



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

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

Case Number: 77/2017

Today, 23rd October 2017

**The Police
(Inspector Priscilla Caruana Lee)**

vs

**Awet Estifanos Weldetinsae
(ID number 116951(A))**

The Court,

After having seen the charges brought against the accused, Awet Estifanos Weldetinsae, 26 years of age, born in Eritrea on 1st January 1991, son of Estifanos and Wejni, without a fixed address, holder of ID number 116951A, police number 13K014;

Charged with having on 12th May 2017 in Marsa and on the previous months on these Islands:

1. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the whole or any portion of the plant cannabis in terms of Section 8(d) 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. And also for having on the same date, time and circumstances 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 it was not intended for his personal use.

In case of guilt, accused is to be treated as a recidivist, after having been found guilty by a decision of the courts of Malta, which decision has become *res judicata* and cannot be changed.

The Court is requested to order the accused to pay any court expenses related to the appointment of any court expert in the course of the proceedings and this as stipulated in Article 533 of Chapter 9.

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:

The facts of the case, in brief, are as follows: On 12th May 2017, at around 2.25 a.m., police from the Valletta Police Station received an anonymous call to the effect that drugs were being sold at Block 2, Xatt il-Mollijiet, Marsa, adjacent to the Tiger Bar. PS 710, PS 1098, PS 507, PS 1024, PC 332 and WPC 334 proceeded to the said site, specifically to the third floor of the said premises, to conduct an inspection. According to PS 710 Stephen Gulia, the set-up of the third floor is that of a bar, where alcohol is sold.

During his examination in chief¹, PS 710 Stephen Gulia stated that as the said inspection was being conducted, they noticed the accused: *“And when he saw the police, he threw something from his black leather jacket, he threw it away. Upon seeing that, I immediately stopped the person.”*² He further stated that the accused threw something away from the right hand pocket of his jacket. He continued as follows: *“As soon as he threw it away, I immediately stopped him and upon stopping the person we immediately confirmed what he threw away”*³, namely a plastic bag containing twelve separate plastic bags, each holding a green substance and two packets of cigarettes, each containing a brown substance. The witness also stated that

¹ Vide this deposition, a fol. 36 to 41 of the records of the case.

² A fol. 38 of the records.

³ A fol. 38 of the records.

they collected the said items and arrested the accused, who was escorted to the Police Headquarters at Floriana.

In cross-examination⁴, PS 710 Gulia stated that there were about fifteen persons on the third floor where the inspection was conducted. He also stated that they had entered the premises for a regular inspection, but as soon as the accused saw the police, he immediately acted in the manner described, namely, *“he took out from his pocket a plastic bag and two packets of cigarettes and threw them on the ground”*.⁵ He indicated to the Court that the size of the objects thrown away were approximately that of a tennis ball. The witness further stated that he could not tell whether in court, the accused was wearing the same jacket that he had been wearing on the day of the incident, although he stated that it was similar. At the defence’s suggestion that as the accused was walking out of the premises, he had taken out a packet of cigarettes and shown the witness a cigarette, at which stage accused threw away the said packet of cigarettes, the witness replied that this had not been the case. PS 710 explained that the incident had taken place in the corridor as accused was walking out, *“and we stopped him immediately, as soon as he threw the things we stopped him immediately”*.⁶ He denied that the accused had walked out and had been called later and repeated that he had been immediately arrested. He confirmed that at that stage, accused had been walking out and had his back to the witness, as he had already walked past him, when he threw away the said objects. Witness stated that yet, he was certain it was the accused because of his particular hair style. He stated that at the time, he had been observing what was happening in the room, explaining that the corridor, where the accused had been stopped, is like a room or rather like a hall. At the time, the witness was by the door, whilst accused was walking out in the corridor. The witness stated that he did not recall telling the accused that he could go, after he had passed by him or that the accused had shown him a packet of cigarettes or that he had spoken to him at all prior to his arrest. He also stated *“No I did not talk to him before”*⁷, but specified again that as soon as he saw the accused’s movements, he had intervened immediately.

During his examination in chief⁸, PS 507 Rhys Cassar stated that upon arriving on site, namely the premises adjacent to the Tiger Bar, they proceeded to the third floor. Whilst there, they noticed the accused, who was then wearing a black jacket, throwing something on the floor, from his right pocket. He stated that PS 710 and himself stopped the accused and PS 710 *“went to check the things that were thrown from his pocket and told me that they were two packets of cigarettes containing brown substance ... and also a plastic bag containing several small plastic bags with green substance inside”*.⁹ In this regard, the witness further stated that *“I saw this*

⁴ A fol. 80 to 92 of the records.

⁵ A fol. 82 of the records of the case.

⁶ A fol. 85 of the records of the case.

⁷ A fol. 89 of the records.

⁸ A fol. 44 to 47 of the records of the case.

⁹ A fol. 45 of the records.

movement of throwing something. At that time I could not be certain what they were but the movement was clear from his end that he was throwing something."¹⁰ He confirmed that he had seen something being thrown away and that this was collected by the police.

In cross-examination¹¹, PS 507 Rhys Cassar stated that upon arriving on site, they proceeded to the third floor, where there were about 20 persons. He explained that his colleagues instructed the people therein to walk out and as soon as they were doing so, he saw the accused "*throwing something from his right hand side to the floor*", at which point the accused was stopped by the witness and by PS 710. He also explained that at that point, he (the witness) was not inside the room or bar on the third floor, but outside, watching the flow of people as they walked out of the room into the corridor, which leads to the stairway. He further stated that the first time he had noticed the accused was as the latter was walking out of the room. Asked whether the accused had walked by the side where witness was standing, the witness replied "*Not exactly but I saw him from the side*"¹², and stated that the accused had walked past him and it was then that he saw his movements. He further stated that the accused had his back to him as he had already walked by and that he was facing the flow of people as they walked out.

He denied that the accused had previously shown him a packet of cigarettes or anything at all or that accused had spoken to him. He further explained that at the time he was not certain as to what the accused had thrown but afterwards, he found the objects described by him during his deposition. Once it was suggested to the witness, that he had not seen what had been thrown, he replied that "*from the direction in which he threw it, there was only that packet. There wasn't something else.*"¹³ Upon the suggestion that being a crowded place, there must have been many packets of cigarettes on the floor, the witness denied this and replied that this was not the case, with reference to that particular area. Witness further reiterated "*I saw the movement of his hand and something thrown from his hand. I did see something*"¹⁴ and "*I saw him throwing something not moving his hand*", when it was suggested to him that he had seen accused moving his hand. Furthermore, he stated that the accused had been holding said object – medium in size - in one hand. He also explained that there was nothing else on the floor, apart from what had been found, namely the items collected.

Upon being re-examined, the witness stated that he was certain that it was the accused who had thrown "something" away and that "*a couple of seconds. 5 seconds*"¹⁵ had passed from the moment accused had walked by him until the

¹⁰ A fol. 46 of the records of the case.

¹¹ A fol. 94 to 104 of the records of the case.

¹² A fol. 97 of the records.

¹³ A fol. 98 of the records.

¹⁴ A fol. 99 of the records.

¹⁵ A fol. 102 of the records.

moment he threw said items away. He stated that he was standing at the side and that he was observing accused from behind, when the latter threw away the items in question. He also explained that the persons present were not walking out in a crowd, but “*one by one*”.¹⁶ Upon the defence’s suggestion that the objects could have been thrown away by any other person and that witness was merely under the impression that he saw him throwing away “something”, witness again replied that he was certain that it was the accused, although at the time, he was not certain as to what he had thrown.

On 12th May 2017, accused released a statement to the police, in which he denied that the substances found by the police were his own or that he had thrown away any drugs.¹⁷ Accused chose to testify during these proceedings.¹⁸ He stated that he was inside the bar, on the third floor of the premises, when the police arrived and asked all those present to leave the premises. At the time, there were between 18 and 20 persons inside the said bar. He was sitting down with others, drinking a beer. Whilst he was on his way downstairs, he tried to take out a packet of cigarettes, in which he had one cigarette left, from his left jacket pocket. According to him, once outside, he was asked “*What are you doing?*” and they - presumably with reference to the police - could see that he had one cigarette in a Rothmans packet. He explained that he showed the policeman one cigarette and he was told by said policeman to leave. He walked downstairs and was waiting for the bus outside Tiger Bar, when the police approached him again and asked him “*This is yours?*”, stating that he had thrown away some drugs whilst he was still upstairs. Once at the Police Station, he was shown three kinds of packets containing what seemed like marijuana. He denied that these belonged to him and stated that he had told the police to check the packets for fingerprints.

According to the report drawn up by court appointed expert PS 659 Jeffrey Hughes, no fingermarks were noticed on the packaging in Document PCL5, exhibited by Inspector Priscilla Caruana Lee as the evidence bag (marked as M13902175) containing the substances found by the police.¹⁹

In terms of the report drawn up by court appointed expert Professor Emanuel Sinagra²⁰, said expert was handed over an envelope, which contained the following: an evidence bag marked as M13902175 that held: (i) a cigarette packet containing sticks of brown substance (9.18 grams); (ii) a cigarette packet containing sticks of brown substance (14.13 grams) and (iii) a plastic bag holding 12 small plastic bags, which contained green grass. The total weight of the green grass was found to be 15.4 grams, with an average of 1.3 grams of green grass in each bag. The said expert

¹⁶ A fol. 103 of the records.

¹⁷ This statement is exhibited a fol. 7 and 8 of the records.

¹⁸ *Vide* accused’s deposition, a fol. 109 to 122 of the records.

¹⁹ *Vide* report exhibited by Ps 659 Jeffrey Hughes, a fol. 70 *et seq* of the records.

²⁰ This report is exhibited a fol. 57 to 65 of the records.

concluded that *Tetrahydrocannabinol* was found in the extract taken from the brown substance and that the total weight of the brown substances was 23.31 grams. The purity of THC was approximately 6%. *Tetrahydrocannabinol* was also found in the extract taken from the green grass in the said exhibit.

Considers further that:

From the evidence adduced, it results clearly that the Prosecution's case rests on the deposition given by PS 710 and PS 507, who claim to have observed the accused throwing something away, whilst proceeding out of the premises that were being inspected. Upon approaching the accused, on the floor, they found two packets of cigarettes, each containing cannabis resin and a plastic bag containing twelve bags with cannabis grass. On the other hand, the accused denies having thrown away any drugs or that these drugs belonged to him. According to his version, on his way out of the premises, he had shown a packet of cigarettes containing one cigarette to a policeman present on site, who had told him to leave and that later, after he had already proceeded out of the premises and whilst outside in the street, he was stopped by the police, who claimed that he had earlier thrown away the said drugs.

According to the defence, although PS 710 and PS 507 had seen the accused throwing something away, they had not actually seen what had been thrown away, but they had merely assumed that the items containing the drugs, found on site, had been thrown away by the accused. In this respect, the Court notes that the deposition given by PS 710 and PS 507 leaves no doubt that the said police officers had actually seen the accused throwing something away on his way out of the premises being inspected by the police. At the time, both police officers were standing outside, on the third floor, in what they describe as the corridor leading to the stairway. Although there was a number of persons in the premises, yet PS 507 stated that they were all walking out of the premises one by one and thus, not in a crowd, which made it possible for the said police officers to clearly observe the accused's action. Indeed, both approached the accused immediately as soon as they had observed such action on his part. In this respect, PS 507 was very explicit when he stated how he had not simply seen accused's hand moving. Indeed a simple hand movement might lead to a mere impression that an object has been thrown away. However, he had actually seen the accused throwing away an object and also the direction in which this had been thrown. Although it is clear to the Court that both police officers could not be certain of what had been thrown away by the accused, they both indicated that the accused had thrown away an object using his right hand and PS 507 clearly indicates that although at the time, he could not specifically tell what this was or its colour, yet he indicated that it was medium in size. The Court also notes in this respect that two packets of cigarettes and a plastic bag, containing 12 small plastic bags, cannot be deemed to be small or large in size and there is nothing to suggest that they could not have fit in one hand, as submitted by the defence. The Court further notes that PS 507 stated in his deposition that he was certain of what he had observed and that he

was also certain that the said object had been thrown away by the accused. This certainty was also expressed by PS 710. It is also clear from the evidence adduced by the Prosecution, that the items in question were found and seized by the police immediately from the area where the accused was stopped and upon a specific question by the defence, PS 507 clearly states that there was nothing else in this area, except for the said items. Furthermore, as already indicated above, PS 507 had also observed the direction in which the items had been thrown.

The Court also notes that the accused denies that he had thrown away the said items, but seems rather to imply that he had thrown away an empty packet of cigarettes, although he does not state as much. Indeed, in his deposition he states that on his way out of the premises, he tried to take out a cigarette and that his had been the only cigarette left in the packet. Yet, this part of his version of events finds no comfort in the evidence adduced. Both police officers who were surveilling those walking out of the premises, deny having spoken to the accused on his way out, prior to being stopped and arrested and PS 710 specifically denies that the accused had shown him a packet of cigarettes on his way out and that it was then, that the accused threw away the packet. From the records of the case, it results that other police officers were also present on site and yet, the defence did not request that these be summoned to give evidence during the proceedings. Furthermore, had the accused's version been the case, he would have certainly indicated the cigarette in his hand and the empty packet of cigarettes to the police officers who stopped him, there and then. Yet, as already stated, PS 710 refutes the accused's allegation in his deposition. Moreover, the Court finds the accused's version, to the effect that he was already outside in the street when he was stopped by the police, and that it was only then that they claimed that he had earlier thrown away said drugs, as implausible and highly unlikely. PS 710 states repeatedly that PS 507 and himself intervened immediately upon noticing accused's action and that the accused had been immediately approached and stopped, at which stage they found the drugs on the floor. The Court has no reason to doubt this version of events. Indeed, this is in line with normal and proper procedure and it is certainly very improbable that the police, having noticed the accused's action, allowed him to proceed downstairs, only to apprehend him an hour later, as he alleges in his statement.

In view of these considerations, the Court finds that it has been proved to the degree required at law, that the accused had indeed been in possession of the drugs found and seized by the police.

Considers further that:

By means of the first and second charges, the accused has been charged with possession of the cannabis plant and resin obtained from the said plant, in circumstances denoting that this was not intended for his personal use. As indicated above, it results from the report drawn up by Professor Emanuel Sinagra, that the

substances mentioned resulted positive for *Tetrahydrocannabinol*, that whilst the brown substance (cannabis resin) weighed 23.31 grams in total, the grass (cannabis grass) weighed 15.4 grams and each bag of grass weighed approximately 1.3 grams. Photographs of the said substances, forming part of the report exhibited by PS 659 Jeffrey Hughes, show a number of sticks of cannabis resin – about eight pieces in one packet and about thirteen pieces in the other packet – all of approximately the same size and furthermore twelve plastic bags, containing cannabis grass, also approximately of the same weight, in line with the report exhibited by Professor Emmanuel Sinagra. Considering the amounts above indicated and given that a dose of cannabis in a joint normally consists of 0.2 grams²¹, thereby potentially producing approximately 193 joints, considering further the number of cannabis resin sticks, very similar in size, in the two packets of cigarettes, the number of bags containing cannabis grass and that these had a similar weight and moreover that the place in which the accused was apprehended in possession of said substances is well renowned for drug-related activity, the Court deems that the first and second charges have been proved beyond any reasonable doubt. However, although the charges refer to 12th May 2017 and the previous months, once the evidence adduced refers merely to that which occurred on 12th May 2017, the accused is being found guilty of the said charges only with specific reference to such date and not with reference to the previous months.

With respect to the Prosecution's request to treat the accused as a recidivist in terms of law, Prosecution exhibited a true copy of two judgements – one delivered by this Court as presided, dated 4th December 2015, in the names '*The Police (Inspector Jonathan Cassar) vs Awet Estifanos Weldetinsae*' and another also delivered by this Court, as presided by Magistrate Dr. A. Bugeja, in the names '*Il-Pulizija (Spettur Kevin Pulis) vs Awet Estifano Weldetinsae, Abdurai Imam Esmael Ibrahim*', which does not bear a date. As regards the first judgement, during these proceedings, Inspector Jonathan Cassar identified the accused in that case as the accused in the present case and as regards the second judgement, Inspector Kevin Pulis also identified the accused, as the person accused in that case. It results sufficiently proved, therefore, that both judgements refer to the accused. By means of the judgement dated 4th December 2015, the accused was condemned to a period of eleven months imprisonment and a fine of €750. The records of the case do not indicate whether this latter punishment, namely, the fine, has been paid or converted into a term of imprisonment and the Court, therefore, is considering the accused as a recidivist merely in terms of Section 49 of the Criminal Code.²² Although the second judgement exhibited bears no date, yet in that case the accused was also condemned to a fine (*multa*), together with a suspended sentence of imprisonment and therefore, in any case, the same reasoning applies.

²¹ *World Drug Report 2006 Volume I. Analysis*, pg. 96 *et seq.*

²² *Vide* judgement delivered by the Court of Criminal Appeal in the names '*Il-Pulizija vs Anthony Said*', decided on 10th July 2015.

Considerations on Punishment

For the purpose of the punishment to be inflicted, the Court is taking into consideration the criminal record of the accused and that from the said record, it results that the accused has been found guilty *inter alia* of the offences under Sections 95, 96, 221 and 251B of Chapter 9 of the Laws of Malta, in respect of which he was condemned to a suspended term of imprisonment and a fine (*multa*). It also results that he was, on another occasion, found guilty of the offence of possession of cannabis resin in circumstances denoting that this was not intended for his personal use, which offence was committed in aggravating circumstances. Indeed, this formed the merit of the judgement dated 4th December 2015, above-mentioned. This is therefore the second time within a period of less than two years, in which the accused is being found guilty of serious drug-related offences.

The Court is also taking into consideration the quantity of cannabis grass and resin in the possession of the accused. Furthermore, for the purpose of the punishment to be inflicted, the Court is applying the provisions of Section 17(b) and (f) of Chapter 9 of the Laws of Malta.

Conclusion

For these reasons, the Court after having seen Sections 8(a), 8(d), 22(1)(a), 22(2)(b)(i) of Chapter 101 of the Laws of Malta, Regulation 9 of Subsidiary Legislation 101.02, and Sections 17(b), 17(f) and 49 of Chapter 9 of the Laws of Malta, finds the accused Awet Estifanos Weldetinsae guilty of the charges brought against him (though only with reference to 12th May 2017 and not with reference to the months prior to this date) and condemns him to a term of **sixteen (16) months effective imprisonment** – from which term one must deduct the period of time, prior to this judgement, during which he 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 four hundred Euro (€1,400)**.

In terms of Section 533 of Chapter 9 of the Laws of Malta, the Court condemns Awet Estifanos Weldetinsae to pay the expenses relating to the appointment of expert Professor Emanuel Sinagra, amounting to the sum of two hundred, twenty six Euro and ninety six cents (€226.96) and those relating to the appointment of PS 659 Jeffrey Hughes, amounting to the sum of one hundred, fifty two Euro and thirty four cents (€152.34), totaling such expenses to the sum of three hundred, seventy nine Euro and thirty cents (€379.30).

The Court orders that the drugs exhibited as Document PCL 5 are destroyed, once this judgement becomes final and definitive, under the supervision of the Court 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