

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

Magistrate Dr Josette Demicoli LL.D

The Police

(Inspector Trevor Micallef)

vs

Abdirashid Ibrahim Ahmed

Case No: 119/2018

Today 15th November 2018

The Court,

Having seen the charges brought against **Abdirashid Ibrahim Ahmed**, identity card no. 9000245(A)

Accused with having on the 14th August 2018 at around half seven in the afternoon (19:30hrs), in these islands, in St George's Road, St Julian's:

1. 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)
2. accused further for 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 article 22(2) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

Having seen the Attorney General's order in terms of Article 22(2) of Chapter 101 of the Laws of Malta dated 15th August 2018.

Having heard witnesses.

Having heard oral submissions.

Having seen all the acts and documents of the case.

Considers

The accused is being charged with having on the 14th August 2018 at around 19:30hrs having in his possession the resin obtained from the plant cannabis which drug was found under circumstances denoting that it was not intended for his personal use; and also with the aggravating circumstance of the distance.

Inspector Trevor Micallef¹ testified that on the 14th August 2018, at about 7p.m., he was informed by Inspector Malcolm Sammut (Rapid Intervention Unit) that whilst he was on duty in St George's Road, St Julians in the vicinity of Axis Complex he noticed two coloured persons whom he saw throwing something on the ground. Inspector Sammut told him that he noticed the accused throwing a packet of ciagrettes. When Inspector Sammut went near the packet of cigarettes, a Rothmans red packet, he opened it and found several pieces of suspected cannabis resin. Therefore, he requested assistance and the accused was arrested. The accused then released his statement the following day.

Inspector Malcolm Sammut² testified that on the 14th August 2018 whilst he was in plain clothes at around 6.30p.m in St George's Road in front of Axis he noted a male person who was wearing a black t-shirt with yellow stripes who was holding a packet of cigarettes. This man was walking about 5/10 metres in front of Inspector Sammut when the

¹ Sitting of the 30th August 2018

² Sitting of the 30th August 2018

latter saw him put this packet of cigarettes in the part where there are the plants and the trees. He put the packet of cigarettes there and kept on walking. This raised suspicion from his end as to how and why the packet of cigarettes was left where it was left. Thus, Inspector Sammut went to the spot, picked up that packet and opened it and inside he noticed several sticks which looked like cannabis resin. Hence, he called for RIU and when they came he pinpointed the suspect who was arrested and he accompanied him to St Julians Police Station and handed over the packet with the contents to the police officers. He also explained that the packet was Rothmans Red and he recognized Dok TM which he explained had been handed to PS 211.

Inspector Sammut identified the accused as the person who left the packet of cigarettes in the trees. He explained that the accused was walking with another man who before also threw a paper which looked like a tissue at that time about only one metre away. The Inspector picked it up and handed it also to the police officer at the police station. The witness also stated that the area where all this happened is well-known for drug-trafficking. The area where all this occurred is an entertainment area where there are discos. In cross-examination he confirmed that he saw the accused about five metres in front of him. Asked how he could be certain that the packet of cigarettes which was in the accused's possession is the same one that the witness had retrieved, he replied that all this happened in a matter of seconds. The witness stated that accused left it and kept on walking for five/ten seconds. There were no people between them. He could see clearly what was in plain view. His eyes were constantly on the person and the packet of cigarettes. He explained that this packet of cigarettes had been placed by the accused. This place where the packet was left was very near Axis Discotheque.

PS 211 Michael Vella³ confirmed on oath the PIRS report⁴ lodged and signed by himself. He explained that on the 14th August 2018 he was on duty at St Julians Police Station while RIU members brought two male persons arrested from Paceville. Inspector Malcolm Sammut was working in Paceville in plain clothes in St George's Road and he noted

³ Sitting of 30th August 2018

⁴ at fol 6 of the acts

two male persons who had thrown something on the floor next to Axis car park. When Inspector Sammut went to check what was thrown he saw a red packet of cigarettes Rothmans which was full of sachets. He arrested them and brought them to the police station. Ps 1010 handed him over the packet of cigarettes and he in turn handed it to Inspector Trevor Micallef. This packet of cigarettes had sachets suspected to be cannabis resin. When shown the packet of cigarettes marked as Dok TM he confirmed that it was same packet. The witness also identified the accused as being one of the two persons brought to St Julians Police Station.

In cross-examination the witness confirmed that two people were brought at the police station in two separate cars. At first, he stated that the accused was wearing a white sleeveless shirt, then he corrected himself that the accused was wearing the black sleeveless shirt.

PS 1010 Andrea Zahra⁵ testified that on the 14th August 2018 at around 6:30p.m was informed by Inspector Malcolm Sammut that he needed assistance since he had noticed some people who were suspected to be trafficking drugs in the area of Paceville. The exact location is Axis, the one which used to be Axis parking area. They met near Burger King for a fast briefing because there was the danger that they would flee the scene. Inspector Sammut informed them that one of the persons was wearing a black shirt with yellow stripes and the other one was wearing a white sleeveless shirt with light blue colour words on it. They walked down near Axis and they spotted these persons. As soon as these persons saw the police officers who were in uniform they tried to flee the scene but the witness managed to grab one of them and the other was grabbed by his colleague and they took the arrested persons near the Axis parking. They were searched but nothing resulted out of it. The witness recognized the accused as one of the arrested persons. Inspector Sammut also went and told them that he had seen the accused hide something in the pavement. It was a packet of cigarettes Rothmans Red and inside he saw a suspected drug, green in colour. They were elevated. By means of a footage they saw that there were two suspected packets in a pot. The arrested persons were taken to St Julians Police

⁵ Sitting of 18th September 2018

Station. The suspected drugs were found near Axis in a tree pot in the grass. It is a parking area. It is an area frequented by youngsters.

In cross-examination the witness confirmed that his involvement was to apprehend the suspect. It was Inspector Sammut who picked up the drugs and he had footage. He stated that the accused was wearing a black t-shirt with yellow stripes.

Gilbert Mercieca⁶ , the court-appointed expert, testified that he examined Dok TM which consisted of a brown envelope containing 21 pieces of brown resin inside a packet of cigarettes. In his report he concluded :

Samples taken from the exhibits with the laboratory code: Dok TM A-D, tested positive for the presence of controlled substances, Cannabis (Δ 9-THC) which is included in Schedule 1, Chapter 101, Laws of Malta.

The brown resin was identified as resin derived from cannabis plants. The total weight of cannabis resin was 21.52g. The percentage of cannabinoid (Δ 9-THC) in the material was 21.26%.

The accused did not testify in these proceedings. He has however released a statement in which he categorically denies ever being in possession of the drugs.

Considers

The first charge

The accused is being charged with possession of the cannabis plant in circumstances denoting that it was not intended for his personal use.

The accused denies that he had in his possession the drugs and upon him being searched no drugs were found.

As was stated in the case in the names of *Il-Pulizija vs Marius Magri*⁷:

“Illi dawn il-kazijiet mhux l-ewwel darba li jipprezentaw certa diffikolta’ biex wiehed jiddetermina jekk id-droga li tkun instabet kienetx intiza ghall-uzu

⁶ Testified on the 3rd October 2018

⁷ App Krim. 12/05/2005

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-prosekuzjoni li l-pussess tad-droga in kwistjoni ma kienx ghall-uzu esklussiv (jigifieri ghall-uzu biss). Prova, ossia cirkostanza wahda f'dan ir-rigward tista', skond ic-cirkostanzi tal-kaz tkun bizzzejjed. (Ara App.Krim. Il-Pulizija vs Carmel Degiorgio" 26.8.1988) Meta l-ammont tad-droga ikun pjuttost sostanzjali, din tista' tkun cirkostanza li wahedha tkun bizzzejjed biex tissodisfa lill-Qorti li dak il-pussess ma kienx ghall-uzu esklussiv tal-hati (Ara Appell. Kriminali; "Il-pulizija vs Carmel Spiteri" 2.9.1999)

Illi pero' kif gie ritenut minn din il-Qorti, kif presjeduta, kull kaz hu differenti mill-iehor u jekk jirrizultawx ic-cirkostanzi li jwasslu lill-gudikant ghall-konvinjoni li droga misjuba ma tkunx ghall-uzu esklussiv tal-akkuzat, fl-ahhar mill-ahhar, hija wahda li jrid jaghmilha l-gudikant fuq il-fattispecje 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 u mill-evalwazzjoni tal-fatti li jaghmel il-gudikant u jekk il-konkluzzjoni li jkun wasal ghalha l-gudikant tkun perfettament raggungibbli bl-uzu tal-logika w l-bon sens u bazata fuq il-fatti, ma jispettax lil din il-Qorti li tissostitwiha b'ohra anki jekk mhux necessarjament tkun l-unika konkluzzjoni possibbli. (App.Krim. Il-Pulizija vs Brian Caruana 23.5.2002)".

The defence in its submissions first of all argued that it is highly improbable that the accused was recognized the way he was by Inspector Malcolm Sammut since same inspector was actually observing two people. Also, PS 211 Michael Vella's testimony is confusing with regards to what the accused was wearing that evening. Moreover, the defence argued that a lot of doubt is cast on the case by the different versions given by different witnesses as to where the packet of cigarettes was actually thrown and where it was actually found. Moreover, although there is mentioning of a footage no such footage was exhibited and no fingerprints examination was carried out on the packet of cigarettes.

It is to be noted that in this case although various police officers have testified, only Inspector Malcolm Sammut was the officer who actually

saw what had happened because he was on duty that night working in civilian clothes. The other officers have testified on what they have perceived or what they have heard during their investigations. So truly with regards to the identification of the accused and the manner in which and where he might have left the packet of cigarettes the testimony which should be taken into consideration is that given by Inspector Sammut. The Court has heard Inspector Sammut and in his testimony he was consistent and clear and had no doubt whatsoever as to what was the accused's involvement in this case. The Court is convinced that Inspector Sammut could see clearly the accused and also could see clearly his actions. Inspector Sammut has explained that the accused left the packet of cigarettes, Rothmans red, in the tree pot and walked away and same inspector headed on to where the packet was left and elevated same within a matter of seconds. He identified the accused as the person who was wearing a black sleeveless top with yellow stripes, which description also fits what was written in the Pirs report and what the other witnesses have testified.

The fact that a footage was mentioned and has not been exhibited in the acts of the case does not lead to acquittal once the proof put forward is strong enough to convince this Court that it was actually the accused who left the packet of cigarettes which was then elevated by Inspector Sammut and duly presented in these proceedings. Even the fact that no examination of finger-prints on the packet was carried out cannot mean that the accused should be acquitted and does not mean that the packet of cigarettes was not in the accused's possession.

There is no doubt as to the contents of the packet of cigarettes upon the expert's examination and the report which was mentioned previously in this judgment.

This Court also has no doubt that the amount of cannabis resin 21.52g which was in the packet Dok TM is not a negligible amount. There were 21 pieces of brown resin inside the packet and thus the Court deems that the Prosecution has managed to prove beyond reasonable doubt that same was not intended for the accused's personal use. This emerges from the fact that the accused has left the packet of cigarettes where he

left it, the way the drug itself has been separated in 21 sticks and also that same packet was left where it was left in Paceville. The accused just stated that the packet of cigarettes with its content had not been in his possession which declaration has turned out to be untrue and contradicted by the evidence which has been submitted.

The Court cannot but conclude to the degree required by law that the accused was in possession of said substances in circumstances denoting that these were not intended for his exclusive use.

Second charge

As regards the second charge, which refers to the aggravating circumstance of having committed these offences in or within 100 metres of a place where young people habitually meet, it clearly results that these offences were committed in Paceville, which is certainly a place where young people normally meet. Thus, such aggravating circumstance also results proven to the degree required by law.

Considers further that:

For the purpose of punishment to be inflicted, the Court took into consideration the serious nature of the offences of which accused is being found guilty, the amount of cannabis found in his possession and that in terms of the second proviso to Section 22(2)(b) of Chapter 101 of the Laws of Malta, the punishment is to be increased by one degree.

On the other hand, the Court is also taking into consideration the clean criminal record of accused.

Conclusion

For these reasons, the Court after having seen Sections 8(a), 22(1)(a), 22(2)(b)(i) and the second proviso to Section 22(2)(b) of Chapter 101 of the Laws of Malta, Regulation 9 of Subsidiary Legislation 101.02 finds the accused guilty of the charges brought against him and condemns him to **fourteen (14) months effective imprisonment** - from which term one must deduct the period of time during which the person sentenced has been detained under preventive custody in connection with the

offences of which he is being found guilty by this judgement - and a fine (*multa*) of seven hundred euro (€700).

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 expert in these proceedings, namely the expenses relating to the appointment of expert Scientist Gilbert Mercieca, amounting to the sum of three hundred and fifty-four euro (€354)

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.

Dr Josette Demicoli
Magistrate