



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

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

Case Number: 48/2018

Today, 11th July 2018

**The Police
(Inspector Trevor Micallef)**

vs

**Daniel Hæggløv
Norwegian Passport No 28838159**

The Court,

After having seen the charges brought against the accused Daniel Hæggløv of 31 years, son of Owe and Reidun nee` Skjerven, born in the Lærdel, Norway on 23rd May 1986, residing at 'Violet', Flat 5, Triq Misrah il-Barrieri, Msida, holder of Norwegian Passport bearing No 28838159;

Charged with having on 8th March 2018 in 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. 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 that it was not intended for his personal use;

3. 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 an export authorization issued by the Chief Government Medical Officer in pursuance of the provisions of paragraph 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorised to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorised 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 was supplied to him for his personal use, and this in breach of the 1939 Regulations of the Internal Control of Dangerous Drugs (GN 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;
4. 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, Chap 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;
5. 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;
6. Failed to observe any of the conditions imposed on him by the Court of Magistrates (Malta) Magt. Dr. D. Clarke LL.D in her decree granting bail.

The Court is also requested to apply Section 533(1) of Chapter 9 of the Laws of Malta, as regards the expenses incurred by the Court appointed experts.

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) and in virtue of subsection two (2) of Section 120A of the Medical and Kindred

Professions Ordinance (Chapter 31 of the Laws of Malta), for this case to be heard by this Court as a Court of Criminal Judicature;

Having heard final oral submissions by the parties.

Considered that:

The facts which led to this case were as follows: On 8th March 2018, at about 00.45 a.m., whilst on patrol in St. George's Road, Paceville, PS 1540 Edmond Fenech and PC 1089 Brady Sammut noticed the accused who was about to enter a club in Paceville, holding his head down and walking at a fast pace. PS 1540 recognised accused as having been arrested in connection with drug related offences three weeks before and this roused the officer's suspicion. Accordingly, PC 1089 approached the accused and informed him that he was about to conduct a search on his person. During this search, said PC 1089 found three bags containing a substance suspected to be cocaine, five pink pills suspected to be ecstasy pills and a bag containing a yellowish substance. Inside accused's wallet, he also found a slightly bigger plastic bag containing a white substance, suspected to be cocaine and €295 in cash.¹ A search was later conducted at accused's residence, during which the following items were found: three bags that contained a substance suspected to be cannabis, five pills suspected to be ecstasy pills, one bag containing a substance suspected to be MDMA, another bag allegedly containing cannabis, a joint, twelve empty plastic bags containing traces of cocaine and scales.²

In terms of the report drawn up by expert Professor Emanuel Sinagra³, he was handed the following documents for analysis:

A brown envelope which contained a further four brown envelopes labelled TM8, TM9, TM10 and TM11, the contents of which were as follows:

- i) TM 8 contained a) a brown envelope with 295 Euros; b) a packet containing five pink tablets in the form of dominoes; c) a plastic packet containing 1.74 grams of a light brown crystalline substance; d) a bag containing a white substance weighing 0.94 grams; e) and a bag with

¹ During his deposition, PC 1089 Brady Sammut recognised Document TM 8, exhibited by Inspector Trevor Micallef, as containing the substances and cash found in accused's possession in Paceville.

² *Vide* the depositions given by PC 1089 Brady Sammut, a fol. 27 to 30 of the records and PS 1540 Edmond Fenech, a fol. 35 to 38 of the records.

³ *Vide* report a fol. 53 to 73 of the records.

three packets each containing a white substance with individual weights of 0.44 grams, 0.41 grams and 0.41 grams;

- ii) TM 9 contained a) a number of empty sealable plastic bags; b) six sealable plastic bags containing traces of a white substance and c) another with traces of a light brown substance;
- iii) TM 10 contained a) two batteries; b) a knife and c) small electronic weighing scales;
- iv) TM 11 contained a) five pink tablets in the form of dominoes; b) packets with traces of a white substance; c) a plastic bag containing 14.60 grams of a light brown crystalline substance; d) two packets containing 0.21 grams and 0.27 grams of a white substance; e) three small plastic bags containing 4.95 grams, 0.39 grams and 1.33 grams of green grass; f) a small plastic bag with a smoked joint; g) a piece of cling film; h) 0.59 grams of a brown substance and 0.12 grams of green grass.

Said expert's conclusions were as follows:

- a) Extracts taken from the pink tablets as well as extracts taken from the light brown crystalline substance resulted positive for 3,4-methylenedioxymethamphetamine (MDMA). The number of tablets was 10. The total weight of the crystalline substance was of 16.34 grams.
- b) Extracts taken from the white substance and traces from eight (8) plastic bags resulted positive for cocaine. The total weight of the white substance found in six different packets was 2.68 grams, with a purity of circa 10%.
- c) Extracts taken from the brown substance, green grass and joint tested positive for Tetrahydrocannabinol. The total weight of the brown substance was 0.59 grams, with a purity of circa 6.5% and the total weight of the green grass was 6.79 grams, with a purity of circa 6%.

Accused released a statement to the police on 8th March 2018, after he was cautioned in terms of law and given the right to seek legal advice prior to his interrogation and to have his lawyer present during said interrogation. He

exercised his right to seek legal advice prior to his interrogation.⁴ He also chose to take the witness stand during these proceedings.⁵

In his statement, accused confirmed that ecstasy, cocaine and MDMA were found in his possession in Paceville. Furthermore, to the question “*You are being shown the drugs which were found at home, do we agree that we have five pink pills suspected ecstasy as I mentioned before, 2 bags suspected with cocaine, 3 bags with suspected cannabis grass, 1 joint, 1 piece of suspected cannabis resin and 1 piece of MDMA?*”, accused replied in the affirmative. He also confirmed that weighing scales and several empty bags were found at his residence.

Considered further that:

By means of the first four charges, accused is being charged with possession of the cannabis plant, cannabis resin, cocaine and ecstasy pills in circumstances denoting that these were not intended for his personal use.

As regards the cannabis plant, resin and cocaine, the accused is contesting these charges and whilst admitting that such substances were found in his possession, he contends that these were merely intended for his personal use. He further contends that the MDMA and ecstasy pills found in his possession in Paceville were likewise for his personal use, whilst the ecstasy pills and MDMA, found at his residence, belonged to a third party for whom he kept them as a favour.

As is clear from the evidence adduced, namely, the testimony of the two police officers who proceeded to arrest the accused, accused’s own statement and the report drawn up by expert Professor Emanuel Sinagra, on the night in question, whilst in Paceville, accused was found in possession of four plastic bags containing cocaine, weighing 0.44 grams, 0.41 grams, 0.41 grams and 0.94 grams respectively, a plastic bag containing MDMA weighing 1.74 grams and five ecstasy pills.

At his residence, the substances found consisted of another five ecstasy pills, two bags containing cocaine and weighing 0.27 and 0.21 grams respectively, a plastic bag containing MDMA weighing 14.6 grams, four bags containing cannabis grass, weighing 4.95 grams, 0.39 grams, 1.33 grams and 0.12 grams respectively (the Court notes that only three bags are mentioned in accused’s statement, but PS 1540

⁴ The statement is exhibited a fol. 18 to 20 of the records.

⁵ A fol. 88 to 102 of the records.

indeed mentions four bags of cannabis), a smoked joint and 0.59 grams cannabis resin. Weighing scales and a number of empty sealable bags as well as eight plastic bags containing traces of cocaine were also found at the residence.

As regards cannabis grass and resin, in his deposition during these proceedings, accused states that he smoked a minimum of five grams daily. That accused smoked cannabis is evident from the smoked joint found at his residence. In this respect, the Court notes that the bags of cannabis grass as well as the resin were found at accused's residence and that in total cannabis grass weighed 6.79 grams, whilst the resin weighed 0.59 grams. The Court further notes that although a number of empty sealable bags were found at accused's residence, yet another eight bags containing traces of cocaine were also found thereat. Whilst empty sealable bags are normally associated with drug dealing, yet in this case, given that eight bags with traces of cocaine were also found, it is also possible that accused used such bags for the drugs which he himself consumed. Thus, considering accused's smoking habits and the amount of cannabis found, the Court does not deem that the first two charges have been proved to the degree required by law. However, the Court is finding accused guilty of the offences of possession of cannabis grass and resin for personal use, which offences are deemed to be comprised in the offences contemplated in the first two charges.

As regards cocaine, accused was found in possession of four plastic bags containing said substance in Paceville and another two plastic bags at home. The latter weighed 0.21 grams and 0.27 grams respectively, whilst the former weighed 0.44 grams, 0.41 grams, 0.41 grams and 0.94 grams. In his statement, he states that he had bought the cocaine found in his possession from Paceville. During his deposition, accused further states that said cocaine was intended for his personal use. He states that he used cocaine daily, that he normally bought five grams at a time, that this would cost circa €300, that he would normally buy such an amount in one bag, if he was not partying he would consume between half a gram and a gram daily, but he would consume much more when he was partying. He sometimes consumed cocaine at work, if he planned on going out after and at times he went straight to work from Paceville, so he would need cocaine to stay awake. Furthermore, accused was also found in possession of five ecstasy pills and 1.74 grams MDMA. In this regard, as to the MDMA, in his statement accused states that he had brought these from his house, whereas with respect to the ecstasy pills, he states that normally he bought ten pills at a time, for his personal use, as he acquired them at a reduced price.

The Court considers that on the one hand, whilst accused did not have large amounts of cocaine, MDMA and ecstasy pills in his possession in Paceville, yet such a cocktail of drugs, considered in their totality, clearly raises suspicion as to the actual intention of accused. On the other hand, the Court notes that accused was a heavy drug user, who consumed between half a gram and a gram of cocaine daily and a larger amount when he went out, as well as other drugs. Considering accused's heavy drug consumption, the Court's considerations above regarding the plastic bags found at his residence, and the lack of any other evidence which clearly points towards dealing in drugs, the Court cannot reach the conclusion to the degree required by law, that accused did not intend such drugs for his personal use. For these reasons, as regards the ecstasy pills, MDMA and cocaine found in his possession in Paceville and the cocaine found at his residence, the Court deems that it has not been sufficiently proved that these denoted other than personal use. Accordingly, the Court is not finding accused guilty of the third charge as proffered against him, but merely of the offence of possession of cocaine for personal use.

Furthermore, once the Court is not finding accused guilty of being in possession of drugs (in Paceville) other than for personal use, neither is accused being found guilty of the aggravating circumstances in the fifth charge.

However, as regards the fourth charge, in his deposition during these proceedings, accused admitted that the MDMA and ecstasy pills found at his residence did not belong to him, but to a third party for whom he had agreed to keep them. It is therefore clear, in view of accused's declaration, that such drugs were not intended for his personal use and consequently, the fourth charge has been proved to the degree required by law. Indeed as stated in the judgement delivered by the Court of Criminal Appeal on 2nd September 1999, in the names **Il-Pulizija vs Jason Mallia**:

“2. Qabel xejn ghandu jigi precisat li mhux korrett li wiehed jghid li biex jikkonfigura r-reat ta' pussess bl-aggravanti kontemplata fl-Artikolu 22(2)(b)(i) tal-Kap. 101 irid ikun hemm provi li juru li l-pussessur kellu l-animus li jispacca d-droga. Jekk tigi ppruvata, mic-cirkostanzi, tali intenzjoni allura certament dak il-pussess ma jkunx ghall-uzu esklussiv tal-pussessur. Izda tali intenzjoni mhix mehtiega ghall-finijiet tal-aggravanti in kwistjoni. Dak li l-ligi tirrikjedi hu li jigu pruvati cirkostanzi li jissodisfaw lill-Qorti sal-grad tal-konvinciment morali “li dak il-pussess ma kienx ghall-uzu esklussiv tal-hati”. Fi kliem iehor, jekk persuna jkollha pussess ta' droga li mhix bi hsiebha tuza, tali pussess ikun jammonta ghal pussess mhux ghall-uzu esklussiv tal-pussessur, anke jekk il-pussessur ikun ghadu

ma ddecidiex kif bi hsiebu jiddisponi altrimenti minn dik id-droga. Bil-kelma “uzu” il-legislatur ried ifisser “konsum”, u cioe` li l-pussessur juza huwa stess dik id-droga ossia jabbuza minnha billi jikkonsmha...”. [emphasis of that Court]

Furthermore, the Court notes that although the fourth charge refers to ‘ecstasy’ and not ‘MDMA’, it is however clear that ‘ecstasy’ is the street name, normally used for pills, which may have different chemical compositions or components, including MDMA and MDA amongst others. As held by the Court of Criminal Appeal in **The Republic of Malta vs Steven John Lewis Marsden** in its judgement dated 2nd November 2009, in a case where appellant was charged with conspiring to deal illegally in “ecstasy pills”:

“The expert Mario Mifsud, when giving evidence before the first Court, stated that the term “ecstasy” is a generic name used for pills which may have different chemical compositions or components – MDMA, MDEA, MDA, BZP, and so on. It is not the term “ecstasy” which renders the pill illegal but its chemical composition, because not each and every substance imaginable that may be used to manufacture “ecstasy pills” is controlled by law. Having said that, however, it is the view of this Court that the wording of the bill of indictment cannot but be interpreted as meaning that appellant was charged with conspiring to deal in pills that were illegal, that is conspiring to deal in “ecstasy pills” whose chemical composition is, or was at the time the pills in question were seized, proscribed by law. Moreover, although the word “ecstasy” may, in certain quarters, be regarded as a generic term, it is MDMA which was first referred to as “ecstasy”. “MDMA” and “ecstasy” are in fact constantly and consistently used interchangeably, the former being a reference to the chemical composition, the latter today being the street name. And, indeed, the constant practice in our Courts of Criminal Justice for the last nineteen years (ever since the Third Schedule to Cap. 31 was substituted by Legal Notice 48 of 1990) has been that anyone charged with possession of, trafficking in, or with conspiring for the purpose of dealing in “ecstasy” was invariably understood as being charged with possession of, trafficking in, or with conspiring for the purpose of dealing in MDMA, that is DMA, MDA or MDMA ...”.

It is therefore clear to the Court that although the fourth charge refers to “ecstasy”, this charge does not merely comprise the ecstasy pills found in accused’s possession, but likewise the substance MDMA.

Finally and by means of the sixth charge accused is also being charged with failing to observe any of the conditions imposed on him by this Court, as presided by

Magistrate Dr. Doreen Clarke, in its decree granting bail. In this regard, the Court notes that the Prosecution has failed to exhibit a true copy of the said bail conditions and indeed only a copy of the same has been exhibited in the records of the case. Yet during his deposition, when questioned on this matter: *“You knew that you were on bail the second time ... One month before, less than a month before you were arraigned by myself in front of these Courts, you were given bail conditions, you didn’t know the consequence of breaking the bail?”*, accused replied as follows: *“I knew the consequences but I just stupidly thought that I wouldn’t get caught again”*.⁶ This Court cannot but consider this reply as a clear admission by accused that he had indeed been granted bail in separate proceedings and that committing another offence would be tantamount to a breach of his bail conditions, of which he was very much aware. Accordingly, the Court deems that this charge has been proved to the degree required by law. However, since as stated above, the Prosecution failed to produce a true copy of the bail conditions, the Court is not ordering the forfeiture of the sum stated in the bail bond in favour of the Government of Malta.

Considers further that:

As regards the punishment to be inflicted, the Court is taking into account the clean criminal record of the accused and that he cooperated with the police to such an extent that the Prosecution declared that accused should benefit from the provisions of Section 29 of Chapter 101 of the Laws of Malta and its corresponding section in Chapter 31 of the Laws of Malta.

The Court is also taking into consideration the circumstances of the case, the nature of the charges of which accused is being found guilty and the amount of drugs found in his possession.

Since there is no evidence to the degree required by law that the monies found in possession of the accused were obtained through drug-activity, the Court is ordering the release of such monies in favour of accused.

Conclusion

For these reasons, the Court after having seen Parts IV and VI, Sections 8(a), 8(d), 22(1)(a), 22(2)(b)(ii) and 29 of Chapter 101 of the Laws of Malta, Regulation 9 of Subsidiary Legislation 101.02, Sections 40A, 120A(1)(a), 120A(2)(b)(i) and (ii),

⁶ A fol. 98 of the records.

120A(2A) and (2B) of Chapter 31 of the Laws of Malta, Regulation 3(1) of Legal Notice 22 of 1985, Sections 17(b) and (f) and 579(2) of Chapter 9 of the Laws of Malta, finds accused not guilty of the fifth charge and acquits him thereof, finds him not guilty of the first, second and third charges as proffered against him, but finds him guilty of the offence of possession of the plant cannabis, cannabis resin and cocaine for personal use, which offences are comprised in the first, second and third charges, finds him guilty also of the fourth and sixth charges and condemns him to a term of ten (10) months effective imprisonment – from which term one must deduct the period of time during which the person sentenced has been held 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(1) of Chapter 9 of the Laws of Malta, it condemns the person sentenced to the payment of expenses relating to the experts appointed by the Court during these proceedings, namely, the expenses relating to the appointment of expert Professor Emanuel Sinagra, amounting to the sum of six hundred and seventy three Euros and fifty cents (€673.50), which costs shall be paid by the person sentenced within four (4) months from today.

Orders the destruction of the drugs forming part of Document TM8 and the drugs and items exhibited as Documents TM 9, TM 10 and TM 11, 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.

Orders the release of the sum of two hundred and ninety five Euros (€295) forming part of Document TM 8 in favour of the person sentenced.

Orders that a copy of this judgement is sent to the Director of Prisons in order that the person sentenced may be provided with the necessary care and assistance to overcome his drug habit.

Natasha Galea Sciberras
Magistrate