



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

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

Case Number: 41/2017

Today, 21st July 2017

**The Police
(Inspector Gabriel Micallef)**

vs

**Stelios Alexander Papadopoulos
(British Passport no 309121485)**

**Joshua Borthwick
(British Passport no 504292026)**

The Court,

After having seen the charges brought against the accused¹:

Stelios Alexander Papadopoulos, 26 years, born at Sidcup UK on 25th May 1990, residing at Hotel Bella Vista Xemxija, St. Paul's Bay, holder of a British passport bearing number 309121485;

and

Joshua Borthwick, 26 years, born at Greenwich UK on 4th July 1990, residing at Hotel Bella Vista Xemxija, St. Paul's Bay, holder of a British passport bearing number 504292026;

¹ Requests by the Prosecution to amend the charge sheet were acceded to by the Court by its decrees dated 19th May 2017 and 10th July 2017 respectively.

Accused of having on 12th April 2017 and the previous days on these Islands:

1. Associated and/or conspired with other persons, in Malta and outside Malta, for the purpose of selling, importing, or to deal in any way in the drugs (*ecstasy*) in these Islands, in breach of the provisions of Article 120A of the Medical and Kindred Ordinance, Chapter 31 of the Laws of Malta and the Regulations for the Control of Medicines, LN 22/1985 as amended, or promoted, constituted, organized or financed such association;
2. Had in his possession the psychotropic and specified medicine without due authorization, 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 their personal use;
3. Supplied or distributed, or offered to supply or distribute dangerous drugs, being a drug restricted and controlled under the provisions of the Kindred and Medical Profession Ordinance to person/s, who are not authorized person/s or for the use of other person/s, without being fully authorized in breach of the Medical and Kindred Profession Ordinance, Chapter 31 of the Laws of Malta and the Drugs (Control) Regulations, Legal Notice 22 of 1985 as amended;
4. Had in his possession the psychotropic and restricted drug (*ecstasy*) without a special authorization 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 his personal use;
5. Together with another one or more persons in Malta or outside Malta, conspired, promoted, constituted, organized or financed the conspiracy with other person/s to import, sell or deal in drugs in these Islands, against the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, or promoted, constituted, organized or financed the conspiracy;
6. Had in their possession the drugs specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, when they were not in possession of an import or an export authorization issued by the Chief Government Medical Officer in pursuance of the provisions of paragraph 4 and 6 of the Ordinance, and when they were not licensed or otherwise authorized to manufacture or supply the mentioned drugs and were 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 them for their 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 their personal use;

7. Committed these offences in, or within 100 metres of the perimeter of a school, youth club or centre, or such place where young people habitually meet in breach of Article 22(2) of 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 Court appointed experts.

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) and the order of the Attorney General in virtue of subsection two (2) of Section 120A of the Medical and Kindred Professions Ordinance (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 charges brought against them during the sitting held on 10th July 2017, which guilty plea they confirmed even after the Court, in terms of Section 453(1) of Chapter 9 of the Laws of Malta, warned them of the legal consequences thereof and allowed them sufficient time to reconsider their plea and to retract it;

Having heard final oral submissions by the parties about the punishment to be inflicted.

Considered that:

In view of the guilty plea filed by the accused with respect to the charges brought against them, the Court cannot but find them guilty of such charges.

For the purpose of the punishment to be inflicted, the Court took into consideration the serious nature of the charges brought against the accused, the circumstances of the case and the amount of drugs found in their possession. From the report drawn up by expert Scientist Godwin Sammut, it results that the said expert was handed over the following documents for his analysis, namely a brown envelope which contained:

An evidence bag marked as Document GM4, which in turn contained another empty evidence bag that had the following writing on it: “Description 5 sealable bags containing susp drugs in powder Time/Date Seized/Produced 12/4/17 @ 23.30 hours Where seized/produced on the floor between the front passenger door and seat of vehicle NQZ Seized and Produced by PC118 & PC364 & PS 1289”. The evidence bag contained the following exhibits: 5 plastic bags each containing brown crystals.

An evidence bag marked as Document GM5 that contained the following:

- 1) A black cloth containing: i) 7 plastic bags each containing white powder/crystals; ii) 7 plastic bags each containing brown crystals; iii) 4 paper sachets each containing white powder; iv) a plastic bag containing 20 orange rectangular pills with the logo GOLD;
- 2) A plastic bag containing: i) 8 plastic bags each containing white powder/crystals; ii) 3 plastic bags each containing brown crystals; iii) 5 paper sachets each containing white powder; iv) a plastic bag containing 20 orange rectangular pills with the logo GOLD.

Also in terms of the said report:

- a) The analysis performed on the extracts taken from the brown crystals resulted positive for 3,4-methylenedioxymethamphetamine (MDMA). The total weight of the brown crystals is 7.27 grams.
- b) The analysis performed on the extracts taken from the orange pills resulted positive for 3,4-methylenedioxymethamphetamine (MDMA). The total number of pills is 40.
- c) The analysis performed on the extracts taken from the white crystals resulted positive for Ketamine. The total weight of the white crystals is 5.83 grams.
- d) The analysis performed on the extracts taken from the white powder resulted positive for Cocaine. The total weight of the white powder is 3.75 grams.

For the purpose of the punishment to be inflicted, the Court is considering the offence contemplated in the first charge as a means for the commission of the offences contemplated in the third and fourth charges and the offence contemplated in the fifth charge as a means for the commission of the offence in the sixth charge, and this by application of Section 17(h) of Chapter 9 of the Laws of Malta. Furthermore, it is also applying the provisions of Sections 17(b) and (f) of the said Chapter 9 in respect of the second, third, fourth and sixth charges.

As regards the monies exhibited, namely the sum of one thousand, eight hundred and five Euro (€1,805) and the sum of two hundred and fifteen Sterling (£215), there is no evidence, to the degree required by law, which shows that these were proceeds emanating from dealing in drugs. The Prosecution also exhibited three mobile phones. According to Inspector Gabriel Micallef, two of these phones were found in the possession of accused Joshua Borthwick, whereas the other was found in the possession of accused Stelios Alexander Papadopoulos. The Prosecution brought forward evidence to the effect that WPC 368 Shannon Azzopardi had made arrangements to obtain MDMA by phoning and messaging on number 0044 7826106071, following which accused Borthwick met with WPC 368. Yet since the mobile phones exhibited were not analysed by a court appointed expert, in view of accused entering a guilty plea, the Court is not in a position to conclude which of the mobile phones exhibited was used for the purpose of such communication. In view of these considerations, the Court is thus ordering the release of the monies and mobile phones exhibited.

The Court also took into consideration the submission made by the parties to the effect that a term of imprisonment of twenty one months would be a just and fair punishment. After taking into account the circumstances of the case, including the amount of drugs involved, the Court deems such punishment to be appropriate.

Conclusion

For these reasons, the Court after having seen Sections 40A, 120A(1)(a) and (f), 120A(1A) and (1B), 120A(2)(b)(i) and (ii), the second proviso to Section 120A(2)(b) and the Third Schedule, Parts A and B of Chapter 31 of the Laws of Malta, Regulations 3(1) and 5(1) of Legal Notice 22/1985, Parts IV and VI, Sections 22(1)(a) and (f), 22(1A), 22(2)(b)(i) and the second proviso to Section 22(2)(b) of Chapter 101 of the Laws of Malta, Regulation 9 of Subsidiary Legislation 101.02 and Sections 17(b), (f) and (h) of Chapter 9 of the Laws of Malta, upon their guilty plea, finds the accused Joshua Borthwick and Stelios Alexander Papadopoulos guilty of the charges brought against them and condemns them **each** to twenty one (21) months effective imprisonment – from which term one must deduct the period of time, prior to this judgement, during which they were kept under preventive custody in connection with the offences in respect of which they are being found guilty by means of this judgement - and a fine (multa) of one thousand and five hundred Euro (€1,500).

Furthermore, in terms of Section 533 of Chapter 9 of the Laws of Malta, it condemns Joshua Borthwick and Stelios Alexander Papadopoulos each to the payment of half of the expenses relating to the appointment of court expert Godwin Sammut, amounting each such half to the sum of one hundred and forty five Euro and twenty seven cents (€145.27).

The Court orders the release of the monies exhibited as Document GM6 (namely the sum of one thousand, eight hundred and five Euro (€1,805) and the sum of two hundred and fifteen Sterling (£215)) in favour of Joshua Borthwick and Stelios Alexander Papadopoulos. It also orders the release of the two mobile phones exhibited as Document GM2 in favour of Joshua Borthwick and the mobile phone exhibited as Document GM3 in favour of Stelios Alexander Papadopoulos.

The Court also orders that the drugs exhibited as Documents GM4 and GM 5 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