



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

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

Case Number: 153/2017

Today, 10th January 2018

**The Police
(Inspector Nikolai Sant)**

vs

**Mustafa Aseyr Ahmed
(ID 0129203(A))**

The Court,

After having seen the charges brought against the accused Mustafa Aseyr Ahmed, of 21 years, son of Aseyr and Sadija, born in Somalia on 1st January 1996, residing at 52, Apartment 3B, Triq is-Sliem, Marsascala and holder of Alien's Passport Number 9026363 and holder of Maltese Identity Card number 0129203(A);

Charged with having on 30th September 2017 on these Islands:

1. Had in his possession the psychotropic and restricted drug (ecstasy) without a special authorisation 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;
2. Committed these offences in, or within 100 metres of the perimeter of a school, youth club or centre, or such other place where young people

habitually meet in breach of Article 22(2) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;

3. For being a recidivist after being sentenced for an offence by a judgement issued by the Court of Magistrates (Malta) presided by Magt. Dr. C. Scerri Herrera LL.D. on the 26th November 2016, which judgement has become absolute.

The Court is also requested to apply Section 533(1) of Chapter 9 of the Laws of Malta as regards expenses incurred by 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 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 final oral submissions by the Prosecution and having seen the note of submissions filed by the defence.

Considered that:

The facts in brief which led to this case were as follows: On 30th September 2017, after the accused had been observed acting suspiciously in St. George's Road, St. Julians, he was stopped by PC 874 Wayne Briffa, PS 1390 Antoine Muscat and PC 1346 Stephen Cardona and found to be in possession of two small plastic bags, each containing five pills, as well as the sum of one hundred and forty one euro (€141) in cash.

In terms of the report exhibited by court appointed expert Scientist Godwin Sammut, he was given a brown envelope marked as '*Dok A K/B/309/2017 2 plastic bags with 5 ecstasy pills each found on the person of Mustafa Aseyr Ahmed*' containing two transparent plastic bags, each containing five blue pills. According to the expert's conclusions, the substance *3,4-methylenedioxymethamphetamine (MDMA)* was found in extracts taken from the said pills, which amounted to ten.¹

In his deposition, PS 1390 Antoine Muscat states that whilst he was standing in front of the establishment, previously known as Axis, in Paceville, he noticed the accused standing in front of the Hugo Boutique Hotel, some fifty metres away

¹ This report is exhibited a fol. 29 *et seq* of the records of the case.

from him. He observed different persons approaching the accused (he later states that he could not remember whether these persons had approached the accused or whether accused had approached them himself, but all were walking in the direction of where accused was standing) and speaking to him, after which accused would walk away and then return back. He could then see the accused and these persons handing something over to each other, though he could not identify what was being handed over. After the accused had been observed speaking to some people and walking away for the third time, the witness followed the accused together with his colleagues. According to PS 1390, as soon as the accused noticed the witness and PC 874, accused accelerated his pace, but at the end of the road, he was stopped by PC 1346, who approached accused from the opposite direction. The witness states that PC 1346 held accused's right hand, whilst the witness ordered accused to open his fist, following which he could see that accused was holding two plastic bags, each containing five pills. A number of ten and twenty euro notes were found scattered and crumpled in the pockets of accused's trousers. In total, accused was carrying the sum of €141 in cash.² Similarly, PC 1346 Stephen Cardona states that as soon as he stopped the accused, his hand was closed in a fist.³ At first accused refused to open his hand, but then as soon as PC 874 and PS 1390 approached them, he opened his hand, in which he was holding two plastic bags each containing five pills. PC 1346 likewise states that ten and twenty euro notes were found scattered in accused's trousers' pockets and some money was also found in his wallet. PC 1346 further states that initially, he had noticed the accused stopping people further up the road in the area of Havana and St. Rita steps and talking to them. He states that he saw accused passing on something to these persons and later specifies that he saw this movement on the part of accused, though he could not identify what was being passed or given.⁴

In his statement, accused denies that he was selling drugs in Paceville or that he goes to Paceville, in weekends, to sell drugs and states that he had the pills in his possession as "*that's what I use every weekend*".⁵

Considers further that:

In this case, the defence is not contesting the fact that accused was found in possession of ten ecstasy pills. According to the defence, however, the Prosecution has not brought sufficient evidence, to the degree required by law, to sustain the

² A fol. 36 to 53 of the records.

³ Similarly, PC 874 Wayne Briffa states that accused held his hand closed tightly in a fist (a fol. 23 of the records).

⁴ A fol. 55 to 58 of the records.

⁵ A fol. 10 and 11 of the records.

first charge, namely that the said ecstasy pills were found in circumstances denoting that these were not intended for the exclusive use of the accused. The defence submits that the presumption is that drugs are for personal use and it is then for the Prosecution to prove the elements of the offence contemplated in the first charge. According to the defence, the number of pills found in possession of accused was not excessive. Consequently, accused may only be found guilty of possession for personal use.

As held in the judgement delivered by the Court of Criminal Appeal dated 12th May 2005, in the names **Il-Pulizija vs Marius Magri**:

“Illi dawn il-kazijiet mhux l-ewwel darba li jipprezentaw certa diffikolta` biex wiehed jiddetermina jekk id-droga li tkun instabet kienitx intiza ghall-uzu personali jew biex tigi spaccjata. Il-principju regolatur f`dawn il-kazijiet hu li l-Qorti trid tkun sodisfatta lil hinn minn kull dubbju dettat mir-raguni w a bazi tal-provi li jingabu mill-prosekuzzjoni li l-pussess tad-droga in kwistjoni ma kienx ghall-uzu esklussiv (jigifieri ghall-uzu biss) tal-pussessur. Prova, ossia cirkostanza wahda f`dan ir-rigward tista`, skond ic-cirkostanzi tal-kaz tkun bizzejjed.”

Furthermore, as held by the Court of Criminal Appeal in its judgement of 23rd May 2002, in the names **Il-Pulizija vs Brian Caruana**, *“kull kaz hu differenti mill-iehor u jekk jirrizultawx ic-cirkostanzi li jwasslu lill-gudikant ghall-konvinzjoni li droga misjuba ma tkunx ghall-uzu esklussiv tal-akkuzat, fl-ahhar mill-ahhar hija wahda li jrid jaghmilha l-gudikant fuq il-fattispecji li jkollu quddiemu w ma jistax ikun hemm xi “hard and fast rule”x`inhuma dawn ic-cirkostanzi indikattivi. Kollox jiddependi mill-assjem tal-provi w mill-evalwazzjoni tal-fatti li jaghmel il-gudikant u jekk il-konkluzjoni li jkun wasal ghalha il-gudikant tkun perfettament raggungibbli bl-uzu tal-logika w l-buon sens u bazata fuq il-fatti, ma jispettax lil din il-Qorti li tissostitwiha b`ohra anki jekk mhux necessarjament tkun l-unika konkluzjoni possibbli”.*

And as held by the Court of Criminal Appeal in its judgement of 17th February 1997 in the names **Il-Pulizija vs Mohammed Ben Hassan Trabelsi**:

“ ... l-ewwel nett wiehed ghandu jara jekk l-ammont ta` droga huwiex ammont li normalment wiehed jassocja ma` uzu personali, u sa hawn il-piz tal-prova (u cioe` il-prova tal-ammont u tal-pussess) qieghed fuq il-prosekuzzjoni; jekk, pero`, dak l-ammont ikun tali li normalment wiehed ma jassocjahx mal-uzu esklussiv da parti tal-pussessur, ikun jispetta lill-imputat li jipprova, imqar fuq bazi ta` probabbilita`,

li dak l-ammont kien għall-uzu esklussiv tiegħu, u dan b'applikazzjoni tal-Artikolu 26(1) tal-Kap. 101.”

There is no doubt, in the light of the evidence adduced, that on 30th September 2017, the accused was found in possession of ten ecstasy pills. It is likewise clear to the Court that this amount of ecstasy pills is not such as is normally associated with personal use. Accused states, in his statement, that this is the amount of drugs that he uses every weekend. However, the Court deems that it is highly unlikely that the accused would have consumed ten ecstasy pills in one night as this is certainly an excessive amount of drugs for a night's consumption. Furthermore, if the accused is alleging that he consumes this amount of pills over the whole weekend, the question still arises as to why the accused would be carrying a whole weekend's supply with him and this apart from the fact that this still remains an excessive amount of drugs for personal consumption. The Court further notes that accused was found in possession of ecstasy pills in Paceville and specifically, in an area renowned for drug trafficking, after he had been observed approaching several people in the same area over a short period of time. Although the police officers observing the accused could not confirm that the accused had supplied drugs to third parties, yet all these circumstances together, including the number of ecstasy pills found in accused's possession, leave no doubt in the mind of the Court as to the reason for accused's presence in that area.

Consequently, the Court deems that the first charge has been proved to the degree required by law.

As regards the second charge, namely that of having committed this offence in or within 100 metres of the perimeter of a school, youth club or centre or such other place, where young persons habitually meet, in terms of the proviso to Section 120A(2)(b) of Chapter 31 of the Laws of Malta (which is identical to the proviso to Section 22(2) of Chapter 101 of the Laws of Malta), it results from the evidence adduced that the accused was apprehended in Paceville and there is no doubt therefore that the offence occurred in a place where young people habitually meet. Therefore this aggravating circumstance has also been sufficiently proved to the degree required by law.

Finally by means of the third charge, the Court is being requested to treat the accused as a recidivist after having been sentenced by a judgement delivered by this Court, as differently presided, on 26th November 2016. In this respect, the Prosecution exhibited a judgement delivered by this Court as presided by Magistrate Dr. Consuelo Scerri Herrera, dated 26th November 2012, in the names

of ‘The Police (Inspector Kevin Pulis) vs Mustafa Aseyr Ahmed’.⁶ The Court notes, however, that this document, exhibited by the Prosecution, does not indicate that it is a true copy of the judgement indicated in the charge and deems, therefore, that the said charge has not been proved to the degree required by law.

Considers further that:

For the purpose of the punishment to be inflicted, the Court took into consideration the serious nature of the offence of which accused is being found guilty, the number of ecstasy pills found in his possession and that in terms of the proviso to Section 120A(2)(b) of Chapter 31 of the Laws of Malta, the punishment is to be increased by one degree.

The Court notes that the criminal record of accused has not been exhibited by the Prosecution.

As regards the monies found in the possession of the accused, the Court cannot conclude from the evidence adduced, to the degree required by law, that this was derived from drug dealing or that it was forthcoming from drug-related activity specifically on the date to which the first charge refers. Indeed, although accused was observed approaching third parties, police officers were not in a position to confirm that he had supplied them with drugs. Thus, the Court is ordering that these monies are released in favour of accused.

Conclusion

For these reasons, the Court after having seen Sections 40A, 120A(1)(a), 120A(2)(b)(i) and the proviso to Section 120A(2) of Chapter 31 of the Laws of Malta, Regulation 3 of Legal Notice 22 of 1985 and Section 31 of Chapter 9 of the Laws of Malta, finds the accused not guilty of the third charge brought against him and acquits him thereof, but finds him guilty of the first and second charges and condemns him to **twelve (12) months effective imprisonment** – from which term one must deduct the period of time during which the person sentenced has been detained under preventive arrest in connection with the offence of which he is being found guilty by this judgement – and **a fine (*multa*) of one thousand euro (€1,000)**.

⁶ Exhibited a fol. 12 to 15 of the records.

Furthermore, in terms of Section 533 of Chapter 9 of the Laws of Malta, the Court condemns the person sentenced to the payment of the costs incurred in connection with the employment of experts in these proceedings, namely the expenses relating to the appointment of expert Scientist Godwin Sammut, amounting to the sum of one hundred, eighty two euro and seventy one cents (€182.71).

The Court orders the release of the sum of one hundred and forty one euro (€141), exhibited as Document B, in favour of Mustafa Aseyr Ahmed. Furthermore, it orders the destruction of Document A, once this judgement becomes final and definitive, 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