



**Court of Magistrates (Malta)
As a Court of Criminal Judicature**

Magistrate Dr. Doreen Clarke LL.D.

Today, 27th November, 2017

**The Police
(Inspector Jonathan Cassar)**

vs

Nasir Aydiid Aabi

The Court,

Having seen the charges against Nasir Aydiid Aabi holder of a Maltese Identity Card bearing number 0083308A.

Charged with having in these Islands on the 20th September 2015 and in the preceding weeks:

- a) produced, sold or otherwise dealt in the resin obtained from the plant *Cannabis* or any preparations of which such resin formed the base, this in breach of section 8(b) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta; and
- b) having had in his possession the resin obtained from the plant *Cannabis* or any preparations of which such resin formed the base, this in breach of section 8(a) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

The Court was requested, on pronouncing judgement, to order the payment of the costs incurred in connection with the employment of experts as per section 533 of Chapter 9 of the Laws of Malta.

Having seen the Order of the Attorney General for this case to tried summarily by this Court sitting as a Court of Criminal Judicature.

Having heard the evidence and the submissions of the parties.

Having seen the acts of the proceedings.

Having considered

This case refers to events which took place in the early hours of the 20th September 2015 at Paceville.

Police officers from the drugs squad were conducting a surveillance operation in Paceville for drug related offences. PS839 Stephen Micallef was stationed at a vantage point from where he had part of St George's Road in view; a number of other police officers were stationed in various parts of St George's Road.

In his testimony¹ PS839 Stephen Micallef explained that on the night in question whilst at his vantage point he observed the defendant getting something from behind parked cars; PS839 also observed him going up and down St George's Road stopping youngsters. One of these youngsters was an Italian called Alessio Strano. PS839 saw defendant hand over something to Strano so he instructed his colleagues to stop and search Strano who was found to have cannabis resin. Defendant was also arrested very soon after and, whilst still at Paceville, Strano indicated the defendant as the person who had handed him the cannabis resin.

PC10 Trevor Cassar Mallia gave evidence² and he explained that he had seen the defendant bending down near parked cars and acting as if he was retrieving something then walking on and stopping with various youths. At a certain point when PC10 had just arrested a third party he was informed by PS839 that the defendant had just made contact with an other youth (who

¹ At folio 26 et seq, and folio 125 et seq for the cross-examination.

² Ref testimony at folio 32 and cross-examination at folio 149.

was described to him) and that he was to stop this youth and conduct a search. PC10 carried out these orders and he stopped the person indicated to him: this was an Italian national, Alessio Strano, who had two pieces of brown substance. On his arrest Strano told PC10 that that substance had been given to him by a dark skinned person. Whilst being taken to the police van Alessio Strano saw the person who had just given him the substance and he informed PC10; the person indicated to the police by Alessio Strano was the defendant.

An other officer involved in this operation was PS1086 Johann Micallef³. He confirmed that on the night in question he, together with PC1348, were on the road observing the defendant they followed him near the Westin Dragonara parking lot and whilst there saw him looking for something between the parked cars and in the wall; they also observed him stopping a number of youths. PS1086 explained that he and his colleague were not following defendant all the time and that at a certain point they were informed that PC10 had arrested an Italian national and that they were to arrest the defendant. On arresting defendant they conducted a search and found a mobile phone and three hundred Euros. PC 1348 Joseph Campbell also gave evidence⁴; he more or less corroborated the version given by his colleague.

Inspector Jonathan Cassar also gave evidence⁵. He explained that he was involved in the initial part of this operation until he was called back to the Police depot. He confirmed that whilst he was at Paceville he observed defendant acting as if he lost something, and he was seen stopping and talking to various people. Inspector Cassar described defendants actions as suspicious.

Alessio Strano was also called to give evidence⁶. He confirmed that on the night in question he was at Hugo's with some friends looking for some job opportunity. On leaving Hugo's there was defendant who placed something in his hand (a small hard object) which he put in his pocket. He claims that he did not pay for this substance but that his friends paid ten Euros. Immediately after he was arrested he was searched by the police who found and took the substance he had just aquired. In the course of his testimony

³ Ref his testimony at folio 28 et seq, and cross-examination at folio141 et seq.

⁴ Ref testimony at folio 30 et seq, and cross-examination at folio 132 et seq.

⁵ Ref testimony at folio 40 et seq.

⁶ Ref testimony at folio 14 et seq.

Strano insisted that although he had initially referred to being with friends, those people weren't really his friends but, whilst also being Italians, simply happened to be close by.

From the report filed by the Court appointed expert Godwin Sammut it was confirmed that the substance which was passed on to Strano by the defendant was cannabis resin. The weight of the substance was 0.38 grammes with a purity of 6%⁷.

The defendant chose not to give evidence but he did release a statement when he was being investigated by the police⁸. In his statement he denies having trafficked drugs but he does admit having had a cannabis joint which he had just bought and which he shared with a Romanian man⁹. Defendant also claims that he never goes to Paceville however hwe also stated that he had been in Paceville in August (2105). Then asked about a person he was seen talking to in Shiha, he claimed that this person is a regular customer at Shiha and sells drugs. He also claimed that although he never bought drugs from this person, he does refer people who want to buy drugs to him. Regarding the three hundred Euros that he had on his possession, defendant claims that he was saving that money for a dental procedure and he keeps that money with him all the time because he did not have any safe place where to keep it.

Defendant called a number of witnesses to confirm that he receives social benefits. It was confirmed that for the twenty weeks between 9th May 2015 and 25th MaySeptember 2015 defendant received €75.66 per week. Payment was effected by cheque and it appears that the defendant used to encash these cheques rather than deposit them in any account¹⁰.

Having considered

That through these proceedings the defendant is being charged with selling and dealing in cannabis resin and with having been in possession of that substance. The prosecution is basing these charges on the fact that on the day in question the defendant sold cannabis resin to Alessio Strano.

⁷ Ref testimony at folio 50 et seq and the report Doc GS1 at folio 52 et seq.

⁸ The statement is exhibited as Doc NS1 at folio 23 et seq.

⁹ He later concedes that the person might have been Italian, but insisted that he did not know this person.

¹⁰ Ref testimony of Joseph Chircop (Department of Social Security) at folio 155 and 165, Maria Victoria Dowty (Bank of Valletta) at folio 160 and Dione Micallef (Bank of Valletta) at folio 162.

It has to be pointed out that Alessio Strano's testimony is not credible in all aspects. However there can be no doubt that he was in possession of cannabis resin when a search was carried out immediately on his arrest. Neither can there be any doubt that it was defendant who handed him this substance not only because Strano identified him, but also because PS839 Micallef observed defendant handing over something to Strano which later transpired to be cannabis resin. Furthermore in his statement the defendant himself concedes that in the night in question he was in possession of cannabis which he shared with an other person whom he didn't know and could be Italian. The Court is also convinced that defendant was paid ten Euros for this substance, payment having been effected by the persons who were with Strano.

In view of the above the Court is satisfied that the charges brought against defendant have been proven according to law.

With regards the penalty to be meted out the Court took into consideration the nature of the offences of which defendant is being found guilty and his conviction sheet, from which it appears that defendant had been found guilty of theft on two separate occasions.

Wherefore the Court after having seen sections 8(a)(b) of Chapter 101 of the Laws of Malta finds defendant guilty of the charges brought against him and **condemns him to seven months imprisonment and to a fine of five hundred Euros (€500)**. Furthermore and by application of section 533 of Chapter 9 of the Laws of Malta the Court **is ordering the defendant to pay to the Registrar of this Court the sum of one thousand fifty nine Euros and thirty nine cents (€1059.39)** representing expenses incurred in the employment of experts. The Court is also ordering the destruction, by the Registrar of this Court, of the cannabis resin exhibited Doc JC6.

DR. DOREEN CLARKE
MAGISTRAT