



**Court of Magistrates (Malta)  
As a Court of Criminal Judicature**

**Magistrate Dr. Doreen Clarke LL.D.**

**Today, the 7<sup>th</sup> day of February, 2018**

**The Police  
(Inspector Trevor Micallef)**

**vs**

**Abdiraheem Abbas Tahlil**

The Court

Having seen the charges against the said Abdiraheem Abbas Tahlil and holder of Identity Card Number 82333(A).

Charged with having on the 14<sup>th</sup> of August, 2018 at around half ten in the evening (22:30hrs) in these islands, in St. George's Road, St. Julians:

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. 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 Chapter 101 of the Laws of Malta.

Having seen the Order of the Attorney General issued 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<sup>1</sup>.

Having heard the evidence and submissions of the parties.

Having seen the acts of the proceedings.

Having considered

This case refers to events which took place on the 14<sup>th</sup> August 2018 in St. George's Road St Julians opposite the Wembley Car Hire and Taxi Services at about 10:30pm.

On that day PS88 Aldo Cassar was on duty together with PC1391 Matthew Camilleri; at about 10:30pm they were driving along St George's Road. Both police officers state in their testimony that they noted the accused sitting on a ledge behind the bus stop which is opposite Wembley Car Hire; accused was surrounded by a few African persons. As soon as these persons saw the police car they all ran away in different directions. On seeing this reaction the police officers stopped the car, got out and approached the accused.

In his testimony PS88 Aldo Cassar<sup>2</sup> continues by stating that on approaching he saw a sachet next to accused which sachet contained a substance that looked like marijuana. When accused stood up he noted that he had been sitting on a similar sachet. PS88 also stated that behind the ledge, where the accused was sitting, there was a larger packet full of a similar substance; this packet was torn open. He also noted empty sachets on the ledge near the

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<sup>1</sup> Note exhibited as Doc TM4 at page 14 of the acts.

<sup>2</sup> At page 21 et seq of the acts.

accused. At that point the accused was placed under arrest and taken to the St Julian's police station; since the packet that was found behind the wall was torn open the police officers put it in a plastic glove in order to preserve its contents. PS88 explained that in the immediate vicinity of the bus-stop behind which they found the accused there is a public garden, two bars, and an ice-cream parlour. Under cross-examination PS88 stated that no sachets were found on the accused's person but there were two sachets which were "*under him*"; he then said that they were "*next to him*" explaining that by "*next to him*" he meant "*next to his feet*".<sup>3</sup> PS88 stated that the sachets were eventually handed over to Inspector Trevor Micallef.

In his testimony<sup>4</sup> PC1391 Matthew Camilleri explained that when he and his colleague approached, the accused (who had been seated up to that time) stood up and a sachet, which he may have been sitting on, fell to the ground; on the ledge there was another sachet. On a search being conducted upon the accused's person another small sachet was found in his jeans pocket; and during a search conducted in the vicinity where the accused was found, specifically where he had been sitting, another larger packet was found. This packet (black plastic) was already torn open when the police officers found it. PC1391 also claimed in his testimony that it was PS88 who physically conducted the search on the accused's person while he (i.e. PC1391) ensured that the accused does not escape.

PS1540 Edmond Fenech stationed at the St Julian's police station confirmed that on the night in question two R.I.U officers (referring to PS88 and PC1391) brought the accused to the St Julian's police station after having found him to be in possession of some drugs. He drew up the relevant report<sup>5</sup>.

After being handed over to the St Julian's police station the accused was questioned by the prosecuting officer Inspector Trevor Micallef<sup>6</sup>. In his

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<sup>3</sup> It is to be pointed out that PS88 had some difficulty expressing himself in English.

<sup>4</sup> At page 29 et seq of the acts.

<sup>5</sup> A copy of which is exhibited as Doc TM at page 6 et seq of the acts.

<sup>6</sup> The relative statement is exhibited as Doc TM2 at page 10 et seq of the acts.

statement the accused denies having had any drugs in his possession and that when he was apprehended by the police he was not selling drugs but “*waiting for drugs*”. Inspector Micallef exhibited in the acts of the proceedings the sachets and packet which had been seized by the two police officers abovementioned.

The Court appointed expert, Gilbert Mercieca, after having examined the contents of the four packets containing herbaceous material which were handed over to him, established that these weighed 3.02, 0.490, 0.458 and 0.464 grammes respectively i.e. a total weight of 4.432grams; this herbaceous material was composed of parts derived from the Cannabis plant with a percentage of cannabinioid of 10.45%.

Having considered

That by these present proceedings the accused is being charged with possession of cannabis under circumstances denoting that it was not intended for his personal use.

The first element that has to be proved for this charge to subsist it that the herbaceous material found by the police was indeed a substance prohibited by the Dangerous Drugs Ordinance<sup>7</sup>. This fact has been definitively determined by the Court appointed expert from whose report and testimony it was confirmed that the substance found was cannabis.

Having determined this, the Court must now determine whether the cannabis found by the Police was indeed in the possession of the accused, and, if in the affirmative, whether the circumstances in which he was found to be in possession of that cannabis denote that it was not for his personal use.

Whilst it is not always easy to determine whether drugs were intended for the personal use of the person in whose possession they were found, it has however been well established in our jurisprudence that there is no hard and

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<sup>7</sup> Chapter 101 of the Laws of Malta.

fast rule as to what circumstances and which amounts of drugs show that the drugs are not for personal use; this because the circumstances in one case will vary from those of the other. In reality the resolution of this question is one of fact which must be determined by the Court which must be satisfied beyond reasonable doubt that in those particular circumstances the drugs could not have been exclusively for accused's personal use.

The Court of Criminal Appeal in fact stated that:

*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.<sup>8</sup>*

The same Court of Criminal Appeal held that:

*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.<sup>9</sup>*

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<sup>8</sup> Ref Il-Pulizija vs Marius Magri decided 12.05.2005

<sup>9</sup> Ref Il-Pulizija vs Brian Caruana decided 23.05.2002.

The Court of Criminal Appeal did also specify that once it is shown that the amount of drugs found was not one which is usually associated with personal use, and by application of section 26(1) of Chapter 101 of the Laws of Malta, the onus than shifts on the accused to prove, at least on a balance of probability, that the drugs found were for his personal use. In fact in the judgement given in the lawsuit *Il-Pulizija vs Mohammed Ben Hassan Trabelsi*<sup>10</sup> the Court of Criminal Appeal held that:

*... 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) qiegħed 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.*

Having established these principles it should be pointed out that in reality the accused isn't claiming that the drugs found were for his personal use since the accused is contesting that the drugs found were his.

From the summary of the evidence adduced before this Court it is apparent that there are conflicting versions. The accused does not deny being in the place indicated by the police, neither does he deny having been in a larger group of people found in the circumstances described by the police. He does deny having been in possession of any cannabis since in his statement he stated that he was not selling drugs but “*waiting for drugs*”. The two police officers who apprehended the accused give a different version stating that the accused was the only one of the group they initially saw who was sitting on the ledge, and that when he stood up a sachet, which he must have been sitting on, fell on the ground and that there was an other sachet on the ledge next to him; yet an other sachet was found in his jeans pocket. The larger

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<sup>10</sup> Decided 17.02.1997.

packet was then found behind the ledge and small empty sachets were also observed on the ledge.

As counsel for the accused rightly pointed out there seemed to be some inconsistencies in the testimony given by PS88 Aldo Cassar<sup>11</sup> in that he was not clear where two of the small sachets were found. However, even after having seen the version of events given by PS88 on reporting the incident to PS1540 at the St Julians' police station, which version was given in the Maltese language, the Court is convinced that these inconsistencies in the testimony given by PS88 are a result of the difficulties he had in expressing himself in the English language.

The Court is in fact convinced, after taking into consideration the fact that the accused was the only one of the group initially observed who was seated, and that when he stood up a sachet fell to the ground, and that an other sachet was found in his pocket, that all the drugs found belonged to him.

The total amount of substance found is, from a purely objective point of view, not a particularly large amount. However in accordance with the jurisprudence abovequoted this does not necessarily mean that it was intended for the accused's personal use; the Court must weigh the amount of drugs found against the particular circumstances in which they were found. It has already been stated that a "large" packet, torn open, was found behind the ledge; three other much smaller sachets were found to have the same drug as that in the larger packet and a number of empty small sachets were also found. Bearing this in mind, as well as the place where the accused was found, and the fact that the accused was surrounded by other persons, it seems to the Court that the only logical conclusion that can be reached is that the larger packet was being used to fill the small sachets. The Court is consequently satisfied that the drugs found had been in the possession of the accused and that they were not for his personal use.

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<sup>11</sup> Which inconsistencies might also seem to be in conflict with what PC1391 Matthew Micallef said.

The first charge brought against the accused is consequently sufficiently proved.

With regards to the second charge the accused is not contesting the fact that he was apprehended in a place which is within hundred meters of a place where youths habitually meet<sup>12</sup>.

Having considered further

With regards the penalty to be meted out the Court took into consideration the serious nature of the offence of which the accused is being found guilty, his clean conviction sheet, and the amount of drugs found.

Wherefore the Court, after having seen sections 8(d), 22(1)(a), 22(2)(b)(ii) and the second proviso to section 22(2) of Chapter 101 of the Laws of Malta and Regulation 9 of Legal Notice 292 of the year 1939, finds the accused guilty of the charges brought against him and **condemns him to one year imprisonment and a fine of five hundred Euro (€500)**. Furthermore and by application of section 533 of Chapter 9 of the Laws of Malta the Court is **condemning the accused to pay the Registrar of this Court the sum of two hundred and sixty five Euros and fifty cents (€265.50)** representing expenses incurred in the employment of experts. In conclusion the Court is ordering **the destruction of the drugs exhibited as Document TM5**, once this judgement becomes final and executive, 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. DOREEN CLARKE**  
**MAGISTRAT**

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<sup>12</sup> Refer the minutes of the sitting held on the 27<sup>th</sup> August 2018 (page 17 of the acts).