

Court of Appeal of Florence, Third Penal Section

The Florence Appeal Court, composed of the judges

-dottoressa Silvia Martuscelli, Presiding Judge

-dottoressa Paola Masi, Recording Judge

-Dottoressa Anna Favi, Judge

having met in Chambers, and having heard the parties attending the hearing on 27 January 2017, issues the following

ORDER

regarding Raffaele Sollecito, born in Bari 26 March 1984, domicile of choice in care of 26, Piazza San Lorenzo in Lucina, Rome, the office of his defence counsel, attorney Giulia Bongiorno.

With the demand lodged on 25 January 2016, the above-mentioned requested fair compensation for the unjust detention he underwent for the period from 6 November 2007 until 3 October 2011, in connection with criminal case 9066/07 RGNR before the Perugia Assize Court, in which he, accused of the crimes under articles 575-573 c.1 n.5cp<sup>1</sup>, 4L.n 110/75, 609 bis e ter n. 2 cp, 624 bis cp, 367 e 61 n. 2 cp, was found not guilty for the reason that 'he had not committed these crimes' (with the exception of those offences which were time-barred) by the definitive verdict issued by the Court of Cassation on 27 March 2015. That judgment annulled, without the possibility of review, the verdict of guilt issued on 30 January 2014 by the Court of Assizes of Appeal of Florence. That court of review was convened following the annulment of the verdict of not guilty issued by the Perugia Court of Assizes of Appeal, which had overturned the verdict of guilt issued by the Perugia Assize Court on 5 December 2009.

In the course of this case, the applicant was arrested by the State Police on 6 November 2007; the arrest was confirmed and was followed by an order of preventive detention, in solitary confinement for six months, and he was held until 3 October 2011 when the custody order was revoked following the above-mentioned judgment of not guilty by the Perugia Court of Assizes of Appeal. The applicant has requested compensation "to the maximum available by law", covering the damage consistent with having been held for almost four years in prison, the damage to his physical and mental health caused by this long imprisonment, the damage to his studies and his future work prospects, and finally the damage to his reputation and good name.

The Prosecutor General has objected to the demand of the applicant, on the grounds that he contributed to the error by wilful misconduct or gross negligence, and initially objected to this Appeal Court considering the matter rather than the Perugia Appeal Court. The Finance Ministry, represented by right, has submitted a memorandum opposing acknowledging the claim, and objecting to paying any compensation, for the same reason.

<sup>1</sup> cp: codice penale, or Penal Code

In order to consider the request we acquired, together with the attachments to the request, parts of the archived court documents, as requested by the Prosecutor General at the hearing on 20 October 2016. In addition, on 11 October 2016 the applicant filed a memorandum responding to the position of the Prosecutor General, agreeing that this Court lacks jurisdiction, and asserting that there was no gross negligence, since from the beginning of the investigations the applicant had claimed that he had had nothing to do with any accusations, and that he had recounted in detail his movements on the night of the murder - while admitting he didn't remember clearly - [2 ->] and he hadn't been able to provide a solid alibi because the investigators had not determined the exact time of death, and that the same investigators had made it impossible to examine his computers or those of Knox because they had destroyed them.

In the light of these facts, examined in detail below, we have to decide whether there was an unjust imprisonment for the period above-mentioned, given the later acquittal of the applicant, and whether he himself had contributed to his detention by his wilful misconduct and gross negligence by giving the police, the investigators and the judges, particularly at the beginning of the case, contradictory or frankly false statements; such evaluations have also been set out in the acquittal decision. The statements certainly contributed, in the context of a framework of circumstantial evidence or evidential ambiguity, to guide the investigators initially, and then the judges of merit, toward an overall evaluation (unfavourable to Sollecito) of the evidence gathered, more than all the many clues susceptible to varied interpretation by experts and consultants, so far as to issue two verdicts of guilt.

Firstly we need to deal with whether we are the court of proper jurisdiction as claimed by the Prosecutor General: Art 102 disp. att. cpp<sup>2</sup> clearly states that an application for compensation for unjust detention presented following acquittal by the Court of Cassation “the competent court of appeal is that of the district which issued the impugned judgment”. Thus the Court competent to deal with this application is this Florence Appeal Court, because the judgment issued by the Court of Cassation on 27 March 2015 annulled a sentence of guilt issued by the Florence Assizes Court of Appeal.

As to the merits of the application, it is clear that during the preliminary investigations, and particularly in the initial phase, Sollecito gave statements which were contradictory or untruthful, which contributed to the issuing and continuation of the cautionary custody order.

Sollecito, made his first statements on 2 November 2007, that is in the hours immediately following the discovery of the body of Meredith Kercher, who was killed the night before. He was interviewed as a witness along with Knox, who later became a co-suspect, and the other young people who lived in, or frequented the house of the deceased and who were present when the murder was discovered. He stated (as far as this is of interest to us now)

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that he left the house at Via della Pergola 7 on 1 November 2007 about 17:30, together with Knox, his recent girlfriend. Together they walked around Perugia and then he went with her to his house where they watched a film together on the computer, had supper and went to sleep, remaining together all night until about ten the next morning. At that time Knox went home (to the house where Kercher had also lived) to take a shower, and on her return she told him that she had seen a suspicious situation which made them decide to go together to the house, enter it, to call the other flatmates, and then to call the Carabinieri.

On the evening of 5 November 2007, at 22:40, Sollecito instead told the police that having left her house at about 17:30 or 18:00, they remained together in the city centre until 20:30 or 21:00, but that then he had gone home alone while Knox went to the Le Chic pub (managed by Patrick Lumumba, whom the young woman, from that day on, falsely accused of being the murderer): [3 ->] Sollecito remained alone at home all of the evening, receiving a phone call from his father at 23:00, but Knox had returned only at 01:00 and then together they slept. Sollecito justified the vast difference between this account and the account he had given before saying "I gave you a *sacco di cazzate*<sup>3</sup> in the earlier statement" because he had been convinced by his friend Knox to agree with her statements, which she had already given to the police and which he knew about because "I heard the first statements she made to the Postal Police when they called at the house" (the phrases in quotation marks come from the questioning by the GIP<sup>4</sup> on 8 November 2007, when the judge was questioning the differing accounts being told by the arrestee.)

On 6 November 2007 Sollecito was placed under arrest by the PM [Prosecutor], and on 8 November 2007 at the interrogation by the GIP of the Perugia Court regarding preventive detention, he changed yet again his version of his and Knox' movements on the evening and night of 1-2 November 2007, saying he had stayed with her, in her house, until 18:00, he had gone with her into the city centre until 20:00-20:30, after which they had both gone to his house where they had eaten together, even though he didn't recall in detail, and then she "as it was Thursday had to go to work at Le Chic...I remember that she told me later that Le Chic was closed but I seem to remember that she went out anyway", but after the judge asked him to remember more accurately the rest of the evening added "I don't remember...and because anyway that evening I had smoked quite a lot of cannabis, other evenings, from the 31<sup>st</sup> onwards the evenings I had passed in much the same way, I did more or less the same things" and even, when asked if Knox had gone out, replied "I'm not sure...given that the evening before she had gone out and other evenings I don't remember exactly". He then went on to recount details of a broken sink pipe, to have been helped by Knox to mop up the spill, and then they had both gone to bed, but he didn't remember at what time. He said that "For sure I worked on the computer" but when asked what he had been working at he said "I really can't remember because everyday I am on the computer. I don't remember what I did that day". In addition he said "I received a phone call from my father because he phones me every night before he goes to

<sup>3</sup> literally, "a sack of crap"/ "a sack of shit", meaning "a pack of lies"

<sup>4</sup> the GIP is the investigations judge who oversees investigations, authorizes non-routine investigative procedures, and presides over proceedings involving arrestees at stages before the preliminary hearing.

bed...I don't remember if he phoned the landline or the cell phone that evening” (but the judge already knew, on that occasion, that no calls to either the landline nor the cell phone had been made). The GIP, as noted above, questioned Sollecito about the differing statements he had made earlier, including that he had said on 5 November 2007 that he had spoken a “*sacco di cazzate*”, but above all, the fact that he had justified this conduct saying that it fitted in with what Knox, in his presence, had told the Postal Police, while having just told the GIP that he alone had spoken to the Postal Police and Knox only spoke when she understood. The young man at this point said “I told lies because I was under pressure and very upset and I didn't remember well, however that which Amanda said to the Postal Police, afterwards there was that confusion what with the Carabinieri, they had been called, as well. I say that I was listening to what everybody was saying, but I didn't say any *cazzate*, I didn't say *cazzate* because she told me to say *cazzate*; because I was upset and scared and worried” adding that he had felt under pressure on the evening of 5 November 2007, but that he was certain that Knox had spent the whole evening with him, or better, “I can say that I don't remember exactly when Amanda went out...if she went out and that's what I said earlier...I don't remember. Adding further, when asked by the judge, “She spent the night with me however I have said that I don't remember when she went out”, but changing his story again when asked whether the girl went out that night or not, saying [4 ->] “I have said I don't remember, I have said before that I don't remember...by night I mean when one goes to sleep, at 11 or midnight or later, she was with me when we slept, we slept together”, and then, about the preceding hours “From what I recall she must have come back with me. Then, if she went out, I don't remember exactly whether she went out”. To further questions asked by his defence, finally, he repeated that Knox might have gone out and returned but “It could have happened but I don't remember this exactly” and that he had remained at his computer until about midnight.

After this interrogation Sollecito was not formally questioned again, not even during trial. We have only spontaneous statements from him, one given on 30 November 2007 before the Court of Review<sup>5</sup> examining his request for the lifting of the custody order imposed by the GIP, and forming part of that court's ruling, and the others given during various court hearings and attached by Sollecito to this application for compensation for unjust imprisonment. On the first occasion Sollecito (as far as is relevant to the present proceeding) repeated that he had remained at his computer for many hours on the evening of 1 November 2007 and he confirmed that he had received at 06:00, on 2 November 2007 when his cell phone was turned on, a good night message sent by his father the previous evening. In the spontaneous declarations given during the first stage proceeding (the only trial of interest to us, since the second stage proceeding led to his definitive release from custody) Sollecito simply restated that he had nothing to do with the crimes or had responded to individual assertions made by some witnesses, without however providing further details of the behaviour of himself or Knox on the evening and night of the murder, and thus not modifying his earlier statements.

<sup>5</sup> Tribunale del riesame Originally denominated the Tribunale della Libertà, there is a Court of Review in the capital city of each province in Italy, a function of which is to review orders for precautionary measures, such as pre-trial incarceration or house arrest.

The contradictions and inconsistencies between the various reconstructions which Sollecito offered about the movements of himself and his girlfriend during the late evening of 1 November 2007, and the succeeding night are clear, and we don't need to underline them. At first he said he and Knox went to his house shortly after 17:30, after a short walk around the town, and that he remained at home with her for the rest of the evening and night. A few days later he described this story as a “*sacco di cazzate*”, recounted by him only because the girl had persuaded him to confirm her account, whereas the truth was that he had gone to his home alone at 20:30-21:00, and had remained at home alone until Knox returned, about 01:00, and she remained and slept with him. Two days later, questioned by the GIP, he said that this story of 5 November 2007 was untrue, and that really Knox had gone to his house with him at 20:00-20:30, they ate together, and then he certainly had remained at his computer until midnight, though it was possible that the girl had gone out, even though he didn't remember well either if she went out or if she had later returned, excusing his lack of recall either because he had smoked cannabis that evening, or alternatively because every evening at that time was much like all the other evenings.

Such contradictions and inconsistencies render some of his earlier statements obviously incredible, because he himself has declared that they contain lies, besides which, after having purposely retracted his statements of 5 November 2007, which completely overturned his earlier statements, he didn't return to his original story but came up with something different in which he reaffirmed the fact that he had first introduced on 5 November 2007 that Knox hadn't spent the whole evening with him, without however being certain about this, but confusing it in a tale of vague recollections emphasising this vagueness in the course of questioning aimed at clarifying his inconsistent statements. Additionally his claims [5 ->] to be unable to remember those hours was criticised by various judges regarding the cautionary measures, who highlighted the strangeness of a “wavering” memory, which showed that he recalled very well various details of the evening but claimed to have completely forgotten other details of equal or greater importance. For example, the GIP in the interrogation of 8 November 2007 receiving the vague replies of Sollecito, when asked about his earlier declarations said “Sometimes you seem to remember very clearly, but at other times, when you are challenged, you say you don't remember. I exhort you to be accurate, because you must understand that with all of these contradictions...your situation is not good.” At the Court of Review, the order made on 30 November 2007 notes that in the spontaneous declaration given by Sollecito to that court that he had lingered on the fact that he had been at the computer the whole evening “adding new details about what he had done on the computer, details which obviously contrast with the complete mental blank which must have been his mind due to drug taking, at least unless we reach the conclusion hypothesising a particular pathology, the loss of memory *secundum eventum*.” [after the event] The poor memory of what he was doing on the evening and night of 1 November 2007 seems barely credible because if it is possible that he spent all of his evenings in the same way, certainly he had never before lived through a day like 2 November 2007. To discover in the morning of 2 November

2007 that in his girlfriend's house a murder had occurred, and that it was one of her flatmates who had been killed should have, logically, prompted the young man to have a precise memory of where Knox had passed the time during which all of this had presumably happened, at the very least to be thankful for the circumstances which had kept her away from the house, and thus would have been bound to encourage a precise recall of whether she was at home with him all evening or had been absent during that critical period.

However all of the versions offered by Sollecito are untrue not only because they are contradictory, but also because many of them have been substantially disproved. For example, the witness Popovic disproves that Sollecito returned to his home alone at around 20:00/30, although this is what he claimed in his last account which he never withdrew. This witness testified that she visited Sollecito's house twice on the evening of 1 November 2007, at about 18:00 and at about 20:40, and that on both occasions saw Knox there, from which it seems certain that both of the young people were at Sollecito's house together at least up until the time of the later visit. In addition, examination of his computer showed that it was in use, to watch a film, and showed signs of human interaction, between the hours of 18:27 and 21:10. It is also disproved that the young man was working at his computer on the evening of 1 November 2007 until 23:00/24:00. The analysis of his computer shows that between 21:10 and 05:32 there was no human interaction, though the machine remained switched on, downloading films in an automated manner (although Sollecito's expert witness D'Ambrosio claims that a short animated film was viewed between 21:26 and 21:46). The claim that the two slept all night, from 24:00 or 01:00 until 10:00 is also disproved; one of them (there was nobody else in the house) at 05:32 had turned on the computer, and listened to music for half an hour, and at about 06:00 someone had turned on Sollecito's cell phone which was then able to receive a goodnight message from his father sent at 23:14 and which had not been received earlier because the phone was turned off. Finally, it was disproved that Sollecito had received a phone call from his father at about 23:00 on 1 November 2007: the phone logs show that he received no calls on either the fixed or mobile line after about 20:40, [6 ->] and indeed his father explained that having established from this call that his son was with his girlfriend, getting ready to spend the evening together, he avoided telephoning again in order not to disturb them.

It is not for this court to investigate possible reasons for the lies, nor to decide to what extent they serve as evidence for the prosecution of Sollecito: what they do demonstrate is that they clearly constituted evidence from his own mouth, leading to the suspicion of a person then under investigation, capable of corroborating other facts, which according to the investigators, demonstrated his involvement in the murder and the other associated crimes, and to thus confirm the validity of the investigators' theories, even if ambiguous or questionable, in a way unfavourable to the subject, to the extent to consider them in the period of initial investigation and during the first-stage trial to be proof sufficient for him to be found guilty.

So far we have examined the truthfulness of Sollecito's statements only in the light of facts known at the time of the decision to hold and retain him in custody, and which were not disproved or considered doubtful or barely credible in the later judgments of acquittal (or more precisely the single definitive judgment of acquittal, it not being possible to take account of the acquittal issued by the Perugia Assize Court of Appeal because this was completely annulled by the First Penal Section of the Court of Cassation which made reference to the disparagement of the evidence by those judges). It appears though our duty to emphasize that the versions of the young man about his movements and those of Knox during the hours when young Kercher was murdered remain completely false even in the light of the reconstruction of the facts provided in the decision issued on 27 March 2015 by the Fifth Penal Section of the Court of Cassation – a reconstruction which, given its definitive status, is the “judicial truth” [*“verità processuale”*]<sup>6</sup> to which this court must adhere.

According to the aforementioned judges, who, although they found Sollecito not guilty of all of the charges ascribed to him, holding his complicity in the murder not proved “beyond a reasonable doubt” (Page 43 of the decision), the murder having been committed with “irrefutable certainty” by Rudy Guede, separately found guilty definitively for having acted “together with other as yet unknown persons”. Many facts connected with the complete reconstruction of the event, exclude that Guede could have acted alone (Page 26 of the cited decision), and at the same time “as for the whereabouts of Amanda Knox, whose presence in the dwelling, site of the murder, is clearly certain in the case, consistent with her admissions, contained also in her hand-written account.” (Page 45 of the decision). In regard to Sollecito “The picture of the evidence which emerges from the impugned judgment is marked by intrinsic unresolved contradictions...It remains, nonetheless, a strong suspicion that he was actually present in the house at Via della Pergola on the night of the murder, but at a time, however, that cannot be determined. On the other hand, given the certainty of the presence of Knox in that house, it is hardly credible that he was not with her.” (Page 49 of the decision) If therefore the fact that Knox was in the house 7 Via della Pergola at the time when young Meredith Kercher was killed constitutes a fact of absolute and indisputable certainty; it is evident that the statements made by Sollecito that she was with him all evening on 1 November 2007 are false, and that one cannot believe his statements that he couldn't remember what he and Knox were doing from the evening of 1 November 2007 until the following morning. It is logical to assume that she, returning to her boyfriend immediately after having helped someone she knew (Guede) and others murder her flatmate, would have been greatly distraught, a circumstance which would have allowed Sollecito to remember well what happened that night even if he had never set foot in the house where the serious crime had happened.

[7 ->] We have established, therefore, that Sollecito gave, before and after he was taken

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<sup>6</sup> “Judicial truth” or “*verità processuale*” is a concept of law addressing the fact that court trials cannot divine absolute or objective truth. The Court can only evaluate conflicting narratives to get to a “limited truth”, the best truth that is humanly possible to extract from a proceeding, reflected in the final judgment.

into prison, completely untrue statements concerning his and Knox's movements on the evening of 1 November 2007 until the morning of 2 November 2007, and for the duration of the entire proceeding, and so for the whole period of detention he remained fixed on an untrue version of what happened during this period of time. We need now to establish whether his statements influenced the decision of the judges to apply and maintain the custody, in the sense of whether he gave cause, or assisted in giving cause, to the custody order in terms of art. 314 cpp.

The arrest warrant issued by the PM on 6 November 2007 described “serious indications of the crimes of assisting in aggravated homicide ex.art 576 n. 5 cp and sexual assault” having being committed by Sollecito in the “numerous inconsistencies found within his first and subsequent accounts”, together with the fact that a shoe print found in the room of the murdered girl seemed compatible with the shoes he wore, and that he carried with him a pocket knife which could be compatible with the weapon which produced one of the wounds on the neck of the victim (these two elements quickly failed by later analyses). The young man's contradictory stories and lies were therefore one of the major clues which made the PM decide to make the first custody order of the applicant.

The order for cautionary detention in prison issued by the GIP on 8 November 2007 following the confirmation of detention showed the serious evidence of Sollecito's guilt, sufficient to order the custody order, included the finding of the shoe print in the room of the victim compatible with the shoes he was wearing, and the finding of the pocket knife which he was carrying being compatible with the possible weapon, but at the same time underlined the contradictions contained in Sollecito's varied stories about the evening of 1 November 2007, and in particular about whether or not Knox was at his house. Thus also the GIP, while giving more weight to those facts which at the time seemed to confirm the investigators' theories (later, as we have said, abandoned), found the aforesaid contradictions and lies told by Sollecito relevant, mentioning them in their disposition.

The Court of Review, in their decision of 30 November 2007 rejected the first request by Sollecito to lift the custody order, identifying “strong suspicions” towards him and stressing in first place the contradictions between his statement of 5 November 2007 and those made subsequently, and terming his stories “unpardonably implausible”. His assertion that he couldn't remember accurately was unbelievable. He had lied in his declaration on 5 November 2007 (because disproved by Popovic, as discussed earlier). His claim to have been at his computer until 23:00 or 24:00 was not true (as shown by the lack of interaction between 21:10 and 05:32). He had lied about receiving a telephone call from his father at 23:00 (shown to be false by the phone logs), and that it was a lie that he had slept from about 01:00 until 10:00 (shown by the finding that the computer was used at 05:32, and that his cell phone was turned on at 06:00, receiving only then a message which his father had sent the previous evening). The published decision of the Court of Review also mentions, as “a finishing touch” to add to the previous reasons, the clue of the shoe print compatible with his shoe, the finding in his house of a knife with a DNA trace of the victim (evidence that failed in later evaluations), and the significance of the phone call he

made to 112 on the morning of 2 November 2007, but after the arrival of the Postal Police at Via della Pergola, clearly to make it appear that he had reported the break in immediately it was discovered. [8 ->] (Sollecito repeatedly denied this, claiming always to have telephoned 112 before the Postal Police arrived, and he was believed on this point by the Court of Assize of Perugia, but not by the Court of Assize of Appeal in Florence. That Court said that phone logs, a video surveillance camera, and the testimony of Inspector Battistelli showed that the Postal Police had arrived in Via della Pergola at about 12:35, but the two calls made by Sollecito to 112 happened at 12:51 and 12:54.)

The conclusions of the Court of Review were that “on the whole we recognise that there are serious suspicions of both of the suspects sufficient to support and legitimise the application of cautionary measures for the crime of aggravated homicide within the context of group violence”, thus basing their decision that sufficient suspicion existed on all of the above factors, of which the factor of the inconsistencies and untruths in the declarations is mentioned first in their reasoning (starting on page 21 of the decision).

Sollecito's behaviour was also the basis for the Court of Review decision to support one of the reasons for keeping the young man in custody, which was to prevent any interference with evidence. This consideration made it essential to stop Sollecito communicating with Guede or with other people because “the suspect, who has shown definite tendencies to indulge in self-serving falsities, should be impeded from elaborating, with the help of unprincipled third parties, new faked scenarios destined to corroborate his proclamations of innocence based on alibis shown up to now to be quite unfounded”.

Furthermore the Court of Review considered that the danger of further crimes being committed was supported, because “the young man has shown with his conduct and attitude, as well as with his wavering declarations, to often align himself with the fantastic versions of his ex-girlfriend, and exhibits a fragile temperament, prone to impulses and suggestibility of every type”. For the Court of Review, therefore, Sollecito's inconsistencies and lies, together with his false or failed alibi and following behaviour, did not only contribute to the picture of serious evidence which justified the custody order, but in fact demonstrate the existence of multiple reasons for custody.

The Court of Cassation, on 1 April 2008 rejected Sollecito's appeal from the aforementioned order of the Court of Liberty or Review, and confirmed the custody order issued by the GIP on 8 November 2007, restating the existence, as assessed by the judge of legitimacy, of the evidence: the finding of a knife in his house with DNA of the victim, and the finding of a shoe print in the room of the victim compatible with shoes he was wearing (facts which as far as they referred to Sollecito, we repeat, later failed); but also restating the existence of “further data unfavourable to Sollecito” consisting of the failure of his computer to prove that he was in his house until late at night, and another “fact now known to be certain” which was the evidence that he had interacted with the computer at 05:32 and at about the same time had turned on his cell phone “which give lie to the assumption that he had woken only at 10:00 and gives an insight into a night more or less

sleepless.” The Court also found that the need for precautionary detention existed “while we have a picture of the crime still in continual evolution, where the position of various players is still unsure, and changeable accounts which are characterised by withholding information or lies (the suspect has, in fact, admitted to have told, at least at the outset, a ‘*sacco di cazzate*’).”

So even the judge of legitimacy based his decision both on serious indications pointing towards guilt, and on the presence of real needs for custody on the changing, unforthcoming and false statements made by Sollecito.

Finally, on 29 October 2008 the GIP of the Court of Perugia, a different person from the one who had issued the first custody order, rejected [9 ->] the request for the revoking or liberalizing of the order, made reference to the fact that “the two suspects gave versions which impartially do not support comparison or are objectively believable” and that their excuse for not being able to remember or to having been confused, created either by external pressures or by drug use had no validity, citing then as far as Sollecito is concerned, the disproving of his various tales by the witness Popovic, and the computer analysis showing it was not used later than 21:46, not to mention the fact that the Carabinieri were called on the morning of 2 November 2007 only after the arrival of the Postal Police.

The first stage judgment, which found Sollecito guilty and maintained the imprisonment order, was not able to take into account the declarations of this suspect because nobody asked him to testify, which meant that not even the transcript of his only judicial interrogation on 8 November 2007 was admitted into the Court record, nor did the voluntary declarations made in that trial include any mention of what he was doing at the time of the murder, or about the alibis he had earlier offered

In the judgment, however, considering the statements made by Knox, who also claimed that she had remained with Sollecito in his house from the evening of 1 November 2007 until 10:00 of 2 November 2007, the Court noted a lack of correspondence after 20:40, the time of the second visit of Popovic and the last call from Sollecito's father, (or anyway, later than 21:10, the time of the last computer interaction); the falseness of the girl's assertions that she had eaten in the house at 22:00 or 23:00 (because Sollecito's father at 20:40 was told that they had already eaten and that a leak had occurred under the sink while they were washing up); the untruthfulness of her statement that both had slept together all night until 10:00, given the evidence of human interaction with Sollecito's computer at 05:32 and the turning on of his cell phone at about 06:00. The Court also described further behaviour of the young man which they considered incongruous and suspicious, particularly his behaviour on the morning of 2 November 2007 both because he seemed quite unworried by the apparent robbery and not at all interested in the strangeness of the young Kercher's door being locked, not even mentioning this to the Postal Police (unlike the other young people, who were sufficiently worried to break down the door themselves), and to have asserted in one of the calls to 112 when he reported the

robbery that nothing had been stolen, something he could not have known since he had not made any examination of the disturbed room.

One must therefore conclude that the conduct exhibited by Sollecito in making the statements described above strongly contributed to convince firstly the Prosecutor of the Perugia Court, then the GIP of the same court, and then the Court of Review, and then the Court of Cassation on the cautionary appeal, and lastly the Perugia Court of Assize to issue and to maintain for almost four years the cautionary measure of custody in prison. All of these judicial authorities cited the contradictions and lies in the statements as one of the indications which, in cohesion with others, painted a picture of such gravity to justify the suspicion of guilt and to permit the application of custodial measures. The silence maintained after 8 November 2007, without either modifying previous stories about his movements on the evening of 1 November 2007, or explaining their incompatibility with objective facts emerging from the phone logs or computer analysis, especially with the presence of Knox in the house which was the scene of the crime, a presence held to be certainly true and amply proved in the judgment of the Court of Cassation, and thus has become “the judicial truth”, had then without doubt contributed to Sollecito being found guilty by **the [10 ->]** Perugia Court of Assizes with the consequent maintenance of the cautionary measures in place.

No less than the judgment of acquittal of the Fifth Penal Section of the Court of Cassation thought, on Page 50, that “a strong element of suspicion” of Sollecito is formed by his confirmation (deduced only from his spontaneous statements made in various courts of merit, the Court not having been able to read the statements made during the preliminary investigations because they had never been incorporated in the record) of the affirmation of Knox that both had remained at his house for all of the evening and the night between 1 November 2007 and 2 November 2007, and that an “umpteenth element of suspicion lies in the substantial failure of the alibi connected to others with the claimed interactions with his computer”. Even the judge who acquitted Sollecito thus recognised that the statements containing the elements described above, made in the early days of the investigation, were such as to engender a “strong” suspicion of him, and they were therefore adequate to weigh on the picture of the crime to the point that they justify the issuance of the custody order and its continuation.

The behaviour of Sollecito must therefore qualify as an example of “wilful misconduct and gross negligence” which, according to article 314 cpp. in the interpretation always furnished by the Supreme Court, rules out the right of a subject judged innocent to be recompensed for unjust detention. Cassation n. 47756 of 16 October 2014 “Concerning damages for unjust detention, the conduct of the suspect who has provided an alibi quickly found to be false, even if offered in right to self-defence, can be considered relevant for ascertaining the existence of barriers such as wilful misconduct or gross negligence, which, in the presence of a circumstantial picture already significant in and of itself, contributes to reinforcing the suspicion of guilt”. Cass n 13714 of 17 February 2005 “On the subject of damages for unjust detention, the not testifying, the withholding of

information, or the lies, while being methods which a suspect has the right to use in his defence, can be weighed by a judge as comportment showing wilful misconduct or gross negligence by the suspect, who in this way has contributed to give cause for the unjust detention”.

Sollecito's conduct as described, clearly falls into the category of wilful misconduct, or at the least gravely negligent and imprudent, because [he] knowingly and voluntarily [made] his early contradictory or false statements and subsequently never clarified them, all [of which is] considered to have contributed to the issuance and continuance of the custody measures, and must be considered barriers to the recognition of the right to compensation. Also, in light of the most recent judgments, according to which “On the subject of compensation for unjust detention, the behaviour of the suspect who, in the course of an interrogation, avails himself of the right to remain silent, while this is his right, it can assume relevance for ascertaining the existence of barriers such as wilful misconduct or gross negligence, only if the subject has not reported circumstances, unknown to investigators, useful to attribute a different meaning to facts forming the basis of detention”. (Cass. n. 25252 of 20 May 2016). And, “Concerning damages for unjust detention, lying declarations made under interrogation of the subject undergoing cautionary custody can be considered relevant when ascertaining the existence of the barriers of wilful misconduct or gross negligence only when the subject has not mentioned circumstances, unknown to the investigators, which if they had been known of earlier would have avoided making an order of custody” (Cass. n. 46423 of 23 October 2015).

It does appear clear, in the light of the judicial truth established in the acquittal ruling concerning the indisputable presence of Knox in 7 Via della Pergola at the time of the murder, that if Sollecito had immediately said, without later changing his story, that the young woman had been far away from him during that time, and if he had told in a precise way the time at which she had arrived at his house and also her condition [11 ->] at that time – presumably upset or even extremely distraught, his legal situation would certainly have been different. It seems probable that he would not have even become a suspect, or even so, not seen as withholding information or lying in his statements. If he did become a suspect, the need for preventive custody would have been absent or much less important, inducing the judges to apply, at the worst, a less restrictive custody order.

Similarly, the need for custody would have been lesser if he hadn't tried making up a quickly disproved alibi, for example the claimed telephone call from his father, or if he had explained the incompatibility of his statements with objective facts revealed with certainty during the investigation, such as the use of his computer at 05:32 and of his cell phone at 06:00. These early morning factors, in the order made by the Court of Review issued 24 days after the start of his detention, were considered by the judges to be symptomatic of a night spent not sleeping quietly, but of a sleepless night, indirectly demonstrating that extraordinary events had happened and which the suspect had, however, always wanted to keep quiet about.

If then, he himself had been present that night in the house at 7 Via della Pergola, as the acquittal judgment has conjectured, saying that “There remains, nevertheless, a strong suspicion that he was actually present in the house in Via della Pergola on the night of the murder, at a time, however, which is not possible to determine. On the other hand, given the indisputable presence of Knox in that house, it is difficult to believe he wasn't there with her” (Page 49 of the decision) the impact on his request for a declaration by the court on the infliction of a penalty and the long time he was detained is still more obvious. In fact, if he had intervened only after the homicide, he should have told the investigators, and could have thus explained not only the lies in his statements, but above all the reasons, aside from having participated in the murder, for his traces found at the scene (although these are different traces from those initially attributed to him) which he could have left at a later date. He could then have become a suspect for the crime of aiding and abetting, but this would not have resulted in a custody order.

If, however, he was present in the house at the time of the murder, but had not participated in it, as is considered a possibility in the judgment of acquittal of 27 March 2015, we can't exclude a simple “collusion” charge arising in the light of the “complete absence of biological traces attributable to them in the murder room”. Equally, an immediate admission that he was present but had nothing to do to the crime (necessarily accompanied by a full description of what had occurred) would have probably improved Sollecito's legal position. However, if we are to consider Sollecito as only a conspirator, an idea which the acquittal decision truly expresses without espousing it, leaving, however, doubt whether he was present at the time of the murder, the acknowledgement of the right to damages for unjust detention must be ruled out on the basis of the principle established by the Court of Cassation n. 15745 of 19 February 2015, which states “Concerning compensation for unjust detention, gross negligence, a barrier to the award of compensation, can be recognised in relation to shared passive responsibility when, in the alternative, 1) it [either] shows a lack of the fundamental obligations of social solidarity to prevent serious harm to persons or things; 2) [or] it occurs not as mere passive behaviour regarding the perpetration of a crime but allows the crime to be accomplished, provided that the person is in a position to prevent the criminal act from being carried out by reason of a special relationship; 3) [or] it is objectively established that the criminal will of the agent was strengthened, even though the conniver did not intend to pursue such effects and there is proof positive that he was aware of [12 ->] the criminal activity of the person”, Sollecito, having failed to prevent serious crime, caused harm to Meredith Kercher.

Therefore it must be concluded on analysis that there is a barrier to recognizing the right to compensation for unjust detention provided for by Article 314 c. 1 cpp. Because of the conduct described above, he has, by willful misconduct or gross negligence contributed to the inclination of various judges to issue and thereafter to maintain his precaution-

ary detention. It appears obvious that a different course of action that avoided statements [that were] contradictory or clearly false, that is that would have supplied an immediate explanation of their incongruity regarding various events in the investigation, would have prevented the onset and consolidation of suspicion of Sollecito's material participation in the murder of young Meredith Kercher, or at least it would have allowed a different evaluation of the danger he posed with regard to the reasons for the issuance and long maintenance of the maximum precautionary measure.

The proposed petition must be rejected, and the petitioner must be ordered to pay the costs of suit, as the losing party, as held by the Supreme Court (Cas. n. 104 del 28.1.1994)

P.Q.M.

The Court, with regard to art 341 cpp.  
rejects the request for redress for unjust detention suffered by Rafaele Sollecito, born in Bari 26 March 1984, domicile of choice in care of 26, Piazza San Lorenzo in Lucina, Rome, the office of his defence counsel, attorney Giulia Bongiorno, and orders him to pay the costs of suit herein incurred.

Orders this Order be sent to all interested parties.

Florence 22 January 2017

Presiding Judge  
Dr. Silvia Martuscelli

Reporting Judge  
Dr. Paola MASI

Filed with Registry [the clerk of court] 10 February 2017  
Antonio Bossa  
Clerk