



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

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

Case Number: 13/2017

Today, 18th August 2017

**The Police
(Inspector Frank Anthony Tabone)**

vs

**Abubakar Ibrahim Jabril
(ID 83283(A))**

The Court,

After having seen the charges brought against the accused Abubakar Ibrahim Jabril, 35 years of age, son of Jabril and Fatih Yacoub, born in Niger on 11th February 1982, with no fixed address and holder of Maltese Identity card number 83283(A);

Charged with having on 13th February 2017 on these Islands:

1. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the resin obtained from the plant cannabis or any other preparation of which such resin formed the base, in terms of Section 8(a) of Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use;
2. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the resin obtained from the plant cannabis or

any other preparation of which such resin formed the base, in terms of Section 8(a) of Chapter 101 of the Laws of Malta;

3. Assaulted or resisted by violence or active force not amounting to public violence, any person lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority;
4. Caused slight injuries to PS 918 Clayton Azzopardi as certified by Dr. Yanica Vella MD;
5. Carried outside any premises or appurtenance thereof, a knife or cutting or pointed instrument without a license or permit from the Commissioner of Police;
6. Committed an offence whilst being under an operative period of a judgement issued by the Court of Magistrates (Malta) presided by Magt. Dr. A. Vella LL.D. on 21st January 2016, which judgement has become absolute;
7. For being a recidivist after being sentenced for an offence by a judgement issued by the Court of Magistrates (Malta) presided by Magt. Dr. J. Demicoli LL.D. on 5th November 2014, which judgement has become absolute.

And also for having on 20th October 2015 on these Islands:

8. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the resin obtained from the plant cannabis or any other preparation of which such resin formed the base, in terms of Section 8(a) of Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use;
9. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the resin obtained from the plant cannabis or any other preparation of which such resin formed the base, in terms of Section 8(a) of 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 heard the evidence produced 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 heard final oral submissions by the parties.

Considered that:

The facts of this case relate to two separate incidents dated 20th October 2015 and 13th February 2017 respectively.

From the evidence adduced, it results that on 20th October 2015 at around 6.00 p.m., whilst on patrol duty, PS 131 Nathan Bugeja and PC 971 stopped a vehicle next to Paul and Rocco Service Station in Marsa. The passenger in the said vehicle was the accused, whereas the driver was a certain Eric Boa. A search was carried out inside the said vehicle and on the person of the two men. In a backpack, the police found two mobile phones, small empty plastic bags, Rizla paper, the sum of thirty Euro and a set of keys. Furthermore, in the accused trousers' pocket, they found a packet of cigarettes that contained sixteen and a half sticks, suspected to be cannabis resin. The accused was informed that he was under arrest, at which point he fled towards the direction of Tiger Bar, Marsa and later apprehended. During his cross-examination, PS 131 Nathan Bugeja explained that they had stopped the mentioned vehicle after this had left from Tiger Bar, Marsa and after they noticed the two men acting suspiciously by constantly looking backwards towards the police car. Since the accused appeared nervous, they decided to carry out the said search. PS 131 Nathan Bugeja stated that the backpack belonged to the accused – *“I asked him what was his inside the car and he told me this backpack is the only thing I have inside the car since he was not driving”*.¹ PC 1388 Ryan Pisani confirmed that in the pocket of his trousers, the accused had a packet of cigarettes that contained sixteen and half brown sticks suspected to be cannabis resin and that in a backpack, inside the vehicle, there were *inter alia* a number of empty sealable plastic sachets.

The accused was escorted to Mater Dei Hospital, where he was certified as not suffering from any injuries². Inspector Gabriel Micallef states that when he tried to

¹ A fol. 95 of the records of the case. *Vide* the deposition given by PS 131 Nathan Bugeja, a fol. 92 to 97 of the records of the case, the deposition given by PC 1388 Ryan Pisani, a fol. 87 to 91 of the records of the case, who arrived on the scene with PC 1110 as PC 131 was conducting the search on the accused and the deposition of PC 1110 Dion Fenech, a fol. 76 to 78 of the records of the case.

² *Vide* certificate a fol. 54 of the records.

speak to the accused, the latter was acting very strangely, at which point the accused was escorted to Mount Carmel Hospital³ and although he was subsequently certified as fit for interrogation, upon attempting to interrogate him, the accused again acted strangely and even aggressively, so he was again escorted to Mount Carmel Hospital. This happened a number of times, despite the fact that accused was being certified as fit for interrogation, until Inspector Micallef managed to interrogate him on 17th November 2015.⁴ The Court notes in this respect that although Inspector Micallef, in his deposition, states that he was exhibiting a certificate issued by Dr. Chris Role whereby he certified that the accused was fit for interrogation, yet the said certificate merely indicates that the accused was accompanied to Mount Carmel Hospital on 20th October 2015 by police officers and that at the time, he was admitted in the secure unit of the said hospital, under the care of Consultant Psychiatrist Dr. J. Spiteri.⁵ Yet there is no evidence in the records to suggest that accused was not fit for interrogation at the time of the said statement.

In any case, in his statement of 17th November 2015⁶, the accused denies that he had any cannabis in his possession, that he sold cannabis and that the self-sealable bags or anything that he was being shown during his interrogation was his. He however admitted to smoking cannabis every day and that he smoked a lot, though he also stated that he could not tell how much he smoked. This is also in line with the deposition of psychiatrists Dr. Joseph Spiteri and Dr. Anton Grech.

Inspector Gabriel Micallef exhibited the substance found in the possession of the accused, together with the items found in the backpack as Document GM1. From the report exhibited by expert Professor Emanuel Sinagra, it results that said document in evidence bag M00389065 held pieces of resin, containing the substance *Tetrahydrocannabinol (THC)*, weighing in total 5.6 grams, with a purity of 6%.⁷

Considered further that:

From the evidence adduced, it further results that on 13th February 2017, on the basis of anonymous information provided to PS 918 Clayton Azzopardi regarding a dark coloured male known as ‘Rasta’, the police proceeded to Tiger Bar, Marsa

³ *Vide* certificate a fol. 53 of the records.

⁴ *Vide* deposition of Inspector Gabriel Micallef, a fol. 48 to 51 of the records of the case.

⁵ *Vide* certificate a fol. 53 of the records.

⁶ This is exhibited a fol. 52 of the records.

⁷ *Vide* report exhibited by the said expert a fol. 138 *et seq* of the records of the case.

and immediately approached the said Rasta, namely the accused. As soon as he saw the police, he ran inside a property adjacent to the mentioned bar. PS 918 followed the accused, at which point he noticed the accused throwing something out of his pocket. PS 918 states that this was a block of suspected cannabis resin. According to said witness, once the accused had thrown this block away, he immediately turned around to face him and the accused hit him with his head. He states that at that point he was right behind the accused and that “*I do not know whether it was intentional or not*”.⁸ PS 918 states that his nose started to bleed.⁹ He collected the resin block and his colleagues proceeded to arrest the accused. PS 918 further states that the accused did not cooperate during his arrest, that he was shouting, trying to kick the police officers and calling others to help him fight the police, at which point he perceived a dangerous situation on account of the fact that there were many more dark coloured persons than police. During his cross-examination, when it was suggested to the witness that he had only seen the accused throwing something and that at the time, he did not know what this was, the witness replied that he had seen it, as it was in front of him and that when he picked it up, he realised it was cannabis.¹⁰

PC 1113 Ramsis Tonna confirms how on 13th February 2017, whilst accompanying PS 918 to Tiger Bar, they saw the accused, who immediately ran inside. They followed him, with PS 918 taking the lead. According to PC 1113, at one point the accused turned around and head butted PS 918, who grabbed the accused and pushed him towards the witness. He also states that the accused threw away a block, that this was in accused’s hand and that this was immediately picked up by PS 918.¹¹

PC 1148 Adrian Zahra states that upon PS 918’s instructions, he approached the Tiger Bar together with PC 514, when he saw the accused running inside a corridor situated between the Tiger Bar and Marsa Open Centre. He states that PS 918 approached the accused and struggled with him. They handcuffed the accused and searched him. He also states that during this search, he found some brown sticks in accused’s pocket and an amount of money, which he did not count on site as it was dark. Upon his cross-examination, the witness states that he had not seen the accused throwing anything away and that PS 918 and PC 1113 were the two

⁸ A fol. 17 of the records.

⁹ A medical certificate issued by Dr. Yanica Vella in respect of Clayton Azzopardi was exhibited a fol. 34 of the records. This indicates that on 13th February 2017, at 6.24 p.m., she found Mr. Azzopardi to be suffering from swelling and bruising of the nasal bridge. Dr. Vella confirmed that she had issued the said certificate on the said date in her deposition, a fol. 67 and 68 of the records.

¹⁰ *Vide* deposition of PS 918 Clayton Azzopardi, a fol. 14 to 21 of the records.

¹¹ *Vide* deposition of PC 1113 Ramsis Tonna, a fol. 64 to 66 of the records.

officers, who had immediately followed the accused. He was the fourth officer behind the accused and that accused was already on the ground when he saw him. He also states that he saw PS 918 picking up a dark brown substance, which the witness saw on the ground. PC 1148 further states that there was nobody else in the corridor in which the accused ran apart from the police, although there were other people further inside the building.¹² PC 514 Christopher Mallia states that he was accompanying PC 1148 and confirms that as soon as accused saw them, he ran inside a dark corridor adjacent to the Tiger Bar. They followed PS 918 and PC 1113 behind the accused and he saw the accused on the ground. He confirms further that PC 1148 found a substance suspected to be cannabis in the right pocket of accused's jacket and some money in the back pocket of his trousers.¹³

PS 601 Justin Spiteri states that upon receiving information relating to possible drug trafficking at Tiger Bar, Marsa from PS 918, he proceeded there with his colleague PC 313. It was agreed that his colleague and himself would conduct a search on a third party inside the bar, whilst the rest of his colleagues would search the accused. As soon as they arrived on site, he went inside the bar and conducted the said search, which yielded a negative result. He states that subsequently PS 918 entered the room and he could see that he had blood oozing from his nose, at which point, the latter explained that the accused had head butted him. PS 918 also showed him a piece of suspected cannabis resin. As he proceeded outside with PS 918, he saw that the accused had been handcuffed and restrained by police officers. He states that accused was acting aggressively towards the police.¹⁴

Inspector Frank Anthony Tabone states that following his arrest, the accused alleged that he was going to harm himself and he was later referred to Mount Carmel Hospital, from where he was discharged on 23rd February 2017.¹⁵ A certificate issued by Dr. Hector Cutajar on the said date indicates that accused was fit to be interrogated.¹⁶ The accused released a statement on 23rd February 2017, after he was duly cautioned in terms of law and after refusing both the right to consult with a lawyer prior to his interrogation and the right to be assisted by a lawyer during said interrogation.¹⁷ As results both from the said statement and also from Inspector Pulis' deposition, however, this had to be suspended. Inspector Kevin Pulis explains that at one point, the accused started to act very aggressively,

¹² A fol. 22 to 27 of the records of the case.

¹³ A fol. 73 to 75 of the records.

¹⁴ *Vide* this deposition a fol. 58 to 61 of the records.

¹⁵ *Vide* this deposition a fol. 39 to 42 of the records.

¹⁶ *Vide* certificate a fol. 35 of the records. This certificate was confirmed by Dr. Hector Cutajar, a fol. 116 to 117 of the records.

¹⁷ This statement is exhibited a fol. 37 and 38 of the records.

trying to harm himself, “*bumping his head all over in my office*”.¹⁸ He states that the accused’s behaviour changed as soon as he was shown an evidence bag containing a knife. As a result, accused was taken back to Mount Carmel Hospital.¹⁹

In his statement, the accused admits to having been found in possession of cannabis and money in his pockets, as well as two mobile phones, but denied having been in possession of any other cannabis and a knife and he also denied causing any injuries to the police.

From the report drawn up by expert Professor Emanuel Sinagra, it results that Document FT 4 (exhibited by Inspector Frank Anthony Tabone as the substance that was handed over to him by PS 918 and which said PS 918 had seen the accused throwing away) in evidence bag S00678464 held a resin block, resulting positive for *Tetrahydrocannabinol*, weighing 43.6 grams, with a purity of 6%. Furthermore, Document FT 6 (exhibited by Inspector Tabone as the substance that was found by PC 1148 upon his search of the accused) in evidence bag S00811954, which held three pieces of resin, resulted positive for *Tetrahydrocannabinol* and weighed 1.8 grams, with a purity of 6%.²⁰

Considered further that:

By means of the third charge, the accused is being charged with the offence contemplated in Section 96 of the Criminal Code, namely with having assaulted or resisted by violence or active force, not amounting to public violence, any person lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority. Furthermore, by means of the fourth charge, the accused is also being charged with causing slight injuries to PS 918 Clayton Azzopardi, as certified by Dr. Yanica Vella.

From the report drawn up by expert Dr. Anton Grech, it results that the accused suffers from psychosis, which in his deposition he describes as a serious type of psychosis. According to the said report, accused’s history of heavy cannabis use could be an important contributory factor in the development of this illness. Furthermore, accused was using cannabis as a form of self-treatment for agitation and insomnia and the psychotic illness itself could have had a contributory factor.

¹⁸ A fol. 44 and 45 of the records.

¹⁹ *Vide* this deposition a fol. 43 to 47 of the records.

²⁰ *Vide* report a fol. 138 *et seq* of the records.

In his deposition, Dr. Grech states that the accused described having paranoid symptoms. According to Dr. Grech, if at the time of the offence, the accused had been acting on these symptoms, namely, that he was irrationally afraid that someone wanted to harm him, he would have been acting on his condition, which would consequently render him not responsible for his actions. He further confirmed that at the time of the incident, in February 2017, the accused was psychotic and that since the psychosis was a serious one, it would definitely have affected his criminal responsibility. From the said report, it also results that accused had been admitted to Mount Carmel Hospital on 13th February 2017 until 23rd February 2017 and then subsequently on other occasions.²¹ According to the said report, accused reported hearing voices in 2015 and that although he did not remember the content of these voices, he was afraid that the police would kill him. He would therefore hit his head on the wall in order to die, rather than being killed by the police.

In this regard, the Court notes that this would explain the accused's behaviour both upon being informed that he was under arrest in October 2015 and during the several times that Inspector Gabriel Micallef attempted to interrogate him and also his subsequent behaviour and aggression on 13th February 2017 towards the police officers, in particular PS 918, as well as his reaction during his interrogation on 23rd February 2017, when said interrogation had to be suspended.

This is further explained and confirmed by Dr. Joseph Spiteri, consultant psychiatrist of the accused at Mount Carmel Hospital, who states that the accused suffers from dual diagnosis, namely, substance misuse together with brief episodes of psychosis. He explained that the medical term 'psychosis' refers to a situation where the patient loses contact with reality so that "*he can for example see a police car coming by and feels that that police car is coming for him to attack him.*"²² He further explained that in such circumstances, his reasoning would be illogical and that his control and element of volition would be very compromised. Dr. Spiteri states that he is not sure whether the accused was aware that his cannabis use exacerbated his psychosis and Dr. Grech states that he does not think that accused was aware of his condition. Dr. Spiteri confirms that accused was admitted to Mount Carmel Hospital on 13th February 2017, when he has found to be highly aggressive, both physically and verbally and showed evidence of being psychotic. In this respect, he explained that accused was reacting in such a manner to his abnormal beliefs, termed as delusional, since these were not in contact with reality.

²¹ *Vide* report drawn up by Dr. Anton Grech, a fol. 161 to 162 of the records and his deposition, a fol. 156 to 160.

²² A fol. 110 of the records.

*“If I remember well the case was related to hitting the police and so on and the paranoid features were very relevant ... knowing him from before ... the picture was quite similar to a paranoid psychotic disorder ... they lose contact with reality ... his volition is related to his abnormal thoughts rather than to his normal thoughts that he should be harbouring.”*²³ He explained that in such case, the person acts under a delusional precept, reacting to a delusion by becoming aggressive because he feels threatened.²⁴

In view of the above, since it results clearly to the Court that the accused was acting under a psychotic condition at the time of the offences with which he is being charged – as evidenced both upon his admission into Mount Carmel Hospital on the date of the incident itself and also by his aggressive reaction as he was being arrested by the police, including the manner in which he was requesting others to help him fight police officers as described by PS 918 – and was therefore delusional, deprived of his understanding and volitional capacities in respect of his actions, the formal element required by law in order that the accused may be found guilty of the offences contemplated in the third and fourth charges was clearly lacking. Consequently, the accused cannot be found guilty of the said offences.

By means of the fifth charge, the accused is also being charged with carrying outside any premises, a knife without a license or permit from the Commissioner of Police. Inspector Tabone exhibited a knife, together with two mobile phones, a set of keys and an amount of money as Document FT7, being items seized from the accused on 13th February 2017 by PC 1148, apart from three pieces of a brown substance, which resulted positive for *Tetrahydrocannabinol*.²⁵ However, in his deposition, PC 1148 merely refers to having found cannabis resin and a sum of money in possession of the accused and this is confirmed by PC 514 Christopher Mallia, who was present during this search. None of the police officers who were present during this particular search refer to finding a knife in the possession of the accused. Furthermore, in his statement although the accused admits to having been in possession of the sum of money and the mobile phones, he denies that the knife was his. In view of the lack of continuity in the chain of evidence relating to the finding of the knife, the Court deems that it has not been proved to the degree required by law that the accused was in possession of the said cutting instrument.

²³ A fol. 150 of the records.

²⁴ *Vide* a fol. 108 to 115 and a fol. 145 to 153 of the records.

²⁵ A fol. 40 of the records.

The first, second, eighth and ninth charges refer to the possession of cannabis resin on the part of the accused during the two separate incidents in October 2015 and February 2017.

As held above, on 20th October 2015, the accused was found in possession of sixteen and a half sticks of cannabis resin, contained in a packet of cigarettes in the pocket of his trousers. Although in his statement the accused denied that he was in possession of such cannabis, there is no doubt from the evidence adduced by PS 131 Nathan Bugeja who conducted the search, as well as the other police officers present during the same, that the accused was found in possession thereof.

It further results from the evidence adduced that a backpack inside the vehicle in which the accused was riding as passenger with a certain Eric Boa, contained *inter alia* a number of empty, sealable plastic sachets. PS 131 Nathan Bugeja states that this backpack belonged to the accused and that he confirmed this fact through the accused's own admission, upon the latter being asked what items, in the vehicle, belonged to him, at which point the accused indicated the backpack. However, nowhere does it result from the evidence adduced that the accused was duly cautioned in terms of law prior to being asked this question.

In this regard, the sequence of events is not clear to the Court. It is not clear from the evidence adduced whether the police first conducted a search on the person of the accused, at which point they found him to be in possession of cannabis resin and later inside the vehicle and therefore the backpack, where they found the empty plastic sachets or whether the vehicle was searched first, followed by a search on the persons of Boa and the accused, when the drugs were found. There is no doubt that if it were the case that the drugs were found prior to the search inside the backpack, then the accused should have been immediately given his rights in terms of law and duly cautioned, prior to being questioned about his belongings. The Court is thus not taking into consideration that the accused told the police officers that the backpack belonged to him. The Court further notes that the accused was not questioned regarding the ownership of the backpack during his statement. Indeed he was merely questioned about the content thereof, namely the plastic sachets, at which point he denied that these were his. For these reasons and bearing in mind that the accused was accompanied by a third party at the time, the Court cannot reach the conclusion that the backpack inside the vehicle belonged to the accused.

By means of the eighth charge, as regards the cannabis found in his possession, the accused is being charged with possession of the said drug in circumstances

denoting that this was not for his personal use. By means of the ninth charge, he is being charged with the simple possession of the same.

In its final oral submissions, the defence focused on the fact that it results from the evidence adduced that the accused suffered from psychosis at the time of the alleged offences and that therefore he cannot be deemed to have had the mental capacity required by law to be found guilty of such offences. It made no distinction between the offences with which the accused is being charged. Yet although it is very likely in view of the report drawn up by expert Dr. Anton Grech and the deposition of Dr. Joseph Spiteri that the accused was already afflicted by this condition in October 2015 – indeed, the fact that the accused reported to Dr. Grech that he used to hear voices in 2015, that Dr. Spiteri states that he had seen the accused as a patient at Mount Carmel Hospital about a year and a half prior to the February 2017 incident and the behaviour of the accused both upon being informed that he was under arrest on 20th October 2015 and during Inspector Micallef’s several attempts at interrogating the accused prior to his interrogation of 17th November 2015 are all very indicative that this was the case – the Court finds that there is absolutely no evidence to indicate that such condition had a bearing on his mental capacity or the *capacita` di intendere e volere* in so far as the drug related offences are concerned. Indeed, the paranoia and delusional symptoms brought about by the accused’s psychosis are described by both psychiatrists as having a specific effect, namely that of illogically feeling threatened in specific situations, which they similarly describe in their respective depositions.

There is no doubt that the accused used cannabis at the time of the October 2015 incident, as he indicates in his statement dated 17th November 2015. Both his consultant psychiatrist and Dr. Anton Grech also refer to the accused as a heavy cannabis user, which cannabis use in fact exacerbated his psychosis. The Court notes that although the weight of the pieces of cannabis resin found on the person of the accused on 20th October 2015 – namely 5.6 grams – is not in itself a hefty amount, though certainly neither an insignificant amount, on the other hand, after having seen the exhibit itself, it cannot but notice the manner in which such cannabis was divided in several sticks (sixteen and a half according to the police officers who conducted the search), approximately of the same length and size. These circumstances leave the Court in no doubt that the said substance was not merely intended for the accused’s personal use. Accordingly, the Court is satisfied that the eighth and ninth charges have been proved by the Prosecution to the degree required by law, with the offence contemplated in the ninth charge being considered as comprised in the offence contemplated in the eighth charge.

By means of the first and second charges, the accused is also being charged with the offence of possession of cannabis resin in circumstances denoting that this was not for his personal use as well as with the simple possession of the said drug and this with reference to the incident dating 13th February 2017. As held above, it results clearly from the deposition of the police officers who searched the accused that the latter was found in possession of pieces of cannabis resin (weighing 1.8 grams) and cash amounting to €373.60. In his statement, the accused admits to having been found in possession of these items and states that he was smoking cannabis at the time when the police approached him. Again, as held above, that the accused used cannabis at the time of this incident is very clear from the deposition of the two psychiatrists. There is no doubt therefore that the second charge has been proved to the degree required by law. Apart from the cannabis found in his pocket, PS 918 who was the first police officer to immediately follow the accused as soon as the latter fled into the building adjacent to Tiger Bar, noticed the accused throwing away that which subsequently resulted to be a block of cannabis resin. Although the accused denies that this substance was in his possession, yet the Court notes that from the evidence adduced, it results clearly that PS 918 was right behind the accused when the latter threw away the said substance and that although it is very likely that PS 918 only realised what the item was as soon as he picked it up, yet the Court has no reason to doubt that PS 918 had actually seen the accused throwing away the said object. Indeed PS 918 was so close to the accused that as soon as the latter turned around, he hit PS 918 with his head, which gives the Court a clear indication of the close proximity of the two. It also results that PS 918 immediately picked up the said substance. In view of the above, the Court has no doubt that the said substance was indeed in the possession of the accused.

It also results from the report drawn up by expert Professor Sinagra that the said substance weighed 43.6 grams, which the Court deems to be quite a significant amount and certainly not one which is normally associated with personal use. Although the accused was a heavy cannabis user, yet the defence produced no evidence which justifies his possession of such an amount of cannabis. Indeed, considering that a joint normally contains 0.2 grams of cannabis, it follows that the said amount could potentially produce circa 218 joints. The Court further notes that when he was being chased by the police, accused did not throw away the smaller amounts of cannabis which were in his possession, but rather this larger amount. In view of these considerations and in view of the place where the accused was apprehended, which is well known for drug trafficking, the Court deems that the first charge has also been proved beyond any reasonable doubt.

By means of the sixth charge, the accused is also being charged with having committed an offence during the operative period of a judgement delivered by this Court as presided by Magistrate Dr. Anthony Vella, on 21st January 2016. In this respect, the Prosecution exhibited a true copy of a judgement bearing the said date in the names ‘Police Inspector Joseph Mercieca & Spiridione Zammit vs Abubakar Ibrahim Jabril’, from which it results that the identity card number of the accused in that case is identical to that of the accused in the present case. The Court therefore deems it sufficiently proved that the said judgement refers to the accused in this case. In terms of the said judgement, the accused was conditionally discharged for a period of three years from the date of said judgement in terms of Section 22 of Chapter 446 of the Laws of Malta. Thus, as at 13th February 2017, this condition was still operative upon the accused. Accordingly, the Court deems that this charge has been proved to the degree required by law.

By means of the seventh charge, the Prosecution is requesting the Court to consider the accused as a recidivist, following a judgement delivered by this Court as presided by Magistrate Dr. Josette Demicoli on 5th November 2014. In this regard, the Prosecution exhibited a true copy of a judgement bearing the said date in the names ‘The Police (Inspector Joseph Mercieca) vs Ibrahim Jabril Abubakar’, from which it results that the identity card number of the accused in that case is identical to that of the accused in the present case. The Court therefore deems it sufficiently proved that the said judgement refers to the accused in this case. In terms of the said judgement, the accused was condemned to a period of four months imprisonment suspended for a period of eighteen months, which means that the said sentence was operative until 5th May 2016. It therefore follows that whilst as at 20th October 2015, the accused was a recidivist in terms of Section 49 of the Criminal Code, as at 13th February 2017, he was a recidivist in terms of Sections 49 and 50 of Chapter 9 of the Laws of Malta.

Considered further:

As regards the punishment to be inflicted, the Court took into consideration the criminal record of the accused, which consists of the two convictions mentioned in the previous two paragraphs of this judgement – one relating to breaching bail conditions and the other to the filing of a false report.

The Court also took into consideration the circumstances of the case, the serious nature of the offences with which the accused is being charged and the amount of cannabis found in his possession in the two occasions.

Furthermore, the Court is considering the second charge as comprised in the first charge and the ninth charge as comprised in the eighth charge and is applying the provisions of Sections 17(b) and (f) of the Criminal Code in respect of the first and eighth charges. For the purpose of the said punishment, the Court is also applying the provisions of Sections 17(b) and (h) of the Criminal Code, when dealing with the accused in respect of the offences of which he was found guilty in terms of the judgement delivered by this Court as presided by Magistrate Anthony Vella on 21st January 2016.

Since no evidence to the degree required by law has been produced indicating that the monies found in possession of the accused were obtained through dealing in drugs, the Court is not ordering the forfeiture of same.

Conclusion

For these reasons, the Court after having seen Sections 8(a), 22(1)(a), 22(2)(b)(i) and (ii) of Chapter 101 of the Laws of Malta, Regulation 9 of Subsidiary Legislation 101.02, Sections 17(b), (f), (h), 49, 50, 101(1)(a) and (2), 108, 109, 110(1) and (2) of Chapter 9 of the Laws of Malta and Section 23 of Chapter 446 of the Laws of Malta, finds the accused not guilty of the third, fourth and fifth charges brought against him and acquits him thereof, but finds him guilty of the first, second, sixth, seventh, eighth and ninth charges and condemns him to a term of **twenty three (23) months effective imprisonment** – from which term one must deduct the period of time prior to this judgement during which the person sentenced has been held 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 four hundred Euro (€1,400)**.

In terms of Section 533 of Chapter 9 of the Laws of Malta, the Court condemns the person sentenced to the payment of expenses relating to the appointment of court-appointed expert Professor Emanuel Sinagra amounting to two hundred, thirty two Euro and eighty six cents (€232.86).²⁶

The Court orders the release of the sum of three hundred, seventy three Euro and sixty cents (€373.60) and the two mobile phones, forming part of Document FT7, in favour of the person sentenced and the destruction of the substances exhibited as Documents FT4, FT6 and forming part of Document GM1, together with the knife

²⁶ The Court is not condemning the person sentenced to the payment of expenses relating to the appointment of court appointed expert Dr. Anton Grech, since he was acquitted of the third and fourth charges on the basis of said report.

forming part of Document FT7, once this judgement becomes final and definitive, under the supervision of the Registrar, who shall draw up a process verbal documenting the destruction procedure. The said process verbal shall be inserted in the records of these proceedings not later than fifteen days from the said destruction.

The Court draws the attention of the Director of Prisons that the person sentenced should be provided with the necessary medical care, as may be recommended and prescribed by his consultant psychiatrist Dr. Joseph Spiteri and orders that a copy of this judgement is sent to the Director of Prisons.

Natasha Galea Sciberras
Magistrate