



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

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

Case Number: 42/2018

Today, 18th June 2018

**The Police
(Inspector Trevor Micallef)**

vs

**Ibrahim Omar Muhudin
(ID 47988(A))**

The Court,

After having seen the charges brought against the accused Ibrahim Omar Muhudin, son of Muhudin and Maymum nee` Fayah, born in Somalia on 4th March 1982, residing somewhere in Fgura and holder of identity card with number 47988(A);

Charged with having on 3rd March 2018 at around ten minutes past two (02.10hrs) in these Islands, in Spinola Garden, St. George's Road, St. Julians and/or in the vicinity:

1. For having on the same date, time, place and circumstances 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 in circumstances denoting that it was not intended for his personal use;

2. Accuse him further of having on the same date, time, place and circumstances, 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 Section 22(2) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

Having heard the evidence adduced 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 be heard by this Court as a Court of Criminal Judicature;

Having heard the prosecution declare that it was resting its case on the evidence adduced and having heard final oral submissions by the defence.

Considered that:

The facts which led to this case were as follows: On 3rd March 2018, at about 2.00 a.m., whilst PC 1111 Braden Borg, PC 1089 Brady Sammut and WPC 316 Ruth Fenech were conducting a patrol in St. George's Road, Paceville, they noticed that the gate to Spinola Gardens was open. Since the said garden was normally closed to the public at this hour, they walked inside the garden, where they saw the accused lying down on a bench, asleep. They immediately noticed that in the palm of his hand, he was holding two small plastic bags, containing a green substance which they suspected to be cannabis grass.

PC 1111 states on oath that he held accused's hand and woke him up. He carried out a frisk search on the accused, during which, in accused's right jacket pocket, he found another bigger bag containing a substance and in his left pocket, a number of empty plastic bags, about fifty in number. In his back pocket, he found another empty plastic bag, different from the rest. Said witness states that he also found a number of other plastic bags, about twenty in number, on the bench where the accused had been lying down and on the ground, underneath the said bench. They also conducted a search around the park, because there was a strong smell of cannabis. Nothing further was found on accused during a strip search conducted later at the police station.¹

¹ A fol. 37 to 41 of the records of the case.

PC 1089 confirmed on oath that whilst asleep, accused held two bags containing a substance that looked like cannabis grass in his hand. Accused woke up startled and upon being asked to sit up, they noticed that on the bench, next to him, there were a considerable number of empty plastic sachets. Witness states that he could smell a strong odour of cannabis and thus, he used his torch to look in the bushes close by. At the same time PC 1111, in the presence of WPC 316, carried out a search on accused, at which point he heard PC 1111 asking the accused “*What is this?*”, whilst he could see PC 1111 holding a bag containing more grass, in his hand.²

WPC 316 likewise confirmed that accused held two sachets containing suspected cannabis grass in his hand, whilst he was asleep on a bench inside the garden and that once they woke him up, they seized these bags. She heard PC 1111, who carried out a frisk search on accused, asking him “*What is this?*”, whilst showing accused a bigger sachet. She states that PC 1111 found this bag as well as a number of empty sachets in accused’s jacket.³

Accused released a statement on 3rd March 2018, after he was duly cautioned in terms of law and after having refused to obtain legal advice prior to his interrogation and to be assisted by a lawyer during said interrogation.⁴ He stated that the two small bags containing cannabis belonged to him, and upon being questioned about the thirty five small empty plastic bags and the bigger sachet, he replied that “*the police found them on the floor away from me, in the garden*”.⁵ He denied that the police found these items in his possession and stated that whilst he was sleeping in the garden, they found him holding two small bags, which belonged to him. He had bought them outside Havana, before midnight. He stated that the bigger bag (containing cannabis) and the small empty bags were not his and that the police were lying as these were not found in his possession.

Accused chose to take the witness stand during these proceedings. He states that during that night he had been drinking and he was slightly drunk and so he slept in the garden in Paceville. Again he states that he was holding two packets of cannabis in his hand and he was suddenly woken up by the police. He states that the police then searched the whole garden and found some cannabis, about five metres away from him. The police also found some small bags underneath the bench, where he had been sleeping. He states that these did not belong to him.

² A fol. 25 to 32 of the records.

³ A fol. 33 to 35 of the records.

⁴ A fol. 12 to 14 of the records.

⁵ A fol. 13 of the records.

According to him, everyone sold drugs in the garden, but he had never sold drugs during his time in Malta. He also states that he smokes cannabis and that this was the reason for having bought the two small bags containing the said substance. He further states that he would not have slept in a public garden, had he been carrying more drugs as he would have been more attentive to police presence.

In terms of the report drawn up by expert Godwin Sammut, for the purposes of his analysis, he was handed over an envelope marked with the words ‘Sp. Trevor Micallef vs Omar Muhudin Ibrahim’, which contained the following: 1) 2 plastic sachets that contained green grass; 2) a plastic bag that contained green buds; 3) a number of empty plastic bags and 4) a lighter. According to the said report both the grass in the two plastic sachets, weighing 0.56 grams and 0.83 grams respectively and the buds, which weighed 4.18 grams, resulted positive for Tetrahydrocannabinol. The total weight of said substances was thus of 5.57 grams and the purity of THC was approximately 12%.⁶

Considered further that:

Accused is being charged with the offence of possession of cannabis plant in circumstances denoting that this was not intended for his personal use. As results from the evidence adduced, the accused denies having been found in possession of the bigger bag containing 4.18 grams of cannabis and the empty plastic sachets and claims that only the two small bags of cannabis (amounting to 1.39 grams) were in his possession and that these were solely for his personal use.

Accused’s version of events is clearly in contrast with the version of events provided by the police officers involved in his arrest. Whilst accused claims that the police found the bigger bag of cannabis and the empty sachets, on the ground, a few metres away from him, PC 1111 states that said bag and some empty sachets were found in accused’s jacket, whilst some more sachets were found on the bench near accused and underneath the said bench. Despite accused’s assertions, the Court sees no reason to refute PC 1111’s version of events. He clearly states that he found the bigger bag of cannabis and a number of empty plastic sachets inside accused’s jacket, whilst he conducted a search on the person of the accused. Neither were the rest of the empty plastic sachets seized, found a few metres away from the accused, as alleged by accused, but rather on the bench where accused had been lying down and underneath it. PC 1111’s version is then corroborated by the other two police officers. PC 1089 also noticed a number of empty sachets on

⁶ This report is exhibited a fol. 61 to 64 of the records.

the bench next to accused and although he did search the surrounding area by using his torch, he did not state to have found any drugs or other items during this search. On the contrary, he states that whilst conducting this search, and whilst his colleagues were performing a search on accused, he could clearly hear PC 1111 addressing accused with the words “*What is this?*” and he could see PC 1111 holding a bag containing cannabis. This is likewise confirmed by WPC 316. PC 1111’s version of events as corroborated by the other two police officers is clearly more credible and plausible than that provided by the accused. The Court thus concludes that it has been proved to the degree required by law that accused was in possession, not merely of the two small plastic bags initially noticed in his hand, but also of the bigger bag containing cannabis and a number of empty plastic sachets, some found in his jacket pocket and some others near him on the bench, where he had been lying down, as well as underneath the said bench.

As to the charge brought against the accused, the Court notes that although the amount of cannabis found in accused’s possession was not substantial, yet the fact that he was found in possession of a substantial number of empty plastic bags denotes that said cannabis was not merely intended for his personal use. It is a known fact that cannabis and other drugs for that matter, are generally sold in small plastic sachets. Had accused intended the drugs found in his possession merely for his personal use, he would have had no plausible reason to also carry around such a substantial number of empty plastic bags. Furthermore, although the amount of drugs in his possession was not considerable, yet it still exceeds the amount which one would be normally expected to consume in a night. Moreover, accused’s denial of having been found in possession of the larger bag of cannabis and the empty plastic sachets, both in his statement and on the witness stand, despite the glaring evidence to the contrary, clearly indicates the unreliability of accused’s assertions.

For these reasons, the Court deems that the first charge brought against the accused has been proved to the degree required by law.

As regards the second charge, which refers to the aggravating circumstance of having committed this offence in or within 100 metres of a place where young people habitually meet, it clearly results that the said offence was committed in St. George’s Road, St. Julians and that accused was found in Spinola Gardens, opposite the Wembley Garage, which is certainly an area where young people normally meet. Thus, such aggravating circumstance also results to the degree required by law.

Considerations on Punishment

For the purpose of the punishment to be inflicted with respect to the first charge, the Court is taking into consideration the criminal record of the accused, from which it results that accused has been previously found guilty of contraventions, the nature of the first charge and that the cannabis grass found in his possession weighed 5.57 grams.

Conclusion

For these reasons, the Court after having seen Sections 8(d), 22(1)(a), 22(2)(b)(i) and the second proviso of Section 22(2)(b) of Chapter 101 of the Laws of Malta and Regulation 9 of Subsidiary Legislation 101.02, finds the accused Ibrahim Omar Muhudin guilty of the first and second charge brought against him and condemns him to eight (8) months 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 offence of which he is hereby being found guilty – and a fine (*multa*) of nine hundred and fifty euro (€950).

The Court orders the destruction of Document TM, 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 process verbal shall be inserted in the records of these proceedings not later than fifteen days from the said destruction.

In terms of Section 533 of Chapter 9 of the Laws of Malta, the Court is sentencing Ibrahim Omar Muhudin to the payment of the costs incurred in the appointment of expert Scientist Godwin Sammut in the course of these proceedings, amounting to the sum of two hundred and eighty three Euro and one cent (€283.01).

Natasha Galea Sciberras
Magistrate