



Criminal Court

Onor. Madame Justice. Dr. Edwina Grima LL.D.

Admission Nr: 11/2014

The Republic of Malta

Vs

John Joseph Evans

Today the 6th July, 2016,

The Court,

Having seen the charges brought against the accused John Joseph Evans holder of American Passport number 48664237 charged together with *omissis* with having:

On the 9th May, 2013 and during the preceding three years from this date, on these islands, with several acts committed, even if at different times and which constitute violations of the same provisions of the law, and are committed in pursuance of the same design:

- a) Carried out acts of money laundering by:
 - i) Converting or transferring property knowing or suspecting that such property is derived directly or indirectly from or the proceeds of criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;

- ii) Concealing or disguising the true nature, source, location, disposition, movement, rights with respect of, in or over or ownership of property knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- iii) Acquiring property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- iv) Retaining without reasonable excuse of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- v) Attempting any of the matters or activities defined in the above foregoing sub-paragraph (i, ii, iii and iv) within the meaning of article 41 of the Criminal Code;
- vi) Acting as accomplices within the meaning of article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub-paragraphs (i, ii, iii, iv and v).

John Joseph Evans by his own:

On the 9th May, 2013 and during the preceding three years from this date, on these islands, with several acts committed, even if at different times and which constitute violations of the same provisions of the law, and are committed in pursuance of the same design:

- b) with another one or more persons in Malta or outside Malta, conspired, promoted, constituted, organised or financed the conspiracy with other person/s to import, sell or deal in the drug cocaine in these Islands against the provisions of The Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, or promoted, constituted, organised or financed the conspiracy;
- c) Supplied or distributed or offered to supply or distribute the drug cocaine specified in the first schedule of the Dangerous Drugs Ordinance, Chapter 101

of the Laws of Malta, to person/s, or for the use of other person/s, without being licensed by the President of Malta, without being fully authorised by the Internal Control of the Dangerous Drugs Regulations (G.N. 292/1939), or by the Authority given by the President of Malta, to supply this drug, and without being in possession of an import and export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of paragraph 6 of the Ordinance and when he was not duly licensed or otherwise authorised to manufacture or supply the mentioned drug, when he was not duly licensed to distribute the mentioned drug, in pursuance of the provisions of Regulation 4 of the Internal Control of Dangerous Drugs Regulations (GN 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

- d) Had in his possession the drug 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 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 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 drug was 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 (GN 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.

The Court is requested to attach in the hands of third parties in general all moneys and other moveable property due or pertaining or belonging to the accused, and further to prohibit the accused from transferring, pledging, hypothecating or otherwise disposing of any movable or immovable property in terms of article 22A

of the Dangerous Drugs Ordinance Chap 101 of the Laws of Malta, of article 5(1)(a)(b) of the Prevention of Money Laundering Act Chap 373 as well as to issue orders as provided for in articles 5(1) and 5(2) of the same Act and of article 23A of the Criminal Code Chap 9 of the Laws of Malta.

The Court is also requested that in case of guilt, apart from imposing the punishment according to law, to order the forfeiture of all exhibited objects.

The Court is also requested to apply section 533(1) of Chapter 9 of the Laws of Malta, as regards to the expenses incurred by the Court appointed Experts.

Having seen that accused John Joseph Evans registered a guilty plea on the 13th March, 2014 and as it results from the minutes of the proceedings of the 21st August, 2014 as drafted by the Court of Magistrates, confirmed this guilty plea even after the Court explained to him the consequences of this guilty plea.

Having seen the Attorney General's note presented together with the acts of these proceedings in the registry of this Court on the 22nd September, 2014, whereby the Attorney General declared that in terms of the proviso of article 392B(2) of Chapter IX of the Laws of Malta, the charges proffered against the said John Joseph Evans before the Court of Magistrates (Malta) as a Court of Criminal Inquiry, to which the accused has registered the aforementioned guilty plea, should be considered as a Bill of Indictment for all the purposes and effects of Law.

Having seen the acts of the proceedings.

Having seen the updated conduct sheet of John Joseph Evans.

Having seen the joint application of both the accused John Joseph Evans and the Attorney General, presented in the registry of this Court on the 8th June, 2016, whereby the applicants informed this Court, that after taking into account the accused's guilty plea, they agreed that the punishment that should be inflicted by this Court upon the accused John Joseph Evans, should be that of twelve (12) years imprisonment and a fine (multa) of twenty five thousand Euros, and this together with the other consequences and sanctions that are mandatorily prescribed by law

upon conviction in terms of the provisions of the Money Laundering Act (Chapter 373 of the Laws of Malta), the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), as well as the Criminal Code (Chapter 9 of the Laws of Malta), including the confiscation of any monies and other moveable and immovable property belonging or owed to the accused in accordance to law.

Finally, the parties declared that in their deliberations regarding the punishment to be meted out to the accused, due regard was given to the accused's early guilty plea, his full co-operation with the investigators, and the provisions of Section 29 of Chapter 101 of the Laws of Malta, applicable by one degree.

Considers,

That in view of the guilty plea filed by John Joseph Evans in front of the Court of Magistrates (Malta) on the 21st August, 2014, which plea was duly confirmed on the same day, the Court cannot but declare John Joseph Evans guilty of having:

On the 9th May, 2013 and during the preceding three years from this date, on these islands, with several acts committed, even if at different times and which constitute violations of the same provisions of the law, and are committed in pursuance of the same design:

- a) Carried out acts of money laundering by:
 - i) Converting or transferring property knowing or suspecting that such property is derived directly or indirectly from or the proceeds of criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;
 - ii) Concealing or disguising the true nature, source, location, disposition, movement, rights with respect of, in or over or ownership of property knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

- iii) Acquiring property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- iv) Retaining without reasonable excuse of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
- v) Attempting any of the matters or activities defined in the above foregoing sub-paragraph (i, ii, iii and iv) within the meaning of article 41 of the Criminal Code;
- vi) Acting as accomplices within the meaning of article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub-paragraphs (i, ii, iii, iv and v).

John Joseph Evans by his own:

On the 9th May, 2013 and during the preceding three years from this date, on these islands, with several acts committed, even if at different times and which constitute violations of the same provisions of the law, and are committed in pursuance of the same design:

- b) with another one or more persons in Malta or outside Malta, conspired, promoted, constituted, organised or financed the conspiracy with other person/s to import, sell or deal in the drug cocaine in these Islands against the provisions of The Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, or promoted, constituted, organised or financed the conspiracy;
- c) Supplied or distributed or offered to supply or distribute the drug cocaine specified in the first schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, to person/s, or for the use of other person/s, without being licensed by the President of Malta, without being fully authorised by the Internal Control of the Dangerous Drugs Regulations (G.N. 292/1939), or by the Authority given by the President of Malta, to supply this drug, and without being in possession of an import and export authorisation issued by

the Chief Government Medical Officer in pursuance of the provisions of paragraph 6 of the Ordinance and when he was not duly licensed or otherwise authorised to manufacture or supply the mentioned drug, when he was not duly licensed to distribute the mentioned drug, in pursuance of the provisions of Regulation 4 of the Internal Control of Dangerous Drugs Regulations (GN 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

- d) Had in his possession the drug 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 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 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 drug was 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 (GN 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.

Considers,

Although the punishment with regards to the crimes the accused has admitted to having committed, is of life imprisonment, however article 492(1) of the Criminal Code provides that if at any stage of the proceedings, before the constitution of the jury, the accused admits to the charges brought against him and for the fact admitted by the accused there is established the punishment of imprisonment for life, the court may, instead of the said punishment, impose a lesser punishment.

That in considering the punishment to be inflicted, therefore, in this case, the Court will take into consideration first and foremost the guilty plea filed by accused, his full co-operation with the investigation and the declaration of the attorney general that the accused is to benefit the provisions of section 29 of Chapter 101 of the Laws of Malta by one degree.

Having considered local and foreign case law regarding a reduction in the punishment when the accused registers an early guilty plea, thereby avoiding useless work and expenses for the administration of justice (Vide “Ir-Repubblika ta’ Malta vs. Nicholas Azzopardi”, Criminal Court, [24.2.1997] ; “Il-Pulizija vs. Emmanuel Testa”, Court of Criminal Appeal, [7.7.2002] and BLACKSTONE’S CRIMINAL PRACTICE, (Blackstone Press Limited – 2001 edit.); As was held by the Court of Criminal Appeal in its judgement in the case “Ir-Repubblika ta’ Malta vs. Mario Camilleri” [5.7.2002], an early guilty plea does not always necessarily and as of right entitle the offender to a reduction in the punishment.

The general rules which should guide the Courts in cases of early guilty pleas were outlined by the Court of Criminal Appeal in its preliminary judgement in the case: “Ir-Repubblika ta’ Malta vs. Nicholas Azzopardi”, [24.2.1997]; and by the Court of Criminal Appeal in its judgement “Il-Pulizija vs. Emmanuel Testa”, [17.7.2002]. In the latter judgement that Court had quoted from Informal Copy of Judgement Page 14 of 17 Courts of Justice BLACKSTONE’S CRIMINAL PRACTICE , (Blackstone Press Limited – 2001 edit. ecc.) :-

“Although this principle [that the length of a prison sentence is normally reduced in the light of a plea of guilty] is very well established, the extent of the appropriate “discount” has never been fixed. In Buffery ([1992] 14 Cr. App. R. (S) 511) Lord Taylor CJ indicated that “something in the order of one-third would very often be an appropriate discount”, but much depends on the facts of the case and the timeliness of the plea. In determining the extent of the discount the court may have regard to the strength of the case against the offender. An offender who voluntarily surrenders himself to the police and admits a crime which could not otherwise be proved may be entitled to more than the usual discount. (Hoult (1990) 12 Cr. App. R. (S) 180; Claydon (1993) 15 Cr. App. R. (S) 526) and so may an offender who , as

well as pleading guilty himself, has given evidence against a co-accused (Wood [1997] 1 Cr. App. R. (S) 347) and/or given significant help to the authorities (Guy [1992] 2 Cr. App. R. (S) 24). Where an offender has been caught red handed and a guilty plea is inevitable, any discount may be reduced or lost (Morris [1998] 10 Cr. App. R. (S) 216; Landy [1995] 16 Cr. App. R. (S) 908). Occasionally the discount may be refused or reduced for other reasons, such as where the accused has delayed his plea in an attempt to secure a tactical advantage (Hollington [1985] 85 Cr. App. R. 281; Okee [1998] 2 Cr. App. R. (S) 199.) Similarly, some or all of the discount may be lost where the offender pleads guilty but adduces a version of the facts at odds with that put forward by the prosecution, requiring the court to conduct an inquiry into the facts (Williams [1990] 12 Cr. App. R. (S) 415.) The leading case in this area is Costen [1989] 11 Cr. App. R. (S) 182, where the Court of Appeal confirmed that the discount may be lost in any of the following circumstances: (i) where the protection of the public made it necessary that a long sentence, possibly the maximum sentence, be passed; (ii) cases of 'tactical plea', where the offender delayed his plea until the final moment in a case where he could not hope to put up much of a defence, and (iii) where the offender has been caught red-handed and a plea of guilty was practically certain"

Consequently in view of the above-made considerations and after having seen articles 2, and 3(1)(2A)(a)(i)(3)(5)(6) of Chapter 373 of the Laws of Malta and articles 9, 10(1), 12, 14, 15(A), 20, 22(1)(a)(f)(1A)(1B), 22(1A)(1B)(2)(a)(i)(3A)(a)(b)(c)(d), 26 and 29 of Chapter 101 of the Laws of Malta and regulations 4 and 9 of Subsidiary Legislation 101.2, and articles 17(b)(h), 23, 31 and 533 of the Criminal Code condemns the said John Joseph Evans to a term of imprisonment of twelve (12) years and the imposition of a fine of twenty-five thousand Euros (€25,000), which fine (multa) shall be converted into a further term of imprisonment of one year according to Law, in default of payment;

Furthermore condemns him to pay the sum of two thousand, two hundred and thirty nine Euros and forty cents (€2,239.40) being the sum total of the expenses incurred in the appointment of court experts in this case in terms of Section 533 of Chapter 9 of the Laws of Malta;

Moreover, orders the forfeiture in favour of the Government of Malta of all the property involved in the said crimes of which he has been found guilty and other moveable and immovable property belonging to the said John Joseph Evans.

Finally, orders the destruction of all the objects exhibited in Court, consisting of the dangerous drugs or objects related to the abuse of drugs, which destruction shall be carried out by the Assistant Registrar of the Criminal Court, under the direct supervision of the Deputy Registrar of this Court who shall be bound to report in writing to this Court when such destruction has been completed, unless the Attorney General files a note within fifteen days declaring that said drugs are required in evidence against third parties.

Edwina Grima

Judge