1997 paras 21-125, 21-126 li

huma riprodotti verbatim fl-edizzjoni tas-sena 2004. Il-Qorti ser tirriproduci dak li hemm fl-**Archbold** li jidher bl-istess kliem a fol 325 ta' l-istess volum:

'There appears to have been widespread misunderstanding of the so-called doctrine of recent possession. The 'rule' is, it is submitted, that where it is proved that premises have been entered and property stolen thereform 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 so be directed: see R v Loughlin, 35 Cr.App.R 69; R v 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 v Smythe 72 Cr.App.R.8.C.A., the court stressed that there 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 or 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 the available evidence.'

Izda d-'doctrine of recent possession' mhix l-unika prova ta' ricetazzjoni. Dan jirrizulta kemm mill-gurisprudenza barranija kif ukoll Maltija. Fil-fatt a fol 1898 tal-Archbold, edizzjoni 2003, insibu hekk:

'The doctrine is only a particular aspect of the general proposition that where suspicious circumstances appear to demand an

explanation, and no explanation or an enitely incredible explanation is given, the lack of explanation may warrant an inference of guilty knowledge in the defendant. This again is only part of a wider proposition that guilt may be inferred from unreasonable behaviour of a defendant when confronted with facts which seem to accuse. (per Stocker L.J. at p.103)'.

Minn naha l-ohra skont il-gurisprudenza tal-Qrati Maltin, kif diga' ntwera aktar 'il fuq, jista' jkun hemm indizji ohra li jwasslu lill-Qorti biex issib lill-persuna hatja ta' dan ir-reat. Fil-fatt, il-Qorti tal-Appell Kriminali kkummentat hekk:

'Ir-reat ta' ricettazzjoni, fost elementi ohra, jirrikjedi li min qed jakkwista jrid ikun jaf li dak l-oggett kien gej minn serq jew xi attivita' ohra illegali, jew seta' ragonevolment jissuspetta li kellu l-origini tieghu hekk, u dan minn diversi cirkostanzi li huma di natura suspettuzi, bhal per ezempju, prezz irrizorju, transazzjoni fl-imwarrab u fid-dlam u bil-mohbi tal-pubbliku, bejjiegh mhux maghruf, u cirkostanzi simili li bil-fors iqajmu suspett ragonevoli li f'dak in-negozju hemm xi haga mhux normali'"

S'intendi ix-xjenza mehtiega fir-ricettatur tirrigwarda l-provenjenza kriminuza generika u ma tirreferix ghad-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 ohrajn)

Kif jghid 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."

Il-Qorti taghmel referenza ghal sentenza ohra moghtija mill-Qorti tal-Appelli Kriminali fl-ismijiet **Her Majesty the King *vs* Cyril Gillham** – 11/05/1943 fejn gie ritenut li:-

"When it has been shown that property has been stolen and that it has been found recently after its loss in the possession of the accused he is called to account for having it; and if he fails to do so, it may be inferred that he was the thief or the receiver. And if he was seen near the place where the property was kept before it was stolen it may fairly be supposed that he was the thief."

Sentenza ohra fuq il-materja u ta' relevanza ghal kaz in ezamina hija dik moghtija mill-Qorti ta' l-Appelli Kriminali (Sede Inferjuri) fl-ismijiet **Il-Pulizija Vs Lawrence Camilleri** – 24/03/1977 fejn gie ritenut li:-

"Il-pussess tal-haga msiruqa fi zmien recenti hu wiehed mill-indizji biex juri li l-possessur hu l-halliel fin-nuqqas ta' spjegazzjoni li turi xort'ohra. La darba l-Prosekuzzjoni prima facie ggustifikat l-imputazzjoni – bil-prova tal-pussess – huwa obbligu tal-imputat li jaghti spjegazzjoni."

Illi ghalhekk fil-kaz in desamina meta l-Qorti tikkonsidra li effettivament l-imputat kien liebes il-gakketta tal-allegat vittma ftit tal-hin wara li l-istess vittma kien halla l-gakketta tieghu '*unattended*' jindika li l-imputat huwa l-halliel u ghalhekk din il-Qorti qed issibu hati ta' serq ta' din il-gakketta li skond il-vittma kellha valur ta' sebghin ewro (€70) meta xtraha u cioe' sena qabel u mhux tar-reat ta' ricettazzjoni. Illi ghalhekk l-aggravju tal-valur ma jezistix ghalkemm jezisti l-aggravju tal-hin u dan ghaliex l-imputat seraq il-gakketta wara nzul ix-xemx u qabel tlugh ix-xemx.

Dwar l-akkuza li huwa seraq il-mobile phone tal-vittma, il-Qorti thoss li l-Prosekuzzjoni ma rnexxilhiex tipprova li f'din il-gakketta kien hemm mobile phone salv ix-xhieda moghtija mill-allegata vittma pero' meta hija ghamlet search fuq l-imputat din tat rizultat negattiv u ghalhekk stante l-prossimita' fil-hin u r-rizultat negattiv tas-search, il-Qorti mhix ser issibu hati talli seraq mobile phone.

Il-Qorti ghalhekk rat l-Artikoli tal-Ligi u cioe' l-Artikoli 270, 281(a) u 334 tal-Kapitolu 9 tal-Ligijiet ta' Malta u filwaqt li tastjeni milli tiehu konjizzjoni ta' l-akkuza ta' ricettazzjoni stante li din inghatat b'mod alternattiv ghall-akkuza ta' serq, minn liema akkuza l-imputat DANNY

CAMILLERI qed jinstab hati bl-aggravju tal-hin, pero' stante li l-imputat huwa *a first time offender* kif jirrizulta minn ezami tal-fedina penali tieghu, qed tilliberah taht il-kundizzjoni li ma jaghmilx reat iehor ghall-perjodu ta' tlett snin mil-lum ai termini tal-Artikolu 22 (1) tal-Kapitolu 446 tal-Ligijiet ta' Malta.

< Sentenza Finali >

--------------------------------TMIEM--------------------------------