



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

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

Case Number: 77/2016

Today, 1st June 2016

**The Police
(Inspector Justine Grech)**

vs

**Simonovic Milos
(Serbian Passport Number 010020450)**

The Court,

After having seen the charges brought against the accused, Simonovic Milos, 26 years of age, son of Zoran and Dusanka nee` Djurovic, born on 24th April 1989 at Leskovac, Serbia, residing at number 2, Triq Sant'Andrija, San Giljan, holder of Serbian passport number 010020450;

Charged with having on 19th March 2016 and the days before this date on the Maltese Islands:

1. Had in his possession the drugs (cocaine) specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or export authorization issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorized to manufacture or supply the mentioned drugs and was not otherwise licensed by the President of Malta or authorized 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 drugs were supplied to him for his

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 (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use;

2. Committed these offences in, or within 100 metres of the perimeter of a school, youth club or centre, or such other place where young people habitually meet in breach of Article 22(2) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;

On 19th March 2016 and the months before this date on the Maltese Islands:

3. Had in his possession the drugs (cocaine) specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance and when he 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 drugs were supplied to him for his 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 the Dangerous Drugs (G.N. 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 the experts appointed by the Court.

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

Having seen that during his examination in terms of law, the accused pleaded not guilty to the charges brought against him;

Having heard final oral submissions by the parties.

Considered that:

Considerations on Guilt

The facts in brief, which are not in contestation are as follows: On 19th March 2016, the accused was stopped by PS 518 Anthony Degiovanni, PC 1500 Alfred Cutajar and PC 243 Clayton Frendo, after they had seen him coming out from a block of apartments near Burger King in Paceville and whilst he was walking near Cascata Restaurant. A search on the person of the accused yielded a packet of cigarettes, which contained twelve sachets, each with a white substance. A search was subsequently conducted in his apartment, which yielded nothing illegal or suspicious.

According to the report drawn up by expert Godwin Sammut¹, who was handed an evidence bag containing 12 plastic sachets each containing white powder for analysis, cocaine was found in the extracts taken from the white powder. The weight of the white powder is 5.57 grams. The purity of cocaine in the white powder is approximately 22%, which in terms of the expert's deposition, is normal street purity. From the report, it also results that the weight of the powder in each sachet was as follows: 0.48g, 0.47g, 0.47g, 0.47g, 0.48g, 0.44g, 0.46g, 0.44g, 0.45g, 0.47g, 0.48g and 0.46g.

In his statement, after being duly cautioned and after refusing legal advice², the accused stated that he worked as a bartender in Paceville and Sliema until about 20 days before and that he had left his employment since the conditions were not good. He stated that he rented his apartment for €600 a month and that he lived with his girlfriend, who was then in Serbia on holiday. Upon being asked whether he had a drug problem, he answered "*not really*"³, that he only consumes cocaine and that the twelve sachets found in his possession were for his personal use. He stated that he normally used cocaine in weekends and that on Friday and Saturday, he normally used five bags. The last time he consumed cocaine was on Friday (namely the day before his arrest) and that he had been using cocaine for less than a year. He had bought the drugs in his possession for the price of €400. He stated that he always bought drugs in separate sachets and denied that he intended to sell the drug. He further stated that he buys such amounts because it is cheaper.

In his deposition during these proceedings⁴, the accused confirmed that he was walking in the street when police officers stopped him and found twelve sachets of cocaine in his possession. He denied ever selling drugs and stated that he had bought the drug, as found in his possession, namely in separate sachets, since his suppliers only provided him with such sachets. He further stated that the cocaine was for his personal use and that he had bought these twelve sachets on the previous night. Upon being asked how long it would take him to use this quantity of sachets, he replied "*Depends. Maybe Friday, Saturday, Sunday. On Friday night maybe I use 4 or 5*

¹ The report is exhibited a fol. 45 *et seq* of the records of the case.

² The statement of the accused is exhibited a fol. 40 of the records of the case.

³ A fol. 41 of the records.

⁴ A fol. 71 *et seq* of the records.

bags".⁵ Furthermore, upon being asked whether he had a drug problem, the accused replied that he was not an addict and that he was enjoying himself. He also stated that he had been consuming drugs for circa the past four or five months. He denied ever selling drugs, stating that he would need scales to produce bags of equal weight and he had nothing of the sort at his residence. He stated that he lives in Malta with his girlfriend. Asked why he had taken out all the sachets once he would not have consumed more than five in one night, he replied that the drug was in his pocket. He further stated that when he was stopped by the police, he was on his way home, and that he was going to get ready to go to Paceville. It was 10:00 p.m. and he was about 20 metres away from his residence.

During his cross-examination, the accused confirmed that he had been stopped after coming out of a block of apartments where he had been visiting a friend, to which he refused to go back once the police had asked him to do so after they stopped him. He stated that he had no mobile phone, that he had left the keys to his apartment at his friend's residence and that he refused to take the police to his friend's residence because he did not want to get his friend involved with the police. As regards the manner in which the drug in his possession was packed, he stated that this is the manner in which he bought it from street dealers and that he had bought 12 sachets for €400. He also stated that sometimes he bought 5, 6 or 10 sachets, but when he bought 10 or more sachets, it was cheaper. He stated that he lived with his girlfriend, that they shared expenses and that he had been unemployed for about two weeks. He explained that he worked as a bartender for eight years, that he worked daily in Fuego where he was a bar manager and depending on the hours he worked, he earned circa €1200 or €1300 monthly. He further stated that he always found a job immediately after quitting one and that he had no problem in finding employment.

Considered further that:

In terms of the first charge, the accused is being charged with possession of the drug cocaine, in circumstances denoting that this was not intended for his personal use. On his part, the accused is not denying that cocaine was found in his possession on the night in question, but claims that such cocaine was solely intended for his personal use and he denies that he had any intention of selling the said drug.

With respect to the offence contemplated in the first charge, in its judgement of 12th May 2005 in the names **Il-Pulizija vs Marius Magri**, the Court of Criminal Appeal held that:

“Illi dawn il-kazijiet mhux l-ewwel darba li jipprezentaw certa diffikolta` biex wiehed jiddetermina jekk id-droga li tkun instabet kienitx intiza ghall-uzu personali jew biex tigi spjaccjata. Il-principju regolatur f`dawn il-kazijiet hu li l-Qorti trid tkun

⁵ A fol. 72 of the records.

sodisfatta lil hinn minn kull dubbju dettat mir-raguni w a bazi tal-provi li jingabu mill-prosekuzzjoni li l-pussess tad-droga in kwistjoni ma kienx ghall-uzu esklussiv (jigifieri ghall-uzu biss) tal-pussessur. Prova, ossia cirkostanza wahda f'dan ir-rigward tista', skond ic-cirkostanzi tal-kaz tkun bizzejjed."

Furthermore, in the case **Il-Pulizija vs Brian Caruana**, decided by the Court of Criminal Appeal on 23rd May 2002, the Court held that: "*kull kaz hu differenti mill-iejhor u jekk jirrizultawx ic-cirkostanzi li jwasslu lill-gudikant ghall-konvinzjoni li droga misjuba ma tkunx ghall-uzu esklussiv tal-akkuzat, fl-ahhar mill-ahhar hija wahda li jrid jaghmilha l-gudikant fuq il-fattispeċċi li jkollu quddiemu w ma jistax ikun hemm xi "hard and fast rule" x'inhuma dawn ic-cirkostanzi indikattivi. Kollox jiddependi mill-assjem tal-provi w mill-evalwazzjoni tal-fatti li jaghmel il-gudikant u jekk il-konkluzjoni li jkun wasal ghalha il-gudikant tkun perfettament raggungibbli bl-uzu tal-logika w l-buon sens u bazata fuq il-fatti, ma jispettax lil din il-Qorti li tissostitwiha b'ohra anki jekk mhux necessarjament tkun l-unika konkluzjoni possibbli"*.

In this case, first and foremost, the Court notes that the amount of the drug cocaine found in the accused's possession cannot be deemed to be negligible or insignificant and that such amount is not normally associated with personal use. Furthermore, although the accused states that he consumed cocaine, this does not necessarily exclude drug possession other than for personal use. The Court further notes that both in his statement and in his deposition, the accused stated that he did not have a drug problem and that he did not consider himself to be addicted to cocaine, but that he was merely enjoying himself. Furthermore, the accused stated that he normally consumed cocaine during weekends, which means that he was not a daily user, but rather that he consumed cocaine recreationally and he also stated that he had been making use of cocaine for the past four or five months. Thus the accused had not been consuming the drug for a long period of time. This leads the Court to deem as very unlikely and lacking in credibility, the accused's assertion during his deposition that he consumed four or five sachets of cocaine in one night – or circa 2 grams or 2.5 grams of cocaine, taking into account the weight of the substance in each sachet found in his possession – and that he would have consumed the entire twelve sachets in one weekend. In view of the accused's declaration that he did not consider himself as an addict or as having a drug problem and that he had been using cocaine for a few months, the Court considers this declaration that he would have used the twelve sachets in one weekend and that he consumed four to five sachets in one night as a very convenient mathematical calculation on his part in order to justify having been found in possession of this amount of cocaine.

The Court further notes that although the accused states that he had bought the twelve sachets found in his possession on the previous night, yet he was apprehended in possession of all twelve sachets on the night of his arrest. In his statement, he states that he had last consumed cocaine on the night before being apprehended, which

means that he had not made use of the cocaine in his possession on the day of his arrest. Furthermore, he states that he was apprehended on the way to his residence, where he would have got ready to go out and thus, this begs the question as to why the accused was carrying his whole supply of drugs, when first of all he had not consumed any drugs on that day, secondly, when this consisted of much more drugs than he would have consumed in one night and thirdly, when he was still on his way to his residence, before going out for the night. The accused's reply in his deposition that the drugs were in his pocket and that he had no inkling that he would be stopped by the police on that night clearly does not justify his possession of such quantity of drugs.

Furthermore, the Court also notes that the accused states to have bought the drugs in his possession for the price of €400 and that he paid a monthly rent of €600 for his apartment. Although he had been unemployed merely for a period of about two weeks (as he states in his deposition) or three weeks (as he states in his statement) and he shared expenses with his girlfriend, yet he also states that he earned circa €1,200 or €1,300 a month whilst in employment. Considering therefore that the accused stated that he normally buys five, six or ten sachets of cocaine and that therefore as a minimum he spent at least circa €200 each time he bought such cocaine, that according to him he used four or five sachets of cocaine on one night, that he spent €400 on twelve sachets of cocaine for the weekend, that he shared expenses relating to his rent with his girlfriend and considering also daily costs of living, even if these were also shared with his girlfriend, it is highly unlikely that the accused could afford to spend such amounts of money on cocaine, without having any other source of income, other than that earned in his previous employment. Although the accused states that he could easily find employment, yet he had already been out of a job for at least two weeks, which he states to have left due to poor conditions and yet he still could afford to spend €400 on cocaine for a weekend's use.

Given these circumstances, namely the amount of cocaine and the number of sachets found in the possession of the accused, the fact that the Court does not deem as credible or likely that the accused consumed four or five sachets of cocaine in one night or twelve sachets of cocaine in a weekend considering that he was a recreational user of cocaine, who had been consuming the drug for a few months, considering further that the accused was apprehended in possession of such quantities of cocaine on the night of his arrest and furthermore that his income does not tally with his alleged use of cocaine, the costs of his accommodation and daily expenses, the Court concludes that it has been proved beyond any reasonable doubt that the said twelve sachets of cocaine were not intended solely for the personal use of the accused.

The Court thus considers that the first charge has been proved to the degree required by law. It is also clear that the third charge of simple possession of the drug cocaine has also been proved beyond any reasonable doubt.

Furthermore, by means of the second charge, the accused is also being charged with having committed the offence contemplated in the first charge in or within 100 metres of the perimeter of a school, youth club or centre, or such other place where young people habitually meet, which is an aggravating circumstance in terms of law. Clearly, it results from the evidence brought that the accused was in Paceville on the night in question – certainly a place where young people habitually meet – and that he was observed coming out from a block of apartments near Burger King and thus in the centre of Paceville, prior to his arrest. It is clear therefore that these aggravating circumstances have been proved beyond reasonable doubt.

Considerations on the Punishment to be Inflicted

The Court is taking into consideration the serious nature of the offence (contemplated in the first charge) of which the accused is being found guilty as well as the aggravating circumstances. Furthermore it is also taking into account the quantity of cocaine found in the possession of the accused.

The Court is also taking into consideration the criminal record of the accused, from which it results that the accused had been previously found guilty, on one occasion, of being in possession of cannabis for his personal use.

Furthermore, the Court is applying the provisions of Section 17(f) of Chapter 9 of the Laws of Malta with respect to the first and third charges.

Conclusion

For these reasons, the Court after having seen Parts IV and VI, Sections 22(1)(a), 22(2)(b)(i) and (ii), the second proviso to Section 22(2)(b) of Chapter 101 of the Laws of Malta, Regulation 9 of Subsidiary Legislation 101.02 and Section 17(f) of Chapter 9 of the Laws of Malta, finds the accused guilty of the charges brought against him and condemns him to **a term of twelve (12) months effective imprisonment** – from which term one must deduct the period of time, prior to this judgement, during which the accused has been kept in preventive custody in connection with the offences of which he is being found guilty by means of this judgement – and a **fine (multa) of one thousand and five hundred Euro (€1,500)**.

In terms of Section 533 of Chapter 9 of the Laws of Malta, the Court condemns the accused to pay the expenses relating to the appointment of expert Godwin Sammut, namely, the sum of two hundred and twenty four Euro and twenty cents (€224.20).⁶

⁶ The Court is not condemning the accused to the payment of the expenses relating to the report drawn up by Scene of the Crime Officer PC 1491 Kurt Attard, since the Scene of the Crime Officer appointed by the Inquiring Magistrate in the course of the inquiry relating to this case and confirmed by this Court was not PC 1491 but PS 36 Sergio Azzopardi (*vide a fol.* 33 of the records of these proceedings).

The Court orders that the drugs exhibited are destroyed, 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