

SENTENCE OF THE SUPREME COURT OF CASSATION
(PRESIDED OVER BY DR. UMBERTO GIORDANO)

RUDY GUEDE'S FINAL APPEAL

Translated from Italian into English

ITALIAN REPUBLIC
IN NAME OF THE ITALIAN PEOPLE
THE SUPREME COURT OF CASSATION
FIRST CRIMINAL DIVISION

PUBLIC HEARING ON
DECEMBER, 16 2010

SENTENCE
N. *1132/2010*
GENERAL REGISTER
N. 27670/2010

Composed of Their Honours Messrs. Magistrates:

Dr. UMBERTO GIORDANO	- President
Dr. ENZO IANNELLI	- Reporting Judge
Dr. ANGELA TARDIO	- Judge
Dr. FRANCESCO MARIA SILVIO BONITO	- Judge
Dr. PAOLA PIRACCINI	- Judge

For the dissemination of
this ruling please omit the
names and other
identification data as by
art. 52 law 196/2003
because:

disposed by the office

at the party's request

imposed by law

Has issued the following

RULING

On the appeal of:

1) RUDI HERMANN GUEDE, born December 26, 1986

opposing the sentence n. 4/2009

COURT OF APPEAL OF PERUGIA, of December 22, 2009

Having viewed the records, the sentence and the appeal
heard in PUBLIC HEARING on December 16, 2010,

on the report made by Judge Dr. ENZO IANNELLI

Having heard the Chief Appeal Court Prosecutor
in the person of Dr. Gialanella

who has concluded for

Having heard, for the civil party, lawyer

Having heard the defense counsel

[1] Having read the documents, the sentence under appeal and the appeal;
Having heard the report of Consellor Enzo Iannelli;
Having heard the Deputy Prosecutor General, Antonio Gialanella, who concluded for rejecting the appeal;
Having heard counsel for the civil parties, the lawyer, Francesco Maresca, and the accused 's lawyer, Walter Biscotti:

-1 - The Sentences

Rudy Hermann Guede was found guilty, and sentenced by a ruling issued on Oct. 28, 2008 by the Preliminary Hearing Judge [GUP] of the court of Perugia, in a fast-track trial, to the penalty of thirty years' imprisonment, as well as penalties and compensatory damages for the crime under art. 575, 576 par. 1 no. 5 of the Penal Code, aggravated by [a finding of] trivial reasons and circumstances hindering self-defence, (ex. art. 61 no. 1 and 5), with denial of the requested mitigating circumstances.

The Court of Appeal, upheld the guilty verdict for an aggravated crime as above, but reduced the sentence of imprisonment to 16 years, after finding the mitigating circumstances to be equivalent to the alleged aggravating circumstances, and thus re-applying the reduction for the [fast-track] trial to the maximum penalty for a non-aggravated murder.

-2- The Event

In order to trace the owner of the SIM card from one of the two cell phones discovered in a garden connected to a private dwelling on Via Sperandio, 5-A, in Perugia at 12:36 PM on November 2, 2007, the Perugia Postal Police headed to Via della Pergola 7, the address of the owner of the aforementioned SIM card, Filomena Romanelli, where two people, Amanda Marie Knox and her boyfriend, Raffaele Sollecito were already present. These two were joined shortly afterwards by Romanelli and two of her friends. The first two individuals, (that is, Knox, who lived on the top floor of the cottage, and Sollecito), reported that on returning to the cottage that morning, they discovered in Romanelli's bedroom (this room on the cottage's upstairs floor is located beyond a small access way outside the kitchen sitting room area, which then leads into two rooms, which are located as follows: the right bedroom being occupied by Laura Mezzetti, the other bedroom on the opposite side occupied by the aforementioned Ms. Romanelli) and in a bathroom off a small corridor leading off to two other bedrooms, those used by Knox and Meredith Kercher, as well as the bathroom used **[2]** by the two girls, a broken window, a large rock on the floor, traces of blood around the flat described above, especially in the bathroom used by Kercher and Knox, the door of the room occupied by British citizen Meredith Kercher locked, and more traces of blood on the doorhandle and the entrance. Knox and Sollecito had called the Carabinieri – it appears that this call was made after the time of arrival of the Postal Police – to report a burglary.

Once the door of Kercher's room was broken down, faced with the horrifying sight, the Postal Police agents prevented everyone present from entering the room which for the purposes relevant to this trial can, according to Forensic Police findings, be described as follows:

a) the internal handle of the door stained with blood, spots of blood everywhere, bloody stains and streaks, likely made by a finger, in the inside of the left sliding door of a closet, bloodstains between the area of the desk and the closet, bloody streaks on the walls made by the fingers of a hand; on the single bed, covered by the bottom sheet, two irregularly-formed bloodstains; also on the bed, amongst other items – a purse, two sponge socks, a bloodstained book - an ivory-coloured terry cloth towel heavily smeared with blood. On the wall above the bed was another small bloodstain. There were three bloody footprints on the ground, set in concentric circles.

On the floor between the closet and the bedside table was a large dried pool of blood, and in another place, the front right quadrant, another 69 cm. long by 40 cm. wide blood smear, containing hair-like formations. Also on the floor was a white bra, whose right strap was drenched in blood, as was the upper external part of the left cup, while the left strap was ripped from the plastic fastening ring of the bra, and the strip of material where the back hooks are attached was missing. Also on the floor were a pair of woman's underwear, a pair of blue jeans partially smeared by blood on the back part, and more bloodstains containing some hair-like formations.

b) On the ground, between the closet and the bed lay, supine, the dead body of Meredith Kercher, covered by a quilt that left her left foot and the top half of her face uncovered.

The body was naked, with only a double **[3]** shirt, heavily stained with blood, rolled up to the thoracic region to the point of uncovering the breasts. The posterior region, left and right, was resting on a pillow underneath which was found the scrap of cloth with hooks sewn onto it belonging to the bra and missing from it. On the pillowcase was a handprint in blood. Also on the floor, visible after rotation of the body, was a tennis sock stained with blood, two sponge towels, one green and the other ivory coloured, the latter completely soaked in blood, the upper bedsheets, also stained with blood in several places, and a light-blue zippered sweatshirt with collar and cuffs in darker blue, also bloodstained.

c) The body presented a very large number of bruising and superficial wounds – around 43 counting those caused by her falling – some due to a pointed and cutting weapon, others to strong pressure: on the limbs, the mouth, the nose, the left cheek, and some superficial grazing on the lower neck, a wound on the left hand, several superficial knife wounds or defence wounds on the palm and thumb of the right hand, bruises on the right elbow and forearm, ecchymosis on the lower limbs, on the front and inside of the left thigh, on the middle part of the right leg, and a deep knife wound which completely cut through the upper right thyroid artery fracturing the hyoid bone, a wound which caused a great deal of bleeding

from the vessels of both lungs. This caused a haemorrhagic shock and asphyxiation by the presence of blood in the respiratory passages, an *exitus* [decease] placed at around 23:00 of Nov. 1 by the forensic pathologist.

d) In the other areas of the upper flat the following was found. There was no sign of breaking through the metal grille or through the door. Of the rooms on both sides of the living-room-kitchen, Laura Mezzetti's room was in order, next to it was a bathroom in which faeces and toilet paper were found in the toilet, and Romanelli's room was disheveled: drawers had been rummaged through, items of clothing and other objects were thrown pell-mell on the bed and on the floor, the pane of the left-hand window frame was smashed, a rock, and pieces of glass were on top of the clothes in the room and on the inner part of the windowsill. In the corridor leading off from the kitchen area leading to the rooms of Knok and Kercher were more bloodstains, [4] also in the bathroom used by the two girls: on the sink, on the faucet, on the floor, on the bidet, on the toilet and on the door.

-3- The results of the scientific investigations

a) traces not attributable to Guede: in Sollecito's house, a knife was found containing traces, on the handle, of DNA ascribable to Knok, and on the blade traces of biological material attributable to Kercher. On the bra hooks, attached to a piece of cloth ripped from the garment and discovered only after removal of the body, traces attributable to Sollecito were discovered, although they have been contested.

b) traces attributable to Guede: a palm print in blood found on the pillow case of a pillow lying under the victim's body – attributed with absolute certainty to the defendant by its correspondence to papillary ridges as well as 16-17 characteristic points equal in shape and position – also a genetic profile, from the Y haplotype on the vaginal swab, in which no traces of semen were found; DNA on the toilet paper in the bathroom near the room of Mezzetti, where unflushed faeces were found, on the bag found on the bed, on the left cuff of the blue sweatshirt (described as a “zipped shirt” in the first inspection, discovered smeared with blood near the body and partly underneath it), and on the right side of the bra found by the foot of Kercher's body; finally, near the body, a shoeprint made by the same Nike brand as that worn by Guede.

- 4 - Guede's interrogations

The presence of Guede in the upstairs flat of the house at 7 via della Pergola is established; it was actually admitted by Guede during his first interrogation in Germany, where he went after leaving Perugia on Nov. 3, 2007, and where he was captured in the act of returning to Italy following an arrest warrant put out by the GIP (Preliminary Investigation Judge) GIP on Nov. 20, 2007, as he had told his friend **GB**. Via the Internet, **B** had succeeded in getting into contact with him on Nov. 19, 2007, using the Skype program, as a volunteer for the P.G.

(Judicial Police), and had learned some information from him about the allegations against him that were appearing in the newspapers and on the television news. During that conversation, Guede stated his intention of returning to Italy, declared that he had nothing to do with the crime, and told his friend what had happened in Kercher's flat, repeating the story shortly afterwards to the German authorities. One significant [5] sentence pronounced by Guede to **B**: «*I was scared that they would say I was the **only** guilty person*».

During the interrogation of Nov 21, 2007 by the judicial authorities of Koblenz, Guede declared that he had met Meredith on October 31, had flirted with her, and that they had made a date with each other for the evening of the next day; that he had left his house at around 19:30-19:45, and had met his friend **AC**, that he had gone to via della Pergola, hadn't found Kercher, and had gone away again to buy a kebab, then returned to the house, and after a few minutes Kercher arrived; that they entered the house, kissed but did not have sexual relations; that Kercher complained about the disappearance of money from her drawer, that she expressed suspicion of Amanda Knox – whom she accused of smoking drugs – that he went into the bathroom, listening to loud music with his earphones, that he heard the doorbell ring, and that after about five minutes he heard screaming, that he went out of the bathroom and caught sight from behind of a shorter man standing at the threshold of Kercher's room or just inside, that Meredith was lying bleeding on the floor, that the man turned towards him and tried to strike him with a knife, wounding him in the right hand (wounds which appear in the photographs taken by the German authorities), and that he then saw him – after hearing him pronounce the phrase “black man found, guilty man found” - leave the house. Guede continued his story by saying that he tried to help the girl, staunching her wounds with a towel that he took from the bathroom, but the blood continued to flow, so he took another towel, and managed to understand a word that Meredith pronounced “AF”, but then he heard sounds from the floor below, panicked, and rushed out of the house, leaving the door open and Kercher on the floor, dressed, the shutters open and Romanelli's windowpane not smashed.

The following interrogations of the accused, the interrogation before the magistrate [interrogatorio di garanzia] by the GIP on Dec. 7, 2007, one by the PM on March 26, 2008 and another on May 15, 2008, did not differ by much from the gist of the story he told in Germany, although there are some differences of detail that are not negligible:

In the interrogation before the magistrate [interrogatorio di garanzia], he stated that at the beginning of October, he was invited by two boys who lived in the flat on the lower floor of via della Pergola, he had met Kercher and exchanged a few words with her; on a second occasion he had met the girl by chance at the Shamrock pub in the center of Perugia, on the occasion of a rugby match between England and South Africa, when he was together with his friends **AC**, **PM** [6] and **F**, and had chatted several times with her. On a third occasion, on October 31, he had met her at a Halloween party at the house of some Spanish friends, in disguise. On that occasion Guede, after exchanging banter with her, kissed her in a particular

place in the house which he described by saying “a bathroom here and one here, and a room”, told her that he wanted to see her again, and stated that they made a date with each other for the next day, Nov. 1. He added that on the day of the date, before seeing Meredith, he had seen his friends **A** and **P**, and had told the latter that he was supposed to see a girl, and would meet him again later together with **A**. He also stated that after having gone to the Spanish people's house and kissed Meredith there, he had gone to the Domus, hoping in vain to meet her there.

He added another detail that was new with respect to the story he told in Germany: that he and Meredith had been petting after he had gone into the house in via della Pergola with the girl, both touching each other in their intimate parts, and that he had penetrated the girl with just fingers, and touched her breasts and her bra under her shirt. On the girl's query as to whether he had condoms, and his negative response, they straightened themselves up, and he went to the bathroom, the one used by Romanelli and Mezzetti, for a call of nature. Then he repeated the version of the facts that he had already given the German police. He repeated that he had not seen the face of Meredith's attacker, who was still smaller than he was and who had a Napapjiri jacket and brown hair, but the scene was lit only by a lamp in the room where Meredith was lying. He added that he heard the steps of more than one person on the stones outside the house. He reaffirmed that he had touched many places in the room with blood on his hands, but that the room was orderly (but he didn't explain his handprint on the pillow under the body of the girl, a pillow that he recalled as being on the bed, outside of the quilt on which the girl's jacket and bag lay), that Meredith was dressed, that the windowpane of the window, which he had leaned out of, was not broken, and that Romanelli's room was in order, and her shutters and inner shutters were open. He had left the house on via della Pergola at around 22:30. The next day, he had met **AC**, **PM** and **SC**. On the 3rd he had left, going through Florence, Bologna and Milan, from where he took a train to Germany and reached Dusseldorf.

In the third interrogation by the P.M. (Public Prosecutor), on March 3, 2008, he [i.e. Rudy] established that the date of his meeting with Meredith was between October 12 and October 14, at the boys' place. The boys lived in the apartment **[7]** downstairs. He stated that Meredith only took one drag off the joint that was circulating among the young people. He corrected himself about the place where he had met Meredith dressed as a vampire; it was not in the afternoon, but in the night of October 31, at the Domus – “*there's the bar for drinks and then there's a room; there's, there's an arch, and a room. I was going around there, and that's where I met Meredith*”, there where he had gone after visiting two flats inhabited by Spanish students.

The next day he had left the house at around 18:00 and went to see **AC**, and had exchanged a few words in the street with **PM**, with whom he had arranged a meeting for later on because he had to see a girl first. He repeated the same version, the ringing of the doorbell and hearing Kercher say to someone in English “we have to talk”. He hadn't closed the door of the

bathroom and heard a female voice which seemed to him to be that of Amanda Knox (this was the first time he mentioned her!) answer in English, asking “what's happening?” or “what's the problem?” From the bathroom, he heard the two women speak, and after a few minutes he heard a scream louder than the music in his earphones; he went out and saw the man armed with a knife on Meredith's threshold. He no longer spoke of a fight lasting five minutes or more, but of a lightening-fast fight before the man fled.

The novelty of the third interrogation was the statement that from Romanelli's window, he briefly saw a female figure with loose hair which seemed to be that of Amanda Knox. Then he repeated what he had already stated: that Meredith's room was in order, that the girl was on the floor, dressed, that he tried to staunch the blood with two towels and then fled, terrified.

On May 15th a fourth interrogation took place, solicited by Guede, following the order issued by the Court of Cassation in the formally opened *de libertate* proceeding: there, he said that he was wearing Nike shoes, corresponding to the empty shoe box found during the search of his flat in via del Canerino, compatible with some of the shoeprints found in the house in via della Pergola, above all with one found near Meredith Kercher's body.

- 5 – The sentence from the first-degree trial

In the fast-track trial, the GUP upheld Rudy Hermann Guede's responsibility regarding the crime attributed to him as fully proven, [8] given the traces left by the accused in the room and on Kercher's body and discovered by the technical scientific investigations, the bruises on the victim indicating the action of gripping her so as to immobilise her, and the intrinsic and extrinsic untrustworthiness of his declarations as shown by their incoherence and the lack of uniformity of the different declarations, and also because they have been denied by all witnesses both in regard to his previous acquaintance with Kercher and in regard to his statement of having been together with **AC** and **PM** in the afternoon and evening hours of Nov. 1, 2007.

The GUP emphasised that the break-in was staged and that the scene of the crime had been modified: nothing had been taken from Romanelli's room, the pieces of the broken windowpane were found on top of the clothes spread around the floor, and the bra containing drops of blood on the cups and a lot of blood on the shoulder strap must have been removed after the attack, as it was found at the right foot of the body in a zone containing no other bloodstains.

The judge of the first-degree trial held that the crime was committed together with other people, because of Kercher's DNA found on a knife seized at the house of Knox's boyfriend, Raffaele Sollecito because of the footprints left on the floor of Kercher's room which came from at least two different people, because of the declarations of Nara Capezzali who lived

near via della Pergola 7 and who, during the night, right after hearing an agonised scream, clearly heard the sound of stones and leaves on the path leading to the house where Kercher and Knox lived, made by at least two people running in opposite directions, and because of the declarations of Alessandra Formica and Antonio Curatolo, who were both near the scene of the crime at around the time of the crime. Alessandra Formica saw a black man running away from via della Pergola who bumped into the man with her, **LM**, and didn't even turn around, and Antonio Curatolo recognised Raffaele Sollecito and Amanda Knox in Piazza Grimana, plausibly when they came there from via della Pergola.

- 6 – The reconstruction of the appeal judges

Based on the witness testimony, the four interrogations of Guede, the findings, and the technical scientific investigations conducted on them, the Appeals Court arrived at the following reconstruction of the facts: **[9]**

A) The injuries suffered by the girl, as indicated above, support a finding of an attempted sexual act, one of insistent violence, in order to break her will, as was revealed by the injuries related to the presumed use of two knives, given the different thicknesses of her wounds, and especially the superficial wound on her cheek, and the purplish spots of bruising present on the internal surface of the victim's labia minora, which revealed evidence of a rushed attempted rape or else [a sexual act] against the will of the passive subject; also the bruising on the victim's thighs revealed that pressure was applied. The appeal judges called on the opinions of the prosecution's expert witnesses - consultants Bacci, Linneri, Marchionni, and during the pre-trial discovery stage Dr. Aprile and Dr. Umani Rochi, who spoke of an escalation of violence against the victim. The traces of DNA and Guede's Y chromosome on the cuff of the left sleeve of the victim's sweatshirt supported a conclusion that considerable pressure had been applied to immobilise her left hand, in contrast with her right hand, on which multiple wounds were visible. Those judges also emphasised that the genetic marker, the Y haplotype found on the vaginal swab, and the biological material discovered on the bra, also led back to Guede.

According to the reconstruction of the appeal judges, the bra had been removed in the midst of the violence, when the first stabbing and cutting wounds had been inflicted, which would explain the traces of blood on it. The hooks on the piece of fabric from the garment indicate that the bra was removed violently, and with a slicing of the knife, because the strip of material had been cleanly cut.

All of this objective data cannot be reconciled with the reconstruction of facts offered by Guede, with its obvious contradictions.

B) According to the appeal judges, Guede's previous acquaintance with Meredith and the date the two made with each other for the evening of Nov. 1, as explained by Guede, was deemed

absolutely not credible, due to the noticeable contradictions in his various depositions. And no significance should be given to the impromptu meeting, a few weeks before the murder, on the lower floor of Via della Pergola, at which Guede had not shown any interest in Meredith, but rather, in Amanda Knox. Also, the kiss that they allegedly gave each other on the night of Halloween at the Domus was deemed not credible, because of the contradictions about the place in which it happened according to the various versions offered by Guede, and also because none of Meredith's friends (Amy Frost, Robyn Butterworth and [10] Sophie Purton, with whom she had gone out on the evening of Halloween, Oct. 31, 2007) nor any of Guede's friends (among others AC and PM) had ever seen them talk to each other. Similarly, the meeting between the two, Kercher and Guede, in the Shamrock pub during the rugby match South Africa vs. England was not credible to the judges. In statements made by friends of the two, no mention had been made about these meetings, nor about Rudy's interest in Meredith. These friends included Robyn Butterworth, Meredith's dinner companion on that last evening, as well as Sophie Purton, who walked a stretch of road with her on her way back home the evening of Nov. 1, 2007. Even Rudy's friend P denied having met with him on November 1, 2007, much less having had Rudy confide in him that he was planning to meet up with a girl that afternoon.

C) In the view of the appeal court, according to the more credible version of events, due to the presence of clear signs attributable to Knox and Sollecito inside the house, the two could have entered the house together with Guede, where an escalation of sexually motivated violence against poor Meredith took place, after which an attempt was made by Knox and Sollecito, the only ones interested in doing so, to simulate a theft, and an attempted or consummated rape, and then in feverish progression a murder by the "phantom" thief. It would have been in the interest of Sollecito and Knox to remove possible traces of their presence. About their presence on the scene of crime, the appeal court, albeit by incidental deduction, seems to have no doubts. For Sollecito they give evidence: traces of DNA on the piece of fabric to which to the hooks of the bra are attached, the knife, which is compatible with the wounds inflicted on Meredith, found at his house with traces of Knox's DNA on the handle and Kercher's on the blade, a print of a bare foot which is compatible with Sollecito's, found on the mat in the bathroom. For Knox: the traces on the knife handle found at the home of Sollecito, statements by Guede, the footprints from Knox and Sollecito detected by luminol, traces of genetic material on the sink and bidet, the phrase "I was there" in a conversation intercepted in prison between Knox and her parents, the testimony of Nara Capezzali who, at the time of the crime from her home about 70 meters away from via della Pergola heard a heart-rending scream and soon afterwards the footsteps of people going in opposite directions, towards via del Melo and along via del Bulagaio. And in fact, given the testimony of Alessandra Formica, her boyfriend, who was accompanying her at a little after 23:00 on Nov. 1, [11] was violently bumped into by a young black man who was running quickly towards via Pinturicchio up the stairs of the Sant'Antonio parking lot. Amanda Knox and Raffaele Sollecito were seen by Antonio Curatolo, at around the same time, in Piazza Grimana, coming from Via della Pergola.

Finally, judges of the appeal court posed the problem of a possible participation of Guede exclusively aimed at sexual violence, not for murder. But they ruled this out, emphasising Guede's active participation in the continued violence, and his presence at the moment of the appearance on the scene of the knife that was used, certainly not for a short time only as a kind of threat or means of injury in order to break the resistance of the victim; this gave Guede a chance to exhibit behaviour that he did not in fact exhibit, that of showing opposition aimed at preventing or distancing himself from the more serious deed, which must have been predictable by him, even just as a possibility.

- 7 – The grounds for the 2nd appeal

1) The first of the grounds for the 2nd appeal, which contains a large part of the grounds for the 1st appeal, concerns the violation of art. 606 pars. b) and e) of the Code of Penal Procedure. It is claimed that the appeal judges gave undue value to mere indications, which do not have the required qualities of gravity, precision or agreement, as is obligatory in a trial based on circumstantial evidence such as this one. In particular, it is claimed that the appeal judges did not make good use of the criteria indicated in art. 92 of the Code of Penal Procedure, due to the fact that their assemblage of circumstances and data which are ambiguous and interconnected formed a reconstruction of the facts which is in no way decisive with respect to the possibilities of other different, parallel and equally probable versions of events.

A) In particular, with respect to the sexual violence which the appeal court retained, the following can be argued, with express reference to the grounds for the 1st appeal, to which the appeal judges are claimed not to have given an exhaustive response:

a) Guede, as he admits, was present in the flat. He made a sexual advance towards Meredith which resulted in his biological material being found on the vaginal swab and on the clothing that Kercher was wearing. Furthermore, there is the possibility that these could also be the results of contamination between different items caused by the unprofessional behaviour of the technicians, as seen in the films of the operations conducted in the residence at via della Pergola. From this one can deduce the unusability of these findings. **[12]**

b) Guede's story about his previous acquaintance with Meredith should be considered acceptable. There are at least three circumstances in which it is certain that they saw each other before that tragic night: at the Shamrock on the occasion of a rugby match between England and South Africa, at the home of the boys who lived in the downstairs flat at via della Pergola, and at the Domus on the night of Halloween. It would be forcing the evidence from the trial to [discount this by asserting] that none of the people that the victim frequented ever heard anything from her about this, given that the same judges admit that the girl was reserved and that the acquaintance was a short one.

c) In conclusion on this point, the appeal judges raised to the status of knowledge of a true fact that which was nothing more than a mere presumption, by forcing the evidence presented at trial.

d) Meredith was a normal girl who was living a full life, like all girls of her age, and had a boyfriend, a certain Giacomo Silenzi, with whom she had sexual relations, and in whose company she drank alcohol and smoked joints. Then why, the defense asks, if not with illogical and distorted reasoning, exclude the possibility that Meredith and Rudy got to know each other before that evening, and that a first contact opened the door for a second, and that there was a sexual approach before the tragic event, as Guede reconstructs it?

e) It is not right to deduce from the wounds on Meredith any sexual violence attributed to Guede. The wound to the cheek was probably caused during the frenzy of the attacker's actions. It is incomprehensible that an inferential relation should be made between the scene of the crime, which in any case was altered by persons other than Guede, and any sexual violence, because of purple, bruise-like marks in the vaginal zone can be compatible with consensual but rapid sexual relations, such as the sexual gestures that Guede claims he performed.

f) The finding of Rudy's DNA and his Y chromosome on the cuff of the left sleeve of Meredith's sweatshirt do not have the meaning that the trial judges ascribed to them, because these traces are compatible with the story told by the accused. The appeal judges gave a reconstruction in which these traces result from someone strongly gripping the victim's wrist in order to overcome her resistance, on the basis of the fact that epithelial cells rub off as a consequence of consistent pressure of the hand on an object, but one can respond that no ecchymosis was found on the wrist, yet some should have been there in response to a strong **[13]** pressure, and one cannot say that the pressure was strong, but not strong enough to leave any imprint on the skin of the wrist.

g) The fact that only a single wound was found on the victim's left hand could be explained by the fact that the victim was right-handed and that she defended herself with her right hand, and that in any case with a wound such as she received to the throat, the hypovolemic shock would have caused her to faint. As for the sweatshirt, it is claimed that she was not wearing it at the time of the attack, since if it had been removed afterwards, as the appeal judges claim, the stains on the sleeve of the garment would have been smeared, leaving bloody traces on the victim's hands, but in fact these stains appear clear and rounded. Not only this, but the blood absorbed by the sweatshirt would have left twin traces of blood, which were not found, on the white shirt that the victim was wearing under the sweatshirt. Furthermore, the sweatshirt is soaked with blood on the right side but not on the left side, as it would have been if the sweatshirt had been worn at the time of the wound.

h) Moreover: the sexual violence should be excluded because at the moment of the attack, Meredith was fully dressed except for the sweatshirt: from photo no. 268 it is visible that the right shoulderblade of the body was smeared with blood, and the negative imprint of the bra-strap is visible, to which also corresponds an analogous negative imprint on the floor which is also smeared in blood. This means that when she fell to the ground she was still wearing the bra, as is confirmed by splashes of blood on the cups, which would not be there if the bra had been removed before the stabbing. For the rest, the large bloodstains on the underwear, the pants and the shoes cannot be explained unless it is considered that the victim was dressed at the time she was stabbed. Moreover, there were almost no bloodstains on Meredith's body, which received several wounds from a pointed and cutting instrument.

i) It is indeed true that the pre-trial discovery stage [incidente probatorio] concluded that there were elements which indicated Meredith's involvement in recent sexual activity, but it is not possible to determine whether these were consensual acts or not on the basis of technical and biological competence alone. In terms of procedural proofs, this would mean that sexual violence cannot be proven.

j) In conclusion, from sound factual circumstances, the Court reached judgments which are subject to criticism because [the factual circumstances were] objectively ambiguous. **[14]**

B) According to the above, the appellant's defence contests the reasons given in the sentencing report of the appeal trial as being illogical, in that they retain the sexual motive, and also the influence of circumstances acting as catalysts for the attack on Kercher, said to be the excitement due to use of drugs. On this aspect, the grounds for the 2nd appeal denounce the lack of any proof whatsoever that Guede was addicted to alcohol or to drugs, insisting rather on the likelihood of a catalyst linked to Kercher's missing money, which could explain the subsequent course of events. They also contest the manifest lack of logic in the sentencing report for not recognizing the lack of an *animus necandi* [intent to kill] on the part of the accused, whereas a knife was actually found and seized in Sollecito's home, a knife which furthermore contained traces of the DNA of Amanda Knox, not of Guede.

According to the appellant, there is no proof that several persons acted together in the crime under investigation. The reconstruction by the appeal judges of a joint crime of Knox, Sollecito and Guede, because traces of all three were found in the *locus commissi delicti* [scene of the crime], is based on conjecture and on indices which are ambiguous and not based on the substance of the data of facts which emerge from the case file. Guede did not know Sollecito, there was the merest acquaintance between Guede and Knox which was certainly insufficient for them to agree to commit a crime together, and the traces of the three of them at the crime scene could have been left at different times. The accused was in the bathroom at the moment of the fatal attack on Kercher, and came out, not even flushing his faeces in the excitement of the moment; this is no proof of conception and preparation of a crime on Guede's part together with Knox and Sollecito. The broken pane of the window in

Romanelli's room for the staging was intended to simulate an attempted break-in *a posteriori*, but surely not by Guede, whose handprint on the pillow found under Meredith's body was left when he ran to help the victim.

Also, in contesting the hypothesis of complicity, further reasons [for appealing] are given at length when the defence notes the weakness of the testimony of Nara Capezzali, and the possibility that she made a mistake when immediately after the agonised scream she heard the steps of more than one person running down the path away from Kercher's house in opposite directions. They are also given with the assertion of the ambiguity of the testimony of Alessandra Formica, who saw a young black man who bumped into her companion going up the stairs from the Sant'Antonio parking garage towards via Pinturicchio at about the place and time of the crime. Capezzali's testimony would at best actually confirm Guede's declarations that after having tried to help Kercher, fatally wounded by an individual that he surprised [15] when he came out of the bathroom, he heard steps of more than one person on the gravel outside. Also, Alessandra Formica saw someone running away, bumping into her boyfriend, and climbing the stairs of the Sant'Antonio parking lot, but she described this person as olive-skinned and presumably of Maghrebi origin, without bloodstains on his clothing.

C) Furthermore, the obvious lack of logic of the judges' motivations is also noticeable in the fact that they decided to exclude the occurrence in this case of the mitigating circumstance as per art. 116 of the Penal Code. Even if one accepts that there was an agreement between the three accused, this would only concern the sexual violence, but certainly not the murder. There are two circumstances which would confirm this: one being that only traces of Amanda Knox were found on the knife that was Sollecito's property, and the other the attempt by the accused to staunch the blood that was flowing copiously from the victim's throat slashed by the knife with towels.

D) Another of the grounds for the 2nd appeal is the lack of logic in the part of the sentencing report concerning the staging of the break-in, in which the window of Romanelli's room was proposed as the entry point of a thief. The defence states that this representation contrasts with the version given in the first-degree trial by the defence of the accused, according to which it was Knox and Sollecito who, after quarrelling with Kercher, who complained about the disappearance of her money – which certainly did disappear – and after murdering her, undressed her in order to simulate carnal violence. They also note the complete lack of attention in the sentencing report given to the significance of the wounds by a pointed and cutting weapon on the palm of the hand of the accused, shown in the photos taken by the German police on the occasion of his arrest in Germany, and which would confirm the truth of his declarations. They further note the obvious unfoundedness of the motivations with respect to the aggravating circumstance of futile motives, since it was also connected in the sentencing report to sexual motives, although these are not considered as substantiated.

In the conclusion of this first, diffuse motive for the 2nd appeal, they also denounce the violation of the rights of the defence in that the court acted improperly in treating Guede's silences and false or reticent declarations as indications of guilt. The accused has the right to lie and to say false things, and one cannot deduce clues or proof against him from this behaviour. According to the defence, this is clearly a violation of his rights. [16]

2) In a second motive for the 2nd appeal, the defence denounces the violation of art. 606 letters d) and e) of the Penal Code for not having taken a decisive proof into account. A colleague from the law firm, the lawyer **MS**, posing as **VC**, managed to reach **ME** via the Internet, who by telephone stated that late in the evening of Nov. 1, 2007, Guede was with him and all their friends (**AC**, his sister **S**, **PM**). This testimony was not admitted, according to the grounds for the 2nd appeal, but it would have been important since it would have diminished the credibility of the testimonies of the other friends, who all together, but falsely, denied having met the accused on the afternoon or evening of that day.

3) In a third and final motive for the 2nd appeal, the error applying the penal law (arts. 132 and 133 of the Penal Code) is pointed out: no motivations are given concerning the length of the sentence, which was justified only by the words "seriousness of the crime".

8 - The 2nd appeal¹ has no basis and therefore must be rejected.

In the meantime it is now necessary to escape the attempt, pursued by the overall setting of the defence, but out of place in the context of this decision, to involve the Court in supporting the thesis of the responsibility of others, namely Raffaele Sollecito and Amanda Knox, for the murder aggravated by the sexual assault of Meredith Kercher. The decision to which this court is called concerns uniquely the responsibility of Guede regarding the deed with which he is charged, and the possible participation of others in the crime should be taken into account only to the extent to which such a circumstance would have an impact on the exclusive commitment of the Court to either modifying or confirming the verdict of guilt of the defendant, which was entirely shared by the courts of first and second instance.

Now, we cannot fail to agree with the call by the defence of the appellant to [respect] the rules repeatedly recalled by the court concerning the actual structure of the sentence in the context of a trial based on circumstantial evidence rather than direct proof, which requires that a guilty verdict must emerge from the trial beyond a reasonable doubt.

However, the Court believes that the probative data acquired and properly evaluated by the judges of lower court does not lose its power due to the abstractly envisioned perspective of the applicant's defence, which evokes remote possibilities, [which are] possible *in rerum*

¹Translator's note: the original term is "ricorso": this is the term used in criminal procedure to indicate an appeal of legitimacy, in fact an appeal of last instance. We translated the term in English as "2nd appeal".

natura, but the realisation of which in their factual occurrence is not reflected by the slightest corroboration in the findings presented at the trial, except on a level of, precisely, remote and abstract possibilities, [17] related to unforeseen and unpredictable factors, inconsistent with any semblance of reality whatsoever.

[There are] many key points constituting the epistemic factual premises that would condition the set of decisions of the judge, with respect to the logical inference about a correspondence between the guilty verdict and the reality of the homicidal fact linked to the guilty conduct of the defendant:

a) the incontrovertible and undisputed traces of Guede's DNA and fingerprints of at the scene of the crime and on the victim's body: on the vaginal swab, on the pillowcase placed under the buttock region of the body, on the cuff of the left sleeve of the sweatshirt found on the floor close to the body, on the bra found by the feet of the girl's lifeless body, and on toilet paper found in the bathroom used by Filomena Romanelli and Laura Mezzetti.

b) the naked body of Meredith Kercher which had suffered 43 wounds and bruises to the face and upper and lower limbs, which the expert consultants cited in the motivations for the decision – Bacci, Marchioni, prof. Aprile, prof. Umani-Ronchi – associate with an escalation of violence aimed at nullifying the resistance of the victim, finally slaughtered² with a deadly knife blow to the throat.

c) an impressive collection of testimonies categorically denies that Kercher and Guede could have had any opportunity of meeting, in the three circumstances mentioned by the latter's various statements given during the investigation, apart from a single time in the company of other young people, where only conventional phrases of greeting were exchanged. It is true that one week, shortly before or shortly after³ Nov. 1, 2007 the accused happened to find himself in the flat below the one where Kercher and Knox lived, with the students who lived there, and that after a short while the two girls came down, but only for a short time, during which – and also later – Guede showed interest exclusively in Knox, no interest at all in Kercher.

On the occasion of the England vs. South Africa rugby match which Kercher and Guede watched together, along with their friends, in the Shamrock pub, contrary to the assertions of the accused, the two were never seen sitting next to each other, much less exchanging even a quick greeting. Finally, on Halloween night at the pub "Domus" no one amongst the friends of either one ever saw them together, much less exchanging any kiss. [18]

2 Translator's note: the original text says "scannata" which literally means "butchered" or "slaughtered". A very crude word usually used to describe the killing of animals by immobilizing and letting them bleed to death.

3 Translator's note: presumably, the author meant to write "a week more or less before 01.11.2007".

d) the omissions, the holes and contradictions in the various versions given by the defendant during the various statements made during the proceedings. In his interrogation by the judicial authorities of Koblenz on Nov. 21, 2007 he spoke of having flirted - without indicating places and times - with Meredith on Oct. 31, 2007, of having made a date with her for the next day, of not having performed any sexual approach in the girl's house, of having gone to the bathroom from where he heard the doorbell ring. In his interrogation before the magistrate [interrogatorio di garanzia] on Dec. 12, 2007, however, he stated that he met the girl on Oct. 31 in the house of some Spanish students and did not meet her later in the "Domus" pub, that the next day, shortly before going to the date with Meredith, he had met his friends **A** and **P**, that later he confided to the latter that he had a date with a girl, and that he had penetrated Meredith's sexual area with his fingers while [they were] in the kitchen-living room of her flat. In the third interrogation, by the P.M. [public prosecutor] on March 26, 2008, he changed the place of his meeting with Kercher on Oct. 31 from the Spanish students' house to the Domus pub, repeated that he had heard the sound of the doorbell while he was in the toilet, and declared for the first time that he had recognised the voice of Amanda Knox speaking with Meredith Kercher, [and] that after surprising the man with the knife and [seeing] Kercher's body on the floor, he seemed to recognise her on the path that leads to the entrance of the house, along which she was leaving. Finally, in the interrogation at trial, he no longer declared that he had heard the sound of the doorbell (obviously incompatible with the entrance of the house of Knox who lived there and had the key).

The judgement rationale thus proceeds through rigorous logical steps, quite consistently, with no possibility of misinterpreting evidence, distorting significant data, or disruption of the overall probative reasoning. Meredith Kercher, before being slaughtered with the deadly blow at her throat, was the victim of a series of wounds, of forced restraining of her limbs, especially the left hand and arm - and on the cuff of the left sleeve of the sweatshirt she wore clear traces of DNA of the defendant are found – aimed at overcoming her resistance to sexual violence, of which the traces of DNA of Guede of the vaginal swabs are evidence, which then led to the violent behaviour of the deadly slaughtering. The version of the accused is totally unrealistic because, even apart from the obvious omissions and contradictions detectable in his many statements, his previous acquaintance of Meredith, shaped in his story by a meeting on the night before the murder at the Domus pub, by a kiss between the two and by a date for the evening of the following day, is clearly disproved by a whole articulated testimonial structure, **[19]** coming from several people and indicating that: the two did not meet at the Domus (indicated by the testimonies of all the friends who were accompanying Meredith), even less did they converse, even briefly, at the Shamrock pub during the match between England and South Africa broadcasted the day before (indicated by the testimonies of **AC**, **PM** and **F**), and Kercher never confided anything, as would have been natural, to her friends about a date with Guede, not even on the afternoon of Nov. 1, as she had done in other occasions about details of her personal and love life (indicated by the testimonies of Robin Carmel Butterworth, Sophie Purton). This is consistent with the portrait of Meredith's

character; she avoided sexual relations with other men apart from Giacomo Silenzi with whom she had begun a relationship that she absolutely did not mean to betray, as stated by her friends, especially not for unimportant adventures.

According to the consistent reasoning of the lower courts, it must be concluded that Guede's story is invented, from the kiss with Meredith at the Domus to the date the following evening to the petting with the girl at her home on the evening of the next day.

-9 – For the rest, the Appeal Court in Perugia pointed out forcefully and with firm conviction the contradictions and improbability of the version of the events gradually given by the appellant. This alternative proposed hypothesis, aside from the improbable date with Kercher, collides with the actual situation, contrasting on the level of logic with the representation described by the defendant once he exited the bathroom following Meredith's scream: the wounds and blows found on the girl's body, before the fatal stab was inflicted, would have occupied the attacker for some time while he confronted the victim's resistance, whereas this action and that resistance were absolutely not noticed, as they should have been, by Guede in the bathroom of the flat, just a few metres from the room of Kercher, whose body was found completely naked, except for the double T-shirt rolled up to her neck.

And it should also be noted, as the judges of the lower courts have correctly held, that following the murder an activity occurred intended to simulate an attempted theft, which the judges of lower courts and the defence of the same appellant agree was an operation done by others and not by the defendant; there is no feasible reason as to why the simulation should include the undressing of the already dead body of the victim and the cruelty on her body of the bruises and wounds that were clearly inflicted in a prolonged injurious action before the fatal stabbing and which – it must be reasserted – are not

[MISSING PAGE, DOCUMENT GOES FROM 19 TO 21]⁴

[21] connected to the other circumstances and the inferences employed by the judges. And this cannot be contested with any possibility of success by the defence, who, on the same ground, may just detect its equivocal value since it would unbind the datum itself from the whole array of evidence evaluated by the lower court. And further, there is no value in pointing out, as verifying the accused's version of events, the injuries to his hands as seen in photos taken at the time of his arrest in Germany: the Perugia judges have stressed the fact that the day after Meredith's murder, those wounds were not confirmed by friends (**AC, PM**

⁴ Translator's note: the original Italian document appears to be missing page 20. Consequently, our pagination goes from page 19 to 21 to reflect the original. We have tried to track down the missing page, to no avail. We were told by one reliable source that the original document is simply incorrectly paginated, but our examination of the text reveals this to be more than just unlikely. If the missing page is located, we will update the translation accordingly.

and SC) whom Guede made sure to see on Nov. 2, 2007, before fleeing to Germany the next day.

The reproposal, therefore, in the motive for appeal, of mitigating circumstances for the appellant as per Article. 116 of the Penal Code develops a reasoning already correctly refuted by the the judges of the first appeal without indicating any new elements. Factual findings, among which traces of Raffaele Sollecito DNA in the victim's bra, the piece of bra cleanly cut seemingly with a knife, traces of Amanda Knox DNA on the handle of a knife found in the home of the former, expert results that because of the morphology of the injuries, attribute them to two different cutting weapons used by different individuals, and footprints not attributable to Guede on the floor of the room where Meredith's body lay, convinced the appeal judges that several people acted together. Guede's contribution is situated in a context of escalating violence over some length of time, and certainly cannot be regarded as exceptional, improvised, or merely occasional so that he could not have foreseen, as a result of a violence so definitely concentrated on a sexual act following a number of bruises and injuries caused by the use of a knife, the possible fatal ending. From these conclusions the reasoning of the lower court is fully safeguarded from assertive criticisms of its legitimacy, because such claims concern the merit, and are thus invalid.

From everything above, the obvious unreasonability of the defence claim intended to invalidate the judicial recognition of the aggravating circumstance of futile motives follows: as if the violent suppression of another person's self-determination and the tortured body of a young living being, Meredith Kercher, do not enjoin us to qualify as merely casual and specious the motive of having sex, to catalyse, faced with the woman's resistance, the brutal and subduing force of a group, a collective behaviour which reveals in its sorry protagonists the orgiastic desire to give free rein to the most **[22]** perverse criminal impulses, such as to arouse a deep sense of dismay, repugnance and disgust in any person of normal morality.

The refutation on the level of legitimacy of the first of the grounds for the 2nd appeal cannot do otherwise than conclude by rejecting, as manifestly unfounded, the observation of the defence that the rules protecting the rights of the defence were violated in that in declaring the guilt of the accused, his declarations were used against him, whereas in fact the declarations of an accused shall never take the meaning of probative elements against him in the judgement process. But it is easy to respond that the right of the accused to silence and the possibility, denied to witnesses, of actually giving false statements, is one thing, but it is another to deduce from his behaviour and from his declarations, together with other evidence, an unfavourable meaning from his defensive position. Indeed, the judge is not forbidden to evaluate the conduct of the accused, putting it together with other symptomatic circumstances, with the consequence that in arriving at a conviction subject to the canons of logic and correct inference, of the data of facts acquired during the trial, he can indeed consider, together – we repeat – with other circumstances, the significance and meaning both of the silence and of the mendacious declarations, on circumstances about which the accused

certainly has knowledge since he was certainly present at the place and time of the crime (see among others Cass. Sec. 2. 21.4/14.6.2010, Di Perna Rv. 247426, Sec. 5. 14.2/6.4.2006, Ferrara Ev. 233903). In the same line of argument, furthermore, it is asserted by this same Section that fleeing before any accusation has even been made is an indication of guilt (Sec. 1, 11.3/8.4.1010, P.G. Proc. Zappia and Rv. 246661).

- **10** – The second and the third grounds given for the 2nd appeal are equally unfounded according to the guidance of established rules of judgement [which are] solid in a court of legitimacy. Firstly, the request to interrogate the witness **ME** in the appeal court about the fact that he allegedly saw the defendant in the company of other young people on the night of December [sic] 1 in the Domus pub is deemed incompatible with the fast-track trial, in that the request was not made in the first instance of judgement; moreover it is irrelevant in comparison with the weight of many other witness reports in the opposite direction. Secondly, recalling, with reference to the seriousness of the crime, all the representations and considerations on the subject of the insistent violence against the poor victim, [who was] assaulted by several people according to the convincing arguments by the judges of first and second instance, corresponds to the canons for a judgement of rejection of the request concerning **[23]** mitigation of the penalty, and of the relevance of the general mitigating circumstances that would absorb aggravating circumstances; this is in fact an opinion of merit that is the exclusive competence, within the aforementioned boundaries, of the lower courts.

Therefore, as required by law when an appeal is rejected, the defendant has the obligation to refund the expenses to the civil parties in this instance of judgement, which will be paid as defined by the disposal.

For These Reasons [P. Q. M.]

[The Court] rejects the appeal and orders the petitioner to pay the legal costs, as well as to reimburse the costs incurred in this proceeding by civil parties in the liquidated sum of 10,000 euro, including fees, and other incidentals as per law.

Decided in Rome on December 16, 2010.

The reporting Judge
(Enzo Iannelli)

The President
(Umberto Giordano)

FILED AT THE CLERK'S OFFICE on February 24, 2011.