MALTA

QORTI TAL-MAGISTRATI (MALTA)

BHALA QORTI TA' GUDIKATURA KRIMINALI

MAGISTRAT DR.

JOSETTE DEMICOLI

Seduta ta' l-1 ta' Dicembru, 2014

Numru. 79/2014

Il-Pulizija

(Spettur Jonathan Ransley)

Vs

Sandra Mc Monagle

MAGISTRAT DR. JOSETTE DEMICOLI LL.D

Seduta tat-Tnejn 1 ta’ Dicembru, 2014

Il-Qorti,

Rat l-imputazzjoni migjuba kontra Sandra Mc Monagle detentrici tal-karta ta' l-identita' bin-numru 16363(M) talli xi zmien fis-sena 2013 f'dawn il-Gzejjer xjentement laqat ghandha hwejjeg misruqa, mehuda b'qerq jew akwistati b'reat u cioe' mobile phone ta' ghamla Iphone 5 li l-valur jeccedi mitejn u tnejn u tletin euro u erbgha u disghin centezmu (232.94).

Rat il-kunsens ta' l-Avukat Generali sabiex dan il-kaz jigi trattat bil-procedura sommarja u li l-imputata m'ghandhiex oggezzjoni li l-kaz jigi hekk trattat.

Semghet ix-xhieda.

Rat l-atti kollha tal-kaz u d-dokumenti ezebiti.

Semghet is-sottomissjonijiet finali.

Ikkunsidrat

Illi l-imputata tinsab akkuzata bir-reat ta' ricettazzjoni in konnessjoni ma' mowbajl li allegatament insteraq fl-24 ta' Gunju 2013.

Illi jirrizulta mix-xhieda ta' PC 1592 Daniel Busuttil[1] li fl-24 ta' Gunju 2013 certu Maria Korneva ghamlet rapport li kien insterqilha l-mowbajl tal-marka Iphone 5, kulur abjad IMEI 013410008509313. Hija infatti hadet il-kaxxa fl-ghassa fejn ghamlet ir-rapport. Hija spjegat li ghamlet uzu mill-public mobile toilets fi Triq it-Torri, Sliema. Hija harget u ftit wara ndunat li nsit il-mowbajl fuq il-flashing izda kif daret lura ghalih ma sabitux.

In segwitu ghal tali rapport, il-Pulizija talbet lill-mobile providers ghall-informazzjoni u l-Vodafone wiegbet fil-pozittiv u nfurmat lill-Pulizija li l-IMEI number 01341008509313 kien gie ipperjat ma' MSISDN79251774 li kien registrat fuq certu Sandra Mc Monagle detentrici tal-karta ta' l-identita' numru 16363(M).

Fl-istqarrija taghha datata 23 ta' Novembru 2013 l-imputata, wara li kkonsultat l-avukat ta' fiducja taghha, iddikjarat li xi hames jew sitt xhur qabel kienet ghaddejja max-xatt tal-Gzira u kien hemm Gharbi u qalilha li huwa agent tal-mowbajls u xtrat il-mowbajl inkwistjoni ghall-prezz ta' €350. Mal-mowbajl la taha kaxxa u lanqas charger. Hija stqarret li ma tafx kemm jiswa gdid. Iddikjarat ukoll li hija kellha mowbajl Iphone 4S li kienet xtratu gdid minn fuq l-internet ghall-prezz ta' €450. L-imputata ghazlet li tixhed f'dawn il-proceduri u bazikament xehdet l-istess li kienet iddikjarat fl-istqarrija. Hija ziedet li hija ma kellhiex bzonn charger ghax diga' kellha u li huwa kellu diversi mowbajls ohra.

Illi minn dawn il-provi ghalhekk jirrizulta illi l-mobile phone gie fil-pussess ta' l-imputata ftit taz-zmien wara li sehhet is-serqa. Illi fit-teorija elaborata minn gurisprudenza u awturi inglizi dwar "the unlawful possession of recently stolen goods." jew 'l hekk imsejjha "theory of recent possession", liema teorija giet applikata anke minn gurisprudenza

[1] Seduta tal-21 ta' Lulju 2014

taghna, jinghad f'diversi sentenzi illi 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 l-provi migjuba mill-prosekuzzjoni fil-fatt jindikaw biss illi l-oggett misruq, mertu ta' din il-kawza kien fil-pussess ta' l-imputata u dana peress illi jidher car illi ma hemmx prova wahda li tindika illi l-imputata kienet involuta fis-serq. Fil-fatt l-imputata hija akkuzata biss bir-reat tar-ricettazzjoni.

Illi f'sentenza moghtija mill-Qorti ta' l-Appelli Kriminali (per.Imhallef Vincent Degaetano) deciza fis-26 ta' Awissu 1998, il-Qorti studjat fil-fond din it-teorija fejn gew ikkwotati diversi awturi inglizi u saret referenza ghal gurisprudenza ingliza:

"Din il-Qorti wkoll ser tikkwota mill-ahhar edizzjoni ta' Archbold peress li hi tal-fehma li l-bran li gej jitratta bl-iktar mod konciz u preciz il-kwistjoni kollha marbuta ma' din it-teorija:

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 stolen property, it is open to the jury to convict him of burglary, and the jury should be so directed:(see R. v. Loughlin, 35 Cr.App.; 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.Symthe, 72 Cr.App R 8 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 5th ed. (now 8th ed.p.35): "If someone is found in possession of goods soon after they have been missed,(sottolinjar tal-Qorti), 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 be 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 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 it fits in or does not fit in with the other available evidence." (Archbold: Criminal Pleading, Evidence and Practice, 1997 paras.21-125, 21-126)."

Hekk kif intqal fis-sentenza fl-ismijiet Il-Pulizija vs Godwin Spiteri[2]:

"Issa, l-artikolu 334 tal-Kap. 9 tal-Ligijiet ta' Malta jipprovdi li huwa hati ta' reat kull min f'Malta, "xjentement jilqa' ghandu jew jixtri hwejjeg misruqa, mehuda b'qerq, jew akkwistati b'reat, sew jekk dan isir f'Malta jew barra minn Malta, jew, xjentement, b'kull mod li jkun, jindahal biex ibieghhom jew imexxihom". Ix-xjenza mehtiega fir-ricettatur tirrigwarda l-provenjenza kriminuza generika, u ma tirreferix ghad-dettalji specifici tar-reat principali tas-serq, fis-sens li hija xjenza li tista' tigi dedotta mic-cirkostanzi tal-kaz. Dan l-element intenzjonali jirrikjedi li r-ricettatur kien jaf, jew li mic-cirkostanzi partikolari tal- kaz, kien messu ragonevolment jaf li l-oggett li ser jakkwista gej minn provenjenza kriminuza.

Illi mill-provi akkwiziti rrizulta li l-mowbajl insteraq fl-24 ta' Gunju 2013. L-imputata stqarret li proprju f'Gunju 2013 kienet miexja max-xatt tal-Gzira u waqqafha Gharbi u qalilha li huwa agent tal-mowbajls u li hija xtrat dan il-mowbajl minghandu. Dwar dan jinghad li l-Qorti hija konvinta li ma jistax ikun li l-imputata emmnet li dan l-Gharbi (li hija qatt ma identifikat) kien agent tal-mowbajls. Ma xehditx li dan taha xi ricevuta jew garanzija ghall-mowbajl mixtri. Irrizulta li meta l-imputata xtrat il-mowbajl hija xtratu fl-ammont ta' €350. Huwa minnu li kif argumentat id-difiza fit-trattazzjoni dan l-ammont mhux ammont irrizorju. Madankollu dan kien mowbajl tal-marka Iphone 5 li jiswa' ferm aktar mill-ammont mixtri mill-imputata. Infatti l-istess imputata ddikjarat li hija kellha Iphone 4 li kienet xtrat ghall-ammont ta' €450. Kwindi huwa altru aktar minn evidenti li mowbajl li kien aktar modern kien se jiswa' aktar minn dak li hija kienet xtrat precedentement. Oltre' dan hija la inghatat il-kaxxa tal-mowbajl u lanqas charger. Il-Qorti ma temminx lill-imputata meta tghid li hija ma kellhix bzonn charger ghax diga' kellha wiehed. Jista' jkun li kellha diga' charger izda min jixtri

[2] Deciza mill-Appell Kriminali fit-2 ta' Marzu 2011

mowbajl gdid minghajr kaxxa u charger? Ghalhekk il-Prosekuzzjoni rnexxilha tipprova l-elementi tar-reat.

Illi dwar il-piena l-Qorti hadet in konsiderazzjoni n-natura tar-reat li tieghu qeghda tinstab hatja l-imputata, ic-cirkostanzi kollha tal-kaz, u il-fedina penali taghha li hija prattikament netta u li kif kellmuha l-Pulizija rritornat il-mowbajl mill-ewwel.

Ghal dawn il-motivi, din il-Qorti wara li rat l-artikolu 334, 261(c), 267, 279(a) tal-Kapitolu 9 tal-Ligijiet ta' Malta ssib lill-imputata hatja tal-imputazzjoni migjuba kontra taghha izda b'applikazzjoni ta' l-artikolu 22 tal-Kapitolu 446 tal-Ligijiet ta' Malta tilliberaha bil-kundizzjoni li ma taghmilx reat iehor fi zmien sentejn.

Il-Qorti wissiet lill-hatja bil-konsegwenzi skont il-ligi jekk tikkommetti reat iehor matul il-perjodu operattiv ta' din is-sentenza.

< Sentenza Finali >

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