



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

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

Case Number: 104/17

Today, 10th January 2018

**The Police
(Inspector Gabriel Micallef)**

vs

**Abdimajid Noor Ismael
(ID 133201(A))**

The Court,

After having seen the charges brought against the accused, Abdimajid Noor Ismael, 21 years of age, son of Noor Ismael and Anab, born in Somalia on 1st March 1997, residing at number 1, Arienne Flat 7, Qaliet Street, Marsascala, holder of a Maltese Identity card bearing the number 133201(A);

Charged with having on 2nd July 2017 in St. Julians:

1. Had in his possession the drugs (cocaine) specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or export authorization issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorized to manufacture or supply the mentioned drugs and was 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 him for his 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 (G.N. 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 his personal use;

2. Supplied or distributed, or offered to supply or distribute the drug (cocaine), specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, to person/s or for the use of other person/s, without being licensed by the President of Malta, without being fully authorised by the Internal Control of Dangerous Drugs Regulations (GN 292/1939), or by other authority given by the President of Malta, to supply this drug, and without being in possession of an import and export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of paragraph 6 of the Ordinance and when he was not duly licensed or otherwise authorised to manufacture or supply the mentioned drug, when he was not duly licensed to distribute the mentioned drug, in pursuance of the provisions of Regulation 4 of the Internal Control of Dangerous Drugs Regulations (GN 292/1939), as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;
3. 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.

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 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 the accused pleaded not guilty to the charges brought against him;

Having heard final oral submissions by the parties.

Considered that:

By means of the first charge, accused is being charged with the possession of cocaine, in circumstances denoting that this was not intended for his exclusive use. The second charge then refers to the offence of supplying or offering to supply cocaine.

The Court notes that the second charge is being adduced against the accused primarily on the basis of that which Inspector Gabriel Micallef states to have heard on the night of 2nd July 2017. Indeed, Inspector Micallef states on oath that in the early hours of 2nd July 2017, whilst walking down St. George's Road, St. Julians, Paceville, he noticed the accused speaking to three Italian youths and he heard him dealing in cocaine – “... *I could hear him dealing in cocaine and mentioning the price of 20 Euro and these 3 youths were telling him, no 15. He was asking for 20 Euro and they were offering 15 Euro.*” According to the witness “... *he offered them something good, they asked for cocaine and he asked them for 20 Euro and they were offering back 15 Euro*”.¹ Accordingly, he informed his colleagues that the accused was trying to sell cocaine and they decided to approach him and arrest him. However, as they started walking towards the accused, Inspector Micallef and his colleagues, PC 760 Christopher Saliba and PC 1348 Joseph Campbell, noticed that the accused had started walking with these youths and instead they followed him. Inspector Micallef explains how the accused and these youths walked down St. Rita's steps and approached Bay Street Complex. They stopped in the street opposite said complex and continued talking. Inspector Micallef states that then, the accused walked up the hill by the entrance of the car park leading to the complex, whilst the youths, who were two at the time, waited. Accused was observed crouching under a tree at the top of the street and picking up an object. After waiting for him to start walking back down the street, Inspector Micallef and PC 760 approached him. Inspector Micallef informed him that he was a police officer and accused dropped four packets, each containing white powder, from his hand. Accused was then arrested. The witness exhibited Document GM as the sachets to which he refers in his deposition.²

PC 1348 Joseph Campbell confirms that on 2nd July at about 12.30 a.m., together with his colleagues, he followed accused whilst walking down towards Bay Street Complex with two youths. They then noticed him going up the road adjacent to the said complex. He states that his colleagues, PC 760 and Inspector Gabriel Micallef then noticed accused retrieving an object from a wall, which later resulted to be a substance suspected to be drugs and accused was arrested.³ The witness identified Document GM as the sachets that were handed over to him by PC 760 and which were later handed over to Inspector Micallef.⁴ PC 760 Christopher Saliba confirms that on said night, Inspector Micallef instructed him to follow the accused and he did so, in the company of Inspector Micallef himself and later, PC 1348. They followed him from St. George's Road, close to Axis shopping mall, whilst he walked with another three males towards Bay Street Complex. According to witness, when accused reached said complex, he continued to chat for several minutes with one male, after which accused and said male walked towards Lourdes Lane, adjacent to

¹ A fol. 24 of the records.

² *Vide* the deposition given by Inspector Gabriel Micallef, a fol. 23 to 26 of the records.

³ *Vide* the deposition given by PC 1348 Joseph Campbell, a fol. 20 to 22 of the records.

⁴ *Vide* a fol. 27 and 28.

the complex. Half way up the road the other male stopped, whilst accused continued to walk uphill alone. Once at the top of the hill, accused crouched next to a rubble wall and retrieved an object, at which point he was stopped and searched. According to witness, accused held four sachets containing a substance, suspected to be cocaine, wrapped in tissue paper. Witness handed over the sachets to PC 1348 and searched the accused, on whom he found a mobile phone and circa €30. He also identified Document GM as the sachets found in the possession of accused.⁵

In terms of the report exhibited by expert Scientist Godwin Sammut, the substance cocaine was found in extracts taken from the white powder in the document handed over to him for analysis, which contained four sachets with white powder. Said powder weighed 0.39 grams, with a purity of circa 18%. The said sachets weighed 0.08 grams, 0.16 grams, 0.06 grams and 0.09 grams respectively.⁶

Accused chose to give his deposition during these proceedings.⁷ He denied selling any drugs and stated that the cocaine found in his possession was merely for his personal use. He explained that during the six months prior to his arrest, he consumed 0.08 grams of cocaine on a daily basis. He also stated that he had merely gone to Paceville to enjoy himself, that he had bought the substance that night and that he had hidden it, because he did not want to be caught carrying drugs. His intention was to take it home with him, upon his departure from Paceville. Accused further stated that at the time of his arrest he worked at Wasteserv Malta Limited, which was confirmed by Clayton Azzopardi, Chief Financial Officer of said company⁸ and by Karina Azzopardi on behalf of JF Services Limited, sub-contractor of Wasteserv⁹.

Considered further that:

It clearly results from the evidence adduced that on 2nd July 2017, accused was in possession of four sachets, each containing cocaine. Indeed, the defence does not contest that accused was in possession of cocaine, but contests the first charge and by implication the second charge, by stating that such cocaine was merely intended for his personal use.

As held above, the second charge is based primarily on that which Inspector Gabriel Micallef states to have heard, upon noticing the accused speaking to three youths. Inspector Micallef states that upon accused's offer of "*something good*", the youths mentioned cocaine, at which stage, accused indicated a price of €20, whilst the youths, in turn, offered €15. The Court deems that Inspector Micallef's deposition in

⁵ A fol. 29 to 32 of the records.

⁶ *Vide* expert's report a fol. 37 to 43 of the records.

⁷ *Vide* accused's deposition, a fol. 49 to 72 of the records.

⁸ A fol. 75 to 79 of the records.

⁹ A fol. 106 to 141 of the records.

this sense is corroborated by the fact that accused then actually walked towards Bay Street Complex with at least two of the said youths, and whilst one (according to PC 760) or two (according to Inspector Micallef) stopped in the road adjacent to the said complex, accused walked to the top of the hill, crouched next to a rubble wall or a tree, and by his own admission, retrieved four sachets containing cocaine, whilst he started walking again down the road. The fact that the accused actually retrieved what later resulted to be cocaine, after having been heard negotiating a price for cocaine with the youths and furthermore, after having been observed walking to the said street from where he retrieved the cocaine with at least two of the said youths, leaves the Court in no doubt that the accused had actually offered cocaine to the said youths and had no other intention but to sell such cocaine.

As regards the second charge, namely that the accused supplied or distributed or offered to supply or distribute the drug cocaine, in terms of Section 22(1B) of the Dangerous Drugs Ordinance, even an offer to supply drugs amounts to dealing in drugs and since it is irrelevant whether any such substance is actually supplied following such offer, the offer in itself being sufficient to constitute the completed offence of dealing in drugs, it is of no consequence in this case that the accused was actually found in possession of cocaine before he had supplied it to others. As stated in the judgement delivered by this Court, differently presided, on 12th October 2001, in the names **Il-Pulizija vs Ronald Psaila**, which was subsequently confirmed by the Court of Appeal in its judgement delivered on 8th January 2002 (Appeal No: 187/2001):

*“Minn din id-disposizzjoni tal-ligi johrog car li r-reat ta’ Traffikar jikkonfigura anki jekk persuna toffri li taghmel wahda mill-azzjonijiet indikata f’dan l-Artikolu. Fit-test ingliz, il-kelma “joffri” hija trodotta bil-kelma “offer”. Issa stante li ma hemmx fl-Ordinanza definizzjoni ta’ din il-kelma, allura ghall-finijiet ta’ interpretazzjoni, din ghandha tittiehed fis-sinifikat ordinarju taghha, u cioe` li, spontaneament jew fuq rikjesta, direttament jew indirettament, **persuna turi**, bil-fatt jew bil-kliem, id-disponibilita` taghha li taghmel wahda mill-azzjonijiet indikati.*

*In propositu huma interessanti l-osservazzjonijiet maghmula fil-Blackstone Criminal Practice 2001 – (11th Ed. B20.29) fuq l-interpretazzjoni tal-frasi “**Offering to Supply**” kontenuta fil-Misuse of Drugs Act 1971 s. 4. “**An offer may be made by words or conduct ... Whether the accused intends to carry the offer into effect is irrelevant; the offence is complete upon the making of an offer to supply**” (vide kazistika indikata – pg. 776).”*

It is clear that in this case the accused offered to supply cocaine to others, so much so that after having been requested to supply them with the said drug, and after discussing the price, he proceeded to walk with them to the area where he had hidden the cocaine and actually retrieved it, at which point he was intercepted by the police. The fact that the accused was apprehended before actually supplying others with

cocaine is irrelevant for the purposes of the said offence, since his offer to supply others with the said drug is in itself sufficient to constitute the offence.

Apart from these considerations, there are other circumstances which lead the Court to conclude that the cocaine found in accused's possession was not intended for his exclusive use, but to be supplied to third parties. Indeed, although in his deposition accused explains that he consumed cocaine daily for the previous six months prior to his arrest, the Court finds this part of his deposition as most unlikely and nothing short of a weak attempt to mould a version that fits the facts resulting from the evidence adduced. In this respect, the Court makes the following observations: Accused states that he bought the cocaine found in his possession on that same night from a Caucasian male. He states that he asked him for five sachets of 0.4 grams of cocaine. The said male did not have five sachets, but four sachets, one of which contained double the amount. Indeed, according to accused, the male told him that the sachet containing 0.16 grams was equivalent to two sachets. Accused explained that he used 0.08 grams of cocaine daily. In this regard, the Court notes that it is very unlikely that on the night in question the accused requested five sachets containing 0.4 grams of cocaine and obtained precisely 0.39 grams of cocaine in four sachets, with one sachet containing double the amount to make up approximately the amount of grams he requested. The Court notes that the accused did not know his supplier on the night in question although he said he would recognise him, so much so that he approached him and asked him if he could sell him something, with the supplier asking him what he needed exactly, to which accused replied 'cocaine'. Yet, quite coincidentally, said supplier had a sachet containing 0.08 grams, which according to accused was the precise amount he consumed daily, another sachet containing precisely double this amount and then another two sachets containing 0.06 grams and 0.09 grams respectively, also close to the 0.08 grams mark. This version of events is, to say the least, very doubtful and implausible and it is clear to the Court that accused merely made up a version as to the amount of cocaine he used daily in order to justify the number of sachets found in his possession and the manner in which these were divided, which in itself also indicates that these were intended for sale.

Furthermore, as the Prosecution rightly points out, it is also very unlikely that a person who uses cocaine on a daily basis, goes to Paceville and acquires cocaine only to hide it in order to take it home later, rather than making, at least, some use of it on the spot. On the basis of the drug cases it deals with daily, this Court also cannot but notice that in Paceville, it has become a common *modus operandi* for foreign drug dealers to hide the drugs in various places. Although the drugs would not be flagrantly noticeable to a passer-by, such places would be easily accessible to the dealer. Additionally, on the basis of the deposition provided by the three Police Officers who were observing the accused, it is also clear that accused's reply in cross-examination that he had not spoken to anyone and that he was alone prior to retrieving the cocaine, is untrue.

These considerations do not only lead the Court to conclude beyond any reasonable doubt that the cocaine was found in possession of the accused in circumstances denoting that this was not intended for his personal use, but corroborate further the circumstances considered by the Court in concluding that the accused had indeed offered to supply cocaine to the mentioned youths.

The Court therefore deems that the first and second charges have been proved to the degree required by law.

Finally, accused has also been charged with committing these offences in, or within 100 metres from the perimeter of a school, youth club or centre, or such other place where young people habitually meet. It is clear from the evidence adduced that the said offences were committed in Paceville, a place where young people regularly meet and therefore, this aggravating circumstance also results in terms of law.

Considered further that:

For the purpose of the punishment to be inflicted, the Court took into consideration the serious nature of the offences of which accused is being found guilty, the circumstances of the case and that the accused had four sachets of cocaine in his possession, that the substance weighed 0.39 grams in total and had a purity of circa 18%.

Furthermore, the Court is applying the provisions of Sections 17(f) and (h) of Chapter 9 of the Laws of Malta in respect of the first and second charges.

Conclusion

For these reasons, the Court after having seen Parts IV and VI, Sections 22(1)(a), 22(2)(b)(i) and the second proviso to Section 22(2)(b) of Chapter 101 of the Laws of Malta, Regulations 4 and 9 of Subsidiary Legislation 101.02 and Sections 17(f) and (h) of Chapter 9 of the Laws of Malta, finds the accused Abdimajid Noor Ismael guilty of the charges brought against him and condemns him to **a term of ten (10) months effective imprisonment** – from which term one must deduct the period of time, prior to this judgement, during which the person sentenced 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 Euro (€1,000)**.

In terms of Section 533 of Chapter 9 of the Laws of Malta, the Court condemns the person sentenced to pay the expenses relating to the appointment of expert Godwin Sammut, namely, the sum of one hundred and eighty Euro and fifty four cents (€180.54).

The Court orders that the drugs exhibited as Document GM 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