



**COURT OF MAGISTRATES (MALTA)  
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE NATASHA GALEA SCIBERRAS B.A., LL.D.**

**Case Number: 86/2016**

**Today, 20<sup>th</sup> May 2016**

**The Police  
(Inspector Justine Grech)**

**vs**

**Imelda Cassandra O'Brien  
(Irish Passport PE3833707)**

The Court,

After having seen the charges brought against the accused Imelda Cassandra O'Brien, aged 22, daughter of Paul and Sandra nee` O'Brien, born in Terenure, Ireland on 23<sup>rd</sup> August 1993, residing at 62, Fortfiel Pocu Terenure, Ireland and holder of Irish Passport number PE 3833707;

Charged with having on 31<sup>st</sup> March 2016 and the days before this date on the Maltese Islands (subsequent to a Court decree of 15<sup>th</sup> April 2016 authorising a correction in the charges):

1. Had in her possession the psychotropic and restricted drug (MDMA) without a special authorisation in writing by the Superintendent of Public Health, in breach of the provisions of the Medical and Kindred Professions Ordinance, Chapter 31 of the Laws of Malta and the Drugs (Control) Regulations, Legal Notice 22 of 1985 as amended;

2. Had in her possession the psychotropic and restricted drug (Ketamine) without a special authorisation in writing by the Superintendent of Public Health, in breach of the provisions of the Medical and Kindred Professions Ordinance, Chapter 31 of the Laws of Malta and the Drugs (Control) Regulations, Legal Notice 22 of 1985 as amended;
3. Had in her possession the psychotropic and restricted drug without a special authorisation in writing by the Superintendent of Public Health, in breach of the provisions of the Medical and Kindred Professions Ordinance, Chapter 31 of the Laws of Malta and the Drugs (Control) Regulations, Legal Notice 22 of 1985 as amended, which drug was found under circumstances denoting that it was not intended for her personal use;
4. Had in her possession the drug cocaine specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, when she was not in possession of an import or an export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance and when she was not licensed or otherwise authorised to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drugs Regulations (GN 292/1939) to be in possession of the mentioned drugs and failed to prove that the mentioned drug was supplied to her for her personal use according to a medical prescription as provided in the said regulations and this in breach of the 1939 Regulations of the Internal Control of Dangerous Drugs (GN 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

The Court was also requested to apply Section 533(1) of Chapter 9 of the Laws of Malta as regards the expenses incurred by Court appointed experts.

Having seen the records of the case, including the order of the Attorney General in virtue of subsection two (2) of Section 22 of Chapter 101 of the Laws of Malta and the order of the Attorney General in virtue of subsection (2) of Section 120A of Chapter 31 of the Laws of Malta, for this case to heard by this Court as a Court of Criminal Judicature;

Having heard the accused plead guilty to the first, second and fourth charges brought against her, which plea was confirmed by the accused after the Court in

terms of Section 453(1) of Chapter 9 of the Laws of Malta allowed her sufficient time to reconsider her guilty plea and retract it;

Having heard the parties' oral submissions.

### **Considerations on Guilt**

#### **Considered that:**

In view of the guilty plea filed by the accused to the first and fourth charges brought against her, the Court cannot but find her guilty of the said charges. With respect to the second charge, however, despite the guilty plea filed by the accused, the Court notes that the English version of the second charge (unlike the Maltese version) – the accused being English and not Maltese speaking - refers to the psychotropic and restricted drug (Ketamine). Ketamine is however listed in Part B of the Third Schedule of Chapter 31 of the Laws of Malta and in the Second Schedule of the Drugs (Control) Regulations (Subsidiary Legislation 31.18). Regulation 2 of the said Regulations define 'specified drug' as any one of such drugs or chemical substances specified in the Second Schedule to the said Regulations, as distinct from 'restricted drug' which is defined as any drugs or chemical substances listed in the First Schedule to the Regulations. Thus, the substance Ketamine is not a psychotropic and restricted drug as erroneously indicated in the charge sheet, but a psychotropic and specified drug. As a result, despite her guilty plea, the accused cannot be found guilty of the second charge as adduced against her.

By means of the third charge, the accused has also been charged with the aggravated possession of a psychotropic and restricted drug.

Although this charge does not specifically indicate the drug in question, yet from the evidence adduced in the course of these proceedings, it results that on 31<sup>st</sup> March 2016, during a party held at Café del Mar, Qawra the accused was found in possession of a number of substances, which in her deposition, Inspector Justine Grech describes as 19 suspected ecstasy pills of different colours and sizes, 4 sachets containing a yellowish substance, a brown self-sealable sachet containing a white substance and a small green bag with white substance.<sup>1</sup> In their respective depositions, PS 1163 Frans Schembri and WPC 107 Sharon Bonnici state that a number of substances were found in the possession of the accused during said

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<sup>1</sup> Evidence tendered by Inspector Justine Grech on 15<sup>th</sup> April 2016.

party<sup>2</sup> and this is also confirmed by the accused in her deposition during these proceedings, wherein she states that whilst at the party, she bought twenty pills, cocaine, a gram of ketamine and four sachets of MDMA, to which she refers as crystals<sup>3</sup>.

In his report<sup>4</sup>, expert Godwin Sammut described the document handed to him for the purpose of analysis as follows:- i) a plastic bag containing 10 blue tablets and 9 yellow tablets; ii) a plastic bag marked as '0.786g' containing light brown crystals; iii) a plastic bag marked as '0.808g' containing light brown crystals; iv) a plastic bag marked as '0.759g' containing light brown crystals; v) a plastic bag marked as '0.799g' containing light brown crystals; vi) a plastic bag marked as '1.252g' containing white powder and vii) a plastic bag marked as '0.055g' containing white powder. The expert concluded as follows with respect to the said substances:

- a) 3,4-Methylenedioxymethamphetamine (MDMA) was found in the extracts taken from the blue and yellow tablets. The total number of blue tablets is 10 whilst the total number of yellow tablets is 9. The substance MDMA is controlled under Part A of the Third Schedule of Chapter 31 of the Laws of Malta;
- b) 3,4-Methylenedioxymethamphetamine (MDMA) was also found in the extracts taken from the brown crystals. The total weight of the brown crystals is 2.75 grams;
- c) Ketamine was found in the extracts taken from the white powder labelled as '1.252g'. The weight of the white powder is 0.73 grams. Ketamine is controlled under Part B of the Third Schedule of Chapter 31 of the Laws of Malta;
- d) Cocaine was found in the extracts taken from the white powder labelled as '0.055g'. The weight of the white powder is 0.05 grams. Cocaine is controlled under Part I of the First Schedule of Chapter 101 of the Laws of Malta.

During her cross-examination, Inspector Justine Grech states that on the same night, 25 persons were arrested and that the 'Lost and Found' parties started on 31<sup>st</sup>

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<sup>2</sup> Evidence tendered by PS 1163 Frans Schembri and WPC 107 Sharon Bonnici on 15<sup>th</sup> April 2016.

<sup>3</sup> Evidence tendered by accused on 18<sup>th</sup> April 2016.

<sup>4</sup> Exhibited as Doc. GS.

March and ended on 3<sup>rd</sup> or 4<sup>th</sup> April. She confirmed that a number of parties a day were being held, with different DJs, that these were spread around Malta and that a large number of foreigners had come to Malta purposely for these parties. The witness also stated that during the accused's arraignment in court, she attempted to commit suicide by trying to jump from the courtroom's window, at which stage she was restrained by a court official and the witness, who further states that she struggled with the accused in order to restrain her. The said witness also recalled that upon trying to calm down the accused, the latter spoke about meeting her father and sister. After the sitting, she was taken to Mount Carmel Hospital for medical care. In this respect, the Court notes that during the first sitting held on 1<sup>st</sup> April 2016, the Court minuted that "*At this stage the Court, in view of the conduct of the accused orders that same be transferred to the Forensic Unit and orders furthermore that accused be supervised under stringent conditions in view of her apparent suicidal tendencies*" (emphasis of this Court).

The accused released a statement on 1<sup>st</sup> April 2016<sup>5</sup> after she was duly cautioned in terms of law and after refusing the right to obtain legal advice prior to her interrogation and she also chose to testify during these proceedings.

**Considers further that:**

Whilst the accused admitted to the charges of simple possession of all substances found in her possession, both formally during these proceedings and also during her deposition, the defence is contesting the third charge of possession of psychotropic and restricted drugs in circumstances denoting that such drugs were not for the accused's personal use and submits first and foremost that the drugs were bought by the accused for her personal use and furthermore, since she admitted in her deposition to sharing an ecstasy pill with her friend, the provisions dealing with 'sharing' should be applied.

The psychotropic and restricted drugs found in possession of the accused were nineteen pills and the brown crystals weighing 2.75 grams, which contained MDMA.

The Court notes that although in her statement, the accused states that she had found these illicit substances (apart from the ketamine) outside before entering the party, which the Court deems to be an unlikely version of events, in her deposition, she states that she had given this version to the police because she was scared and

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<sup>5</sup> The statement is exhibited a fol. 5 of the records.

she had panicked. Indeed, the Court considers this latter version as the more credible in the circumstances. The Court deems also likely that the accused had bought the substances found in her possession once inside the party. Although none of the Prosecution witnesses confirmed that a search had been conducted on the accused at the entrance, yet the police officers who tendered their evidence confirmed that searches were being conducted at the entrance, that there were also other officers conducting searches and furthermore that although it was impossible to conduct a search on all patrons, yet many persons had been searched on their way inside the party. Thus, there is nothing which renders the version given by the accused in the sense that she had been searched at the entrance, as one void of credibility. It also follows that the version given by the accused that she bought the drugs inside the party is also plausible. Here the Court would also like to point out that it had the opportunity to hear the accused *viva voce* and examine her demeanour on the witness stand and at no point did the Court notice any hesitation or evasiveness on the part of the accused, in the course of her deposition. The Court also considers as plausible the accused's part of the deposition where she explains the reason for buying such a quantity of drugs and that these were solely for her personal use. In this respect, the Court takes into account that the accused is a foreigner who would not have been familiar with any places in Malta from where she would have been able to buy drugs, that drugs were readily available at the party, that the pills in particular had been offered to her at a good price, that various parties were being held on the Island in the following days, that the accused had purposely come to Malta to attend such parties and that her intention was to leave Malta on the following Tuesday, 5<sup>th</sup> April, and that therefore she would have had five days of partying. Furthermore, the Court takes into consideration the deposition of the accused, wherein she describes the tragic circumstances which led her to resort to drugs, her use of drugs back home and the deposition given by Aldimero Francisco Agosto, who had dated the accused for a number of years and therefore knew also her family and who confirmed the circumstances which led the accused to resort to drugs and her use of drugs, stating also that she had overdosed on one occasion and that she had suicidal tendencies. This latter tendency was indeed confirmed by Inspector Justine Grech who describes the accused's suicide attempt inside the courtroom during her arraignment, further supported by the Court's minute as above indicated. In view of these circumstances, the Court considers the accused's version that the drugs found in her possession were acquired solely for her personal use as a credible and plausible version.

Furthermore, the Court deems the fact that, following the acquisition of the said drugs for her personal use, the accused shared a pill with her friend Jennifer

Kenny<sup>6</sup>, upon the latter's request, since her friend had not as yet bought such drugs for herself, as falling within the parameters of 'sharing' as defined in the proviso to Section 120A(7) of Chapter 31 of the Laws of Malta. Indeed it results from the accused's deposition that as soon as her friends realised that she had bought the drugs, they asked her to share it with them and she then proceeded to the toilets where she shared a pill with her friend Jennifer. Thus, although once the accused agreed to share the pills with her friends, such drugs were no longer intended merely for her personal use, and in this sense the third charge has been proved sufficiently in terms of law, yet such aggravated possession is being considered in terms of the proviso to Section 120A(7) of Chapter 31 of the Laws of Malta.

### **Considerations on Punishment**

As regards the punishment to be inflicted, the Court took into consideration the quantity of drugs found in the possession of the accused, as indicated above, and that in applying the proviso to Section 120A(7) of Chapter 31 as regards the third charge, it considers a suspended sentence to be the more appropriate punishment. For the purpose of the punishment to be inflicted, the Court applied the provisions of Section 17(h) of Chapter 9 of the Laws of Malta with respect to the first and third charges and the provisions of Section 17(f) of Chapter 9 with respect to the third and fourth charges.

### **Conclusion**

For these reasons, the Court after having seen Parts IV and VI, Sections 22(1)(a) and 22(2)(b)(ii) of Chapter 101 of the Laws of Malta, Regulation 9 of Subsidiary Legislation 101.02, Sections 40A, 120A(1)(a), 120A(2)(b)(i) and (ii) of Chapter 31 of the Laws of Malta, Regulation 3(1) of Subsidiary Legislation 31.18 and Sections 17 (f) and (h) of Chapter 9 of the Laws of Malta, finds the accused Imelda Cassandra O'Brien not guilty of the second charge as adduced against her and acquits her therefrom, and finds her guilty of the first, third and fourth charges, but by virtue of the proviso to Section 120A(7) of Chapter 31 of the Laws of Malta and Section 28A of Chapter 9 of the Laws of Malta, condemns her to eight (8) months imprisonment which are being suspended for a period of two (2) years from today and a fine (multa) of one thousand Euro (€1000).

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<sup>6</sup> The accused states that she took one half of the pill, whilst her friend took the other half. In this respect, the Court also notes that Inspector Justine Grech confirmed during her cross-examination that a girl bearing the surname 'Kenny' was also arrested on that same night and that she was found in possession of a white substance. PS 1163 also confirms that the accused's friend, whose name he could not remember, was found in possession of a white substance.

In terms of Section 533 of Chapter 9 of the Laws of Malta, the Court sentences Imelda Cassandra O'Brien to the payment of the costs incurred in the appointment of expert Godwin Sammut, namely, the sum of two hundred and ninety five Euro (€295).

The Court explained to the person convicted in clear and simple language the legal consequences should she commit any other offence punishable with imprisonment within the operative period of the suspended sentence and that the benefit provided by Section 120A(7) of Chapter 31 of the Laws of Malta applies merely once.

The Court orders the destruction of the substances exhibited as Doc. JG once this judgement becomes final, under the supervision of the Registrar, who shall draw up a *proces-verbal* documenting the destruction procedure. The said *proces-verbal* shall be inserted in the records of these proceedings not later than fifteen days from the said destruction.

Natasha Galea Sciberras  
Magistrate