

**REPUBLIC OF ITALY
IN NAME OF THE ITALIAN PEOPLE**

Court of Milan

III Penal Section

Patrizia Lacaita – sole judge

Has declared the following:

SENTENCE

RUDY HERMANN GUEDE, born on 26/12/86 in Ivory Coast, living in Perugia on Corso Garibaldi 26, in prison for other reasons, contumacious;
Defended by lawyers Nicodemo Gentile, of the Perugia Bar, with studio in Perugia on via Fiume 17;

CHARGED WITH

- B) of the crime foreseen and punished by articles 58, 624, 625 n.2 of the penal code, because, with the aim of obtaining a profit for himself, after introducing himself into the nursery school named “The Kinder Garden”, located in Milan via Plinio 15, acted in a way directly consistent and unequivocal to commit the crime for which we proceed, with the aim of taking possession of a knife with a black handle with a total length of 40cm, not succeeding in his criminal intent for reasons not dependent on his will (intervention of the complainant as well as of the personnel of the State Police),
With the aggravating circumstance for having committed the fact:
Via the use of violence, consisting in having caused the break-in of the entrance door of the aforementioned nursery.
Ascertained in Milan, 27 October 2007;
- E) Of the crime foreseen and punished according to article 545 of the Penal Code, because, in order to gain profit, being aware of its criminal origin, he bought or at least received from persons unknown, the following goods:
One female wristwatch presumably of gold, that for the circumstances of its discovery, is considered to be of a criminal origin, - as per the report prepared by the officers of the Garibaldi Venezia Police headquarters of Milan, one grey/black portable computer of the Sony brand, model Vaio complete with charger; one mobile phone of Nokia brand model 6310 with IMEI code 350780/20/390565/1, thefts recorded as per the complaint presented on 15.10.2007 at Perugia Police station by Paolo BROCCHI.
Ascertained in Milan, 27th October 2007;
- F) Of the crime as per article 4 act 110/1975, because without justified reason, he carried from his residence or originating from there, objects capable of offending in particular: a hammer capable of breaking glass in an emergency.
Ascertained in Milan, 27th October 2007;

CONCLUSIONS

The Prosecutor requests:

conviction for charge A for attempted burglary with aggravating circumstances;

for charge B to concede the mitigating circumstances as being equivalent to the aggravating circumstances hence 4 months of imprisonment and 300 Euros fine;

for charge E to recognize the circumstances as per article 648 of the Penal Code hence 3 months of imprisonment and 200 Euros fine;

for charges F and G no possibility to proceed for statute of limitations.

The Defense requests:

primarily, for charge B the exclusion of the disputed aggravating circumstances, mitigating circumstances as per article 62 n. 4 of the Penal Code and mitigating circumstances, hence the minimum sentence with benefits;

for charge E to be considered the hypothesis as per article 712 of the Penal Code and declare no possibility to proceed for statute of limitations, or alternatively consider the continuation to charge B mitigating circumstances as per article 648 paragraph of the Penal Code and mitigating circumstances as per article 62 bis, hence minimum sentence with benefits;

for charges F and G no possibility to proceed for statute of limitations, or alternatively for charge F recognition as a misdemeanor.

REASONS FOR THE DECISION

Rudy Hermann Guede, who was summoned to trial to respond for the crimes indicated in the preamble, given the request by the defense counsel and lawyer Nicodemo Gentile, was tried through a summary judgment [fast track trial] with supplementary evidence consisting of the acquisition of transcripts from the hearings of 26 and 27 June 2009 of the trial that took place in the Assizes Court of Perugia against Amanda Marie Knox and Raffaele Sollecito (trial. N. 8/2008, relating to the murder of Meredith Kercher), concerning the statements made in that trial by witnesses Maria Antonietta Salvadori del Prato and Paolo Brocchi.

The defendant, imprisoned for other reasons, waiving his rights to appear and declared absent by default, sent a written statement, which are in the court records.

From the recorded report of 27.10.2007 signed by Officer Rita Spessi, head of Venezia Flying Squad Bis of Police Headquarters of Milan, it was established that, at 10:22 of the same date 27.10.2007 the crew of the aforementioned Flying Squad went to via Plinio 16 in Milan, at the nursery / kindergarten located there, sent by the Operations centre following the report of the presence of an immigrant who was wandering inside the school building: on arrival the officers made contact with the director of the nursery, Maria Antonietta Salvadori del Prato Titone, who had requested the intervention and reported that in the morning, having arrived at the nursery school, she had noticed the presence of an individual who was coming out of the director's office and who justified his presence claiming to have slept there. Salvadori del Prato clarified that, while waiting for the officers, she noticed that the cables of her computer had been disconnected and the lock of her cabinet had been tampered with.

The individual in question, who was still present, was then identified as being Rudy Hermann Guede (today's defendant); he, who had a backpack with him, was found in possession of a large kitchen knife, a portable computer (Sony brand, Vaio model), a mobile phone (Nokia brand), a hammer for breaking glass in emergencies and a woman's wristwatch apparently made of gold. The knife, recognized as hers by Salvadori del Prato, was returned to her, while the other objects were seized (record of seizure 27.10.2007, in the court records).

Regarding the portable computer (complete with battery and power adaptor) and the mobile phone, the checks carried out on these goods led to the verification of their illegal origin, which was the burglary perpetrated on 13 October 2007 at a lawyer's office in Perugia, as reported on 15.10.2007 at the Police station of Perugia by Paolo Brocchi; who, having been contacted by telephone by the operators, confirmed goods had been stolen, stating that the computer was the property of his colleague Matteo Palazzoli and was easy to use because entry of a password was not required for access.

The computer and mobile phone were then taken in by the Perugia Prosecutor's office, following the seizure order issued by that office in the proceedings for the murder of Meredith Kercher, which occurred in the night between the 1st and 2nd November 2007 in Perugia (a crime for which Guede was then convicted with the sentence 22.12.2009 of the Assizes Court of Appeal of Perugia, then finalized on 16.12.2010).

In the complaint presented by Salvadori del Prato on the same day 27.10.2007 she stated the following: having arrived at the nursery school on via Plinio, she opened the front door which was partly damaged due to a burglary that had occurred a few days previously which allowed it to be opened with a strong push – and she went up to the level that was half a floor above where her office was located, where she saw a man coming out of it; she immediately asked the man what he was doing there and what he had taken and the man responded that he hadn't touched anything and had only just slept there, because he had arrived at the railway station from Perugia the previous day and not having a place to spend the night, another man had told him that for 50 Euros he would show him of a place where he could sleep and then he had accompanied him to this nursery school, opening the door with the keys that he had in his possession. Salvadori del Prato in her complaint said in her report that she had checked the place and there was no obvious sign that the man had slept there inside the nursery school and in fact no tables had been placed next to each other and the mattresses in the gymnasium were all in their original places. Salvadori del Prato also noticed that that the lock of the cabinet was in a different position from how she had left it – even though then after a later check nothing was found to be missing - and also that two cables of her computer had been disconnected. In the end the claimant confirmed that she recognized the knife with a black plastic handle, about 40cm in length, that was found to be in the aforementioned man's possession.

The statements made by Salvadori del Prato in the trial held in the Assizes Court of Perugia basically confirm what has already been highlighted, with the following clarifications: she was in the company of her 6 year old son and outside waiting for her were a blacksmith (for the installation of a stairway outside in the garden) and the gardener; the man found inside the nursery school was very calm; the lock of the cabinet hadn't been forced open, but it was open (while she normally locked it); in the office there was also a money box, which was open and from which she claimed there were some coins missing; the fact that the front door of the nursery school was “defective” and could be opened with a kick wasn't clearly obvious (“this was something that only we knew”); the man had said that the computer was his; as for the knife, it was for cutting meat and it was used by the chef of the kitchens.

With regards to Paolo Brocchi (a lawyer, who later died), from his testimony before the Assizes Court of Perugia it was established that a burglary had occurred at his studio by unknown burglars on the night between 13 and 14 October 2007, a burglary which had been discovered by his colleague Palazzoli, whose portable computer had been stolen by burglars. Initially Brocchi hadn't realized that burglars had stolen his mobile phone, that wasn't still in use but which he kept in his desk drawer, a fact which he had discovered when he received the telephone call from the Police of Milan, that had found it and had located him because, when turning it on, his name appeared. In the aforementioned testimony Brocchi clarified that on 29.10.2007 a man came to him who said he was the one found in possession of the computer and telephone and he stated that he had bought them legally in Milan, near the railway station; at the time he didn't know this person, who he later recognized as Guede, whose photograph had appeared in the newspapers in relation to the murder of Meredith Kercher.

Finally, in the “spontaneous statements” written by the defendant, Guede stated that in October 2007 he was going through a difficult family period and he came to Milan for the weekend with the intention of going to Lecco where his Aunt lived, to speak with her and receive advice. When he arrived by train in Milan, he decided to take a little break going to some local bars to listen to music; it became late and he didn’t feel like taking the train to Lecco, so he decided to stay in Milan. Not having enough money for a hotel, he accepted the offer of a South American person who had told him that he could put him up; this man accompanied him to via Plinio and had opened the gate with keys in his possession, but then, instead of going to one of the buildings that overlooked the courtyard, he went towards the nursery school and here, still using his keys he was able to – even though with some difficulty – to open the door. Realizing that it was a nursery school, he complained that it didn’t seem correct to sleep there, but the South American calmed him down, saying that his partner worked at the nursery school and he could use it and he had already accommodated people there on other occasions. He had slept on the floor of the office indicated to him by the South American (who had gone away) and the next morning, hearing someone arrive and thinking it was him, he went towards him; instead it was the headmistress, in the company of a child, to whom he tried to explain what happened and who called the Police. With regards to the items in his possession, Guede stated that he bought the computer and the telephone at a second hand market; at that time, to the Police, maybe for the stress of the moment, maybe realizing these were items coming from illegal actions, he said that he had bought them in Milan, but now, thinking it over, he is certain that he bought them in Perugia. Regarding the watch, it was a souvenir given to him by a female friend. Seeing as he had heard mention of the lawyer Brocchi in the Police Offices, when he returned to Perugia he looked for him to explain to him why he was in possession of his computer and mobile phone. Finally Guede affirmed that he hadn’t entered the nursery school to steal, and he stated that he realized that he had made a mistake in accepting the invitation of the South American and of having bought items without being sure where they came from, which he had done out of naivety.

The ascertained findings prove criminal responsibility for attempted burglary as per charge B) and for the crime of receiving stolen goods as per charge E).

Of course he entered into the nursery school on via Plinio, where he was taken by surprise by the headmistress Salvadori del Prato, who then recognized the knife found on him as her own. This makes it clear that the taking of the knife came about with the intention of stealing it, which was unsuccessful because the defendant was taken by surprise while still there. The entrance into the nursery school can’t be considered as occurring with the intention of spending the night once he had decided to remain (and alone) in the nursery school, as no element supports it and it is contrary to any logical explanation. Guede crashed out in the headmistress’s office only because it was the place indicated to him by, according to his version, which is entirely improbable, he had accompanied him there, opening with keys in his possession, instead of making use the more comfortable facilities available in the gymnasium; the details provided by Salvadori del Prato lead to the same conclusion (the lock not closed, the open drawer, the disconnected computer cables), which indicates, in a place where the knife was originally located, of an activity of searching for something of interest, of

potential use. We have already covered the absolute improbability of the defense's version, where it appears clearly lacking when it makes reference to the South American in possession of the keys to the nursery school, for which no identifying element was provided and for which one cannot understand why, overnight, he should be in possession of keys which, even according to the version of the defendant, weren't his own. It's clear, instead, that the defendant entered the nursery school forcing open the front door and that might have been facilitated by the condition of the front door, which was not apparent, which is not sufficient to exclude the existence of the contested aggravating circumstances according to article 625 n2 of the Italian Penal Code especially as the defendant was also found in possession of a tool (the hammer) well suited to the intentions indicated, given its properties.

The findings indicated thus prove the illegal origin of the computer and mobile phone found in the possession of the defendant and if, on one side, there are no elements to confirm that it was Guede who committed the burglary, on the other hand it is certain that he was aware of its origin. Indeed, as emerges from the cited Police report, just by checking these items the officers were immediately led to the identification of Brocchi; the computer could be accessed without a password and so its content was immediately visible; for the mobile phone, from Brocchi's statement it was found that, when switched on, it showed his name. It also appears to be of significance the fact that the defendant had initially claimed to have acquired them in Milan, a fact that was disproved by Guede himself in his last written letter and was in itself unlikely, given the brief time that elapsed since the burglary, the distance between the locations (Perugia-Milan) and the type of objects. The initial version, at least as reported by Brocchi, evidently had the intention of distancing himself from that burglary and in that context even his spontaneous appearance at Brocchi's studio is not an indication of good faith.

Also the watch found in the possession of the defendant must be considered as having a criminal origin, given the type of object and the absence – also relevant in establishing his awareness of its criminal origin – of any concrete indication regarding the “female friend” who allegedly gave it to him.

Moreover the findings of the proceedings prove the facts of the criminal charges F) and G), given that, regarding the hammer, the type of item and its certain possession already previous to the entrance into the nursery school; from the report of the service [officers who arrived on the scene] it emerges how the defendant, at the moment he was checked by the officers, who asked him to show his documents, he didn't have with him an identity card. For such an offense, however, no conviction can be pronounced, given that by now it has expired due to the statute of limitations. Indeed it's a question of a misdemeanor and, taking into account the date it was committed, the maximum period has expired referred to in articles 157 and the penal codes therein as equal to five years.

For the offenses described in charges B) and E), for which a sentence must be pronounced, the obligation of continuation is accepted because of the nature of the offenses and the period of time in which they were committed; the most serious offense, considering the extent of the sentence foreseen for it, refers to charge E). The variety and type of items does not consent

acceptance of the possibility of mitigating circumstances as per article 648, second paragraph, of the penal code.

There are no grounds for mitigating circumstances, given the complete absence of any remorse being shown and taking into account the overall personality of Guede, as demonstrated from the reported sentence [Kercher case], even if for crimes committed at a later time.

As per article 133 and as per the penal code determined to be equal to two years, one month and fifteen days of imprisonment and a fine of €2,100.00, determined as follows: standard sentence for the most serious violation, indicated above, two years of imprisonment and fine of €1,900.00, increased by one month and fifteen days of imprisonment and a fine of €200.00 as per article 81 paragraph of penal code for charge B) as a continuation [of the first crime] and taking into account the modest value of the items up until the intervention of the headmistress and his physical apprehension.

Lastly, this sentence is reduced by one third for the reduction expected for a fast track trial as per article 442 of the Italian Code of Criminal Procedure.

The small hammer and the watch that were seized are to be confiscated, given the nature of the former and the criminal origin of the latter, without it being possible to identify a legitimate owner of the latter.

The reported sentence of the defendant excludes that there can be benefits conceded as per articles 163 and 175 of the penal code.

FOR THESE REASONS

As per articles 533, 535 and 442 of the Italian Code of Criminal Procedure.

DECLARES

RUDY HERMANN GUEDE guilty of the crimes of charges B) and E) and, combining the crimes with the restriction of their continuation, applying the reduction for the fast track trial,

SENTENCES

him to one year five months of confinement and a fine of € 1,400, as well as the payment of court costs

ORDERS

the confiscation of the sequestered hammer and watch.

as per article 531 of the Italian Code of Criminal Procedure.

DECLARES

it is not necessary to proceed against the defendant for the crimes of charges F) and G) because they have expired for the statute of limitations.

Motivations within thirty days

Milan 18.2.2013

Deposited 02 July 2013