

On January 30, 2014, the appeals court in Florence, Italy, reinstated the guilty verdicts for Amanda Knox and Raffaele Sollecito for the murder of Meredith Kercher in 2007. Knox filed an appeal in April with the Italian Supreme court against the Florence ruling. Here is an English language summary of her appeal.

## **Part One**

### **Issues of constitutional illegitimacy**

An issue of constitutional illegitimacy is raised concerning the possibility in Italian proceedings of having an “eternal repetition” of trials, without any limit to the number of times a defendant can be subjected to them for the same charge. [It is important to note that in this context “trial” means not the whole proceeding for a given charge, but each single step of it in front of a different Court].

Article 6 of the European Convention on Human Rights and article 111 of the Italian Constitution provide for proceedings having an end in a “reasonable time”. Italian Law has established (with law 89/2001 concerning financial compensations for too long trials) that this “reasonable time” clause is satisfied if a proceeding comes to a definitive verdict in six years.

The present proceeding has exceeded such time limit.

The European Court for Human Rights has also censored multiple times Italy for the length of its proceedings.

Furthermore, there is a second issue of constitutional illegitimacy linked to the practice of multiple repeated levels of judgement [trials] without a well specified time limit: those defendants charged with crimes which admit a statute of limitations may have an interest in delaying the proceedings as long as possible to take advantage from the expiration of the statute, while those charged with crimes [like murder] which do not allow for a statute of limitations may only suffer the negative effects of an endless proceeding.

This way an unconstitutional discrepancy is introduced between citizens.

In this specific case, since the Court of Cassation with its 2013 ruling had deemed that any point of the previous ruling, except for calumny, had to be reconsidered, the Florence Court had to re-examine every evidentiary element already examined previously, this way introducing a *de facto* “bis in idem” [a.k.a. “double jeopardy”].

## **Part Two**

The 2013 Cassation ruling in mandating a new trial had also established that every available evidentiary element had to be considered without omissions or gaps and that each evidentiary element had to be preliminary evaluated [before “osmosis”] to see if it presents the requirement of precision [it has to be “preciso” ex cpp article 192 section 2].

Moreover the well-established jurisprudence on the subject provides that in case of annulment with retrial of an appeal ruling, the renewal of the fact finding phase with acquisition of new evidence, if asked for by the parties, is a legal obligation the judge has to comply with [Cassation ruling 22923/2004].

The Florence Court has violated this legal obligation by refusing to acquire new evidence according to the written requests of the defense.

The Court of Appeal of Perugia and the Court of Appeal of Florence have come to opposite conclusions (acquittal and conviction) having at their disposal practically the same evidentiary elements, with the difference that the first one acquired the evidence during the trial, while the second only examined the documents.

The Florence Court has insufficiently, or not at all, explained:

- the exclusive presence at the crime scene of Guede's traces;
- complete lack of acquaintance between two of the supposed conspirators;
- the way the alleged murder weapon was carried to the cottage without leaving trace in Knox's bag;
- the inconsistency of the attribution to the victim of the DNA trace on the knife blade;
- no proof of the existence of a second knife;
- inexistence of cleaning actions, especially for what concerns the impossibility of a "selective" cleaning;
- the way they interpreted Knox personality and behavior;
- violation of Knox's basic rights by the investigators;
- Curatolo's testimony conflicting with the ruling's reconstruction of the crime;
- damaging of three computers of the victim, of Knox and of Sollecito;
- the clear alibi presented by Knox and Sollecito on the same day the murder was discovered;
- lack of motive and friendship of Knox with the victim;
- Knox stayed while Guede fled abroad.

The prerequisite of any argumentational process is that each evidentiary element has to have in itself a degree of reliability, certainty and completeness allowing for it to be connected, in an osmotic assessment, to the others.

The osmotic assessment does not add anything new but eventually may point out the harmony among the elements.

It is also a serious violation of the principles of evidence evaluation the fact that multiple times the Judge has considered as evidence against the defendant the lack of justification by the latter and her lawyers for elements which are extraneous or unknown to the defense, as well exemplified on page 88 of the challenged ruling:

*“And indeed the insisted ringing of a cell phone inside a locked room could have made suspicious anyone who had found himself inside the apartment, causing the premature opening of the door and discovery of the murder.*

*With respect to this explanation, which appears to be the only rational one this Court reckons being able to give to the factual datum, it is also easy to notice how an alternative explanation to this singular fact has not been given by any of the defendants, nor by their lawyers. The theft of the cell phones has been completely ignored by the defendants’ defenses when reconstructing the events of that night”.*

Why should have the defense found an explanation for extraneous, unknown facts?

In the penal proceedings it is up to the prosecution to prove its case and no evidentiary element against the defendant can be derived from alleged omissions of the defense about facts not directly concerning the defendant.

### **Lack of motive**

The motive is important in any trial. but it acquires a character of necessity in a trial based on circumstantial evidence [“processo indiziario”].

The prosecution and the convicting (or acquittal-annulling) rulings have proposed six [indeed more] motives, all of them unproven and/or belied by witness evidence, factual findings and previous definitive rulings:

1. hostility between Knox and Kercher;
2. clash caused by rent money theft;
3. housecleaning;
4. choice of evil for evil’s sake;
5. the three scenarios, two of them of sexual nature, provided by the Court of Cassation in its ruling;
6. Rudy Guede’s improper use of the toilet.

Moreover the acquired testimonies show that the defendant’s personality does not present the capacity of committing a crime so serious as the one she has been charged with.

In a trial based on circumstantial evidence the motive is the necessary glue connecting the evidentiary elements, its lack makes the conviction an illogical and contradictory outcome of their evaluation.

### **The forensic [DNA] evidence**

The Court of Florence has wrongfully deemed admissible the use of the result attributing trace 36B on the knife blade to Meredith Kercher.

Forensic evidence is, by its nature, exact and reasoned knowledge of the reality. On the opposite when forensic evidence does not come to a mathematically demonstrable truth, it is not usable in a penal trial because of its ontological nature [to be scientific it has to be mathematically certain, not being so it is not an element of scientific evidence].

Particularly, an element of forensic evidence lacking certainty does not possess the character of “precision” demanded by article 192 section 2 of the penal procedural code, and hence must not be used in the decisional process.

The attribution of trace 36B to Meredith Kercher has been done without performing a double amplification, against what required by international scientific protocols for LCN DNA, hence it is not “precise” and hence it must be excluded from the global evaluation of evidence.

The same lack of scientific reliability can be attributed to the suspect-centered method used by the Scientific Police to attribute DNA profiles during the whole investigation.

The documents show that trace 36B was “low copy number” and that it had not been quantified, even if Stefanoni had stated otherwise in Court during the preliminary hearings.

This contradiction is clear indication of the awareness of the presence of low copy number DNA and hence of the obligation to “halt the investigation” without searching for a result at any cost. Stefanoni indeed did not proceed to test many samples that were quantified as “too low” as trace 36B did.

For what concerns possible contamination of the knife, it was handled multiple times by different officers, not only at the crime scene but also at the police station (also to show it to Coroner Lalli) and it was stored in an inappropriate container: a cardboard box originally used to host an organizer, a present for Christmas 2006 and hence almost a year old and certainly not sterile.

Multiple and repeated violations of the protocols regulating the acquisition and conservation of exhibits are shown by an abundant photographic documentation.

The presence of starch on the knife has been totally neglected by the Florence Court.

The Court has also deemed, without appropriate argumentation, that the major wound on the victim’s neck has been caused by the knife seized at Solledito’s, while at the same time it had to arbitrarily hypothesize the presence at the crime scene of a second knife, since the two minor wounds are totally incompatible with said knife.

Another reason for complaint is the lack of justification for the presence of said knife at the cottage that night: the explanation put forth by the Judge is an arbitrary speculation not confirmed by any testimonial or factual finding.

For what concerns contamination of the bra clasp, court documents prove that, differently from what stated in the challenged ruling, there were more than two accesses to the crime scene by ordinary police between the first discovery of the bra clasp on November 2 and its retrieval on December 18. In

detail there were three further inspections on November 4, 6 and 7 and testimonies prove that on November 6 and 7 objects were moved around.

A final challenge to the legitimacy of the ruling is raised concerning the statement that *“if a negative influence on the trial data has not been ascertained, even the alleged violation of international protocols concerning the inspection of buildings and the collection of samples to be subjected to analysis is a trial element without value”*.

The prerequisite to evidence collection is that it is genuine and that the collection follows the prescriptions ruling the procedure.

International protocols are not optional.

The admission by a Judge that international protocols have been violated implies that forensic evidence collected without respect of said protocols has to be ruled inadmissible.

### **The calumny as circumstantial evidence for the murder charge**

The charge of calumny has been based on the spontaneous statements declared inadmissible by the Court of Cassation already in 2008 and on the first memorial of November 6 2007, whose content cannot support the hypothesis of a calumny committed to hide another crime.

Knox's only desire was that of getting rid of an oppressive and coercive situation of unusual pressure.

Amanda Knox was the object of repeated interrogations from November 2 to November 6, 2007 for a sum total of more than 53 hours.

Both at the time of the writing of the two spontaneous statements of 1.45 am and of 5.45 am and at the time of the writing of the arrest warrant at 8.40 am on November 6 it was omitted the invitation to appoint a counselor.

During the night interrogation the interpreter worked in practice as an element of psychological pressure causing an oppression which can only be reductively defined as “stress”.

Knox's constitutional rights have been violated and an abnormal pressure was brought to bear upon her, also through physical means (slaps), moreover was told to her that requesting a counselor would have worsened her position.

The investigators, having in front of them a young foreign student, with a limited knowledge of the Italian language, unaware of her rights, deprived of legal counseling, brought her into a situation of extremely serious tension and stress such as to irremediably rob of any evidentiary value her statements.

To evaluate her behavior (uncertainties, confusion, desperation) it is mandatory to consider her subjective situation at the moment, namely that of a person, who, even if perpetrated a calumny, was in a state close to inability to understand and take action.

In this context finding, as the challenged ruling does, that the defendant committed calumny with the aim (implying an increased criminal will) of hiding another crime appears to be totally contradictory.

The young woman was in such an extreme state of exhaustion and emotional stress that alleging she could devise such a calculation goes first and foremost against common sense and then also against the documented facts.

The Florence Court should have stigmatized the serious breaches and violations of law committed during the night interrogation of November 6, 2007, instead of attributing to the defendant, against evidence and without logical reasoning, an exceptional criminal ability, together with ethical indifference and pronounced dangerousness.

At any rate, what reliability and usefulness can be attributed to the behaviors of a young woman brought into a situation of desperation?

It is absolutely clear that methods and techniques were applied which influenced her free will in such a way as to alter her ability to remember and assess the facts.

The first memorial of November 6 testifies to such a state of abysmal shock, of total deprivation of solace and support: it is evidence of an extremely serious emotional stress and not certainly of a sophisticated criminal mind devising such a wicked plan.

### **The break-in and footprints and shoe prints**

In assessing the nature of the break-in, the Florence Court has neglected considering the original (2007) testimony by Filomena Romanelli, who had stated she had only half closed the external shutters of her bedroom's window, without locking them.

The Court also neglected to consider evidence found by the Scientific Police on that same window, namely body hair and a presumed bloodstain.

The revision Judge also did not appropriately evaluate the known modus operandi of Rudy Guede nor the details of previous offences attributed to him, all of them presenting many coincidences with what happened at 7 Via della Pergola on the night of the murder.

How is it possible to have 14 Guede's traces in the victim's bedroom and none from Knox?

Any alleged activity of cleaning is clearly contradicted by the findings of the trial.

A selective cleaning is a practical impossibility, but it also goes against any logic: before getting there one would have erased the most evident and easy to delete traces, namely those on the handle of the small bathroom's door, on the light switch, on the bidet and on the sink.

Concerning the alleged bloody footprints, all of them were tested with TMB and all of them returned negative. Stefanoni herself acknowledged at the preliminary hearing on October 4, 2008, that while TMB may give false positives, a negative result gives absolute certainty about the absence of blood.

In this case, the TMB test having been negative, the mandatory conclusion is that there was no blood associated with those footprints. The footprints are just traces of Knox living in that house, contrarily to the ruling's assertion of lack of such traces. The superposition of DNAs can be due to the superposition in different times of footprints by those who lived there.

The lack of bloody footprints around the bathmat, pointed out in the ruling, is due to Knox "gliding" over it from the bathroom to her bedroom and back.

At any rate, if there had been a cleaning activity, the traces on the bathmat would have been erased or even better the whole bathmat would have disappeared.

### **The Alibi, Curatolo and Quintavalle**

The sincerity of the alibi told by Knox is manifest, while the opposite deductions of the Court of Appeal of Florence are marred by factual errors and lack of reasoning.

The assertion that Knox lied about having received Lumumba's 8.18 pm text message on the evening of November 1, 2007, while being at Sollecito's is rejected by the analysis of the trial findings concerning cell tower coverage.

Curatolo's testimony places the young couple he identified as Knox and Sollecito against a background of partying and masked people getting on the buses for the discos and this unmistakably links the alleged sighting to the evening of Halloween, October 31, rather than to the night of the murder.

Moreover, contrarily to what stated in the challenged ruling, there is no certainty that Knox and Sollecito could not have met or passed by Piazza Grimana on Halloween: Knox did not work at Lumumba's pub that evening but just paid a visit, while Sollecito had been at a graduation party that day, but in the afternoon.

Furthermore Piazza Grimana is a meeting place for young people living in the neighborhood, as acknowledged by the ruling on page 129: *"it was hence perfectly logical that many young people living in the neighborhood, including Amanda Marie Knox and Raffaele Sollecito, had chosen the square as a meeting place"*.

The Florence Court also erred in considering unproven that Curatolo could have been a notoriety-driven witness: he testified in two other murder cases well known in Perugia and stepped forward with the authorities at the suggestion of a young Perugian journalist about one year after the murder.

Finally, during Curatolo's testimony at the first appeal trial in 2011, the Judge had to invite the Public Prosecutor not to ask questions already implying the answer, since Curatolo seemed unable to recount the facts by himself.

The need itself of asking such questions is proof of the unreliability of any evidence coming from Curatolo's testimony.

Concerning the evaluation of Marco Quintavalle's testimony, the Court of Appeal of Florence erred by neglecting an appropriate evaluation of Inspector's Volturno's testimony.

According to the challenged ruling (page 137) Inspector Volturno did not ask Quintavalle if he had seen Sollecito or Knox immediately after the murder, while according to his testimony on March 13, 2009, he had testified he had asked to those in the shop if they had seen the defendants in the days immediately before or after the murder getting a negative answer.

The conclusion is that against Knox and Sollecito's alibi there are only unreliable witnesses and assertions belied by trial documents.

### **Violation of law due to the use of Knox's statements**

The challenged ruling makes repeated reference to the content of Knox's statements written at 1.45 am and 5.45 am on November 6, 2007.

*"It appears suitable to also point out how the statements made by the girl to the Police and then to the Public Minister during the night of November 6, 2007, are of undeniable interest also in the context of the reconstructive evidentiary framework specifically pertaining to the murder."* (page 101)

*"And on the other hand, as it has already been said, it is Amanda Marie Knox herself who places herself, even if together with Lumumba and not with Sollecito, at Piazza Grimana on the night of November 1, 2007, after 21 pm."* (page 130)

*"One can hence assert not just that the statements given to the Police at 1.45 am and to the Public Minister at 5.45 am of November 6, 2007, by Amanda Marie Knox constitute a crime of calumny against Patrick Lumumba, but also that said calumny was fabricated with the specific aim of deflecting the suspicions of the Police from the defendants."* (page 142).

All of these statements make use of the content of statements whose use has been declared inadmissible by the Supreme Court already in April 2008, hence the Florence Court openly admits using against Knox documentary evidence the Supreme Court had ruled being totally inadmissible for use against its author (1.45 am statement) or against anybody (5.45 am statement).

Nor evidence can be derived from the November 6 memorial, because it is the product of a violation of the defendant's rights.



If at 5.45 am on November 6, 2007 (hence well before the drafting of the memorial) the right to silence had been made explicit to Knox, she certainly would not have written it without before consulting a lawyer.

The violation of the defendant's rights imply the rejection of the memorial.

Memorial, which, at any rate, is a confused document, self-contradictory and expression of desperation, not representative of the real events.

### **The acquisition of the Guede ruling violates the Constitution**

By introducing in the present proceedings the definitive ruling against Rudy Guede, the elements on which it is based have themselves being introduced, albeit indirectly, in the trial against Knox and Sollecito.

Such elements enter the trial against Knox and Sollecito as the product of a proceeding where they were not represented. In other words, such evidence was "formed" without their lawyers being able to participate in such "formation" representing their interests.

This goes against article 111 of the Italian Constitution [and also against the Sixth Amendment of the Constitution of the United States].

Besides all that, some elements "imported" in this trial from Guede's are moreover in contradiction with evidence found during these proceedings.

### **Violation of law by not complying with the request of questioning Rudy Guede**

During the hearing of June 26, 2011, Rudy Guede accused Amanda Knox and Raffaele Sollecito of being the murderers of Meredith Kercher.

In that context he evaded any attempt to cross-examination.

The defense demanded him to be heard and cross-examined during the Florence trial but the Court did not give any answer to this request.

This is a manifest violation of article 111 of the Italian Constitution, since the defendants have the right to cross-examine (personally or through their lawyers) those who are accusing them, and if those accusing them evade cross-examination, article 111 provides that their statements must not be used as evidence.

This fundamental principle [reiterated also in the Dorigo case by the ECHR] has been violated in the Florence ruling, since it uses Guede's statements against the defendants without having given them the opportunity to cross-examine him.

## **Utilization of inexistent evidence and multiple contradictions in the reasoning**

The challenged ruling on page 321 affirms the existence on the blade of the knife seized at Sollecito's of a Kercher-Sollecito mixed DNA trace.

Such a trace is simply non-existent.

The ruling alleges (page 81) the absence of traces that can be referred to Knox, then on page 178 it lists more than 30 exhibits testifying her presence at the cottage.

The Police made more inspections at the cottage between November 2 and December 18, 2007, than the two acknowledged by the ruling.

Contrarily to what stated in the ruling on page 149, Knox had clearly stated during her testimony the reason why she went to the cottage on the morning of November 2, 2007, why she had a shower and why she changed clothes.

The Florence Court misinterprets the lengths of Knox's phone calls to Kercher on that same morning, especially for what concerns the Italian number, which had an answering machine.

The path from the cottage to the villa where the cell phones were retrieved is totally outside the reasonable itinerary for someone going back from Via della Pergola to Sollecito's flat in Corso Garibaldi.

The Judge has come to conclusions about the alibi drawn from the single surviving computer (Sollecito's MAC), but there were other computers, made unreadable by "electric shocks": the lack of such evidence, due to a mistake done by the investigators cannot go to the detriment of the defendants [practically the Judge should assume that the destroyed hard disks COULD contain further evidence sustaining the alibi].

It is totally unreasonable to state, as done by the challenged ruling, that Sollecito had no reason to call her sister before the Carabinieri: she was a close relative AND a Carabinieri officer at the time.

Nor there is reason to state that Knox delayed such call after having being invited by Romanelli to do it: she was foreigner and did not know how to do and moreover the mood of those involved was far less worried in the historical reality than in the subsequent reconstructions.

## **Further technical issues**

There are technical objections to the increase of Knox's sentence for calumny.

## **Conclusions**

The Florence Court has found no direct evidence against Amanda Knox.

They have contrived a conviction, purportedly “beyond any reasonable doubt”, without considering the elements favorable to the defendant, without even trying to explain them: evidence and its interpretation have been cherry-picked against the defendant.

Hence the defense demands the Court of Cassation first and foremost to accept the validity of the raised issues of constitutional illegitimacy and subordinately to quash Knox’s conviction and order a new trial.