



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

**MAGISTRATE DR. NATASHA GALEA SCIBERRAS**

**Case Number: 451/2012**

**Today, 6th May 2019**

**The Police  
(Inspector Jurgen Vella,  
Inspector Malcolm Bondin)**

**vs**

**Rita Bugeja  
(ID 0021825(A))**

The Court,

Having seen the charges brought against the accused **Rita Bugeja**, daughter of Michael Azzopardi and Francesca Saveria nee` Falzon, born in the United Kingdom on 26th September 1956, and presently residing at Corradino Correctional Facility, holder of identity card number 0021825(A));

Charged with having on these Islands on 14th May 2012 and in the weeks prior to this date, as an inmate at Corradino Correctional Facility:

- a. Produced, sold or otherwise dealt in the resin obtained from the plant cannabis or any preparations of which such resin formed the base in terms of Section 8(b) of Chapter 101 of the Laws of Malta;
- b. Not being a prisons officer or other person employed in the prisons, without lawful authority, introduced or attempted to introduce into any part of the precincts of a prison any article whatsoever not allowed under any regulations made under this Act, or conveyed or attempted to convey any

such article out of any prison, in terms of Article 7(1) of Chapter 260 of the Laws of Malta;

Moreover, with having on these Islands on 14th May 2012:

- c. Had in her possession the resin obtained from the plant cannabis or any preparations of which such resin formed the base, in terms of Section 8(a) of Chapter 101 of the Laws of Malta;
- d. Of having become a recidivist by means of a judgement delivered by the Criminal Court presided by Mr. Justice Dr. M. Mallia LL.D. on 2<sup>nd</sup> May 2012, which judgement has become final and definitive.

The Court was requested, in addition to the punishment to be meted according to law, to order the accused to pay any court expenses related to the appointment of any court expert in the course of the proceedings and this as stipulated in Section 533 of Chapter 9 of the Laws of Malta.

The Court was also requested, in the event of finding the accused guilty, to apply the provisions of Section 33A of Chapter 9 of the Laws of Malta;

Having heard the evidence adduced and having seen the acts of the proceedings and the documents exhibited, amongst which the Order of the Attorney General in terms of Section 22(2) of 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 on the evidence adduced and having heard final oral submissions by the defence.

### **Considered that:**

The facts of the case in brief were as follows: On 14th May 2012, a search was carried out by WCO 1 Karen Grixti and WCO 6 Carmen Attard in cell number 6, Female Division A, within Corradino Corrective Facility. At the time the cell was occupied by accused, Rita Bugeja and another inmate. At the time of the search, inside the said cell there were accused and Christan Urry, an inmate. During this search, the mentioned prison officers found two rolled cigarettes, which they suspected contained drugs. As a result accused was investigated and released a statement to the Executive Police on 15th May 2012, after she was duly cautioned in terms of law and after she was given the right to obtain legal advice. Other persons were also investigated in connection with this case, including the mentioned Christan Urry and another inmate, Ramona Vassallo.

It results from deposition of **WCO 6 Carmen Attard** that on 14th May 2012, at about 6.30 p.m. or 7.00 p.m., she had carried out a search with her colleague

WCO 1 in cell number 6 in Female Section A. During said search, her colleague found two cigarettes which they deemed suspicious and which she described as “*mibrumin u twal*”<sup>1</sup>. She stated that the cell was occupied by Rita Bugeja and Christan Urry and that both inmates were present during this search. She also stated that said cigarettes were found inside a plastic bowl, beneath a shelf, though she could not recall the exact details as it was her colleague who had found the said items. The cigarettes found were subsequently handed over to the police.<sup>2</sup>

**WC0 1 Karen Grixti** testified that on the 14th May 2012 between 6.30 p.m. and 7.00 p.m., together with WCO 6, she had conducted a search in cell number six, which cell was at the time occupied by Christan Urry and the accused, Rita Bugeja. She stated that the search yielded two rolled cigarettes on a shelf. The witness further stated that she had been approached by another inmate, Chanelle Desira, who had informed her that drugs were being used in cell number 6. Yet, when they entered the cell to conduct the search the inmates present were not smoking or using drugs.

**Christan Urry** released two statements on 15th May 2012 and 16th May 2012 respectively and confirmed the latter statement on oath on the same day before the Inquiring Magistrate.<sup>3</sup> On 15th May 2012, Urry declared that she had been detained in cell number 15 in Division A for approximately three weeks prior to the date of her statement and that before that, she was being detained at Mount Carmel Hospital, where she was undergoing a drug rehabilitation program. She further stated that on 14th May 2012, at around 5.15 p.m., she had been sitting on the sofa when she was called by accused, with whom she was not on speaking terms; the reason being that accused had been found in possession of smoke and that some prisoners had told her that accused had blamed her for this. Urry stated that whilst accused and herself were having a conversation in accused’s cell on this matter, two correctional officers approached the cell and conducted a search therein. Urry also stated that Alberta D’Amato, another detainee, had entered the accused’s cell in the presence of the correctional officers for the purpose of indicating the area of the cell where she kept her belongings. The search yielded two joints. She denied any wrongdoing on her part or that she had joined accused in the cell to smoke cannabis with her.<sup>4</sup>

Upon her own request, Urry released a second statement on 16th May 2012, premising that her intention this time round was to state the truth. She stated that on 14th May 2012, she joined the accused in her cell to roll two joints. As she was doing so, correctional officers suddenly entered the cell, at which point she handed the smoke to accused, whilst throwing the joints to the ground, which

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<sup>1</sup> *Vide* a fol. 68 of the records.

<sup>2</sup> A fol. 67 to 70 of the records.

<sup>3</sup> *Vide* process verbal, a fol. 13 of the records.

<sup>4</sup> A fol. 20 and 21 of the records.

joints landed on the shelf. Urry further declared that the cannabis resin belonged to Rita and that this was not the first occasion in which she had rolled joints for the accused as the latter was unable to roll joints. She stated that recently they had not been on speaking terms, but during the previous days they had started to talk again and she started to roll joints for her. Moreover she stated that in the previous two weeks, she had bought two joints from the accused, in exchange for which she was to give accused four packets of cigarettes.<sup>5</sup>

Christan Urry also testified in the course of these proceedings on 2nd April 2014<sup>6</sup>. She stated that she had already been prosecuted in connection with this case. Urry explained that prior to this incident, she was not being detained at Corradino Correctional Facility but at Mount Carmel Hospital to undergo a program. At the time, cannabis resin was found in the cell which she occupied with accused. She had been questioned about this find notwithstanding the fact that she had not been in prison at the time. She stated that such resin could not have been hers as she had been at Mount Carmel Hospital for three months at the time. As a result of this incident and occurrence, accused and herself had not been on speaking terms when she returned to the Correctional Facility. This time round she occupied a different cell, whilst accused remained in cell 6. She further stated that accused had called her and as they were having a conversation, correctional officers entered accused's cell, conducted a search and found the joints. She was then spoken to by the police and in her own words: "*U hareg li kemm il-darba ohra inqabdet Rita kienet bir-raza tal-cannabis kienet qaltihom li dik mhux taghha u jista jkun li hija tieghi ghax jien xbajt diehla u hierga programmi. U ovja ma jistax ikun hux*".<sup>7</sup> She further stated that she had on occasions rolled joints for accused, that the resin belonged to accused and that accused would smoke the joints herself and give joints to other inmates in her cell, though she also stated that she was never present when accused gave joints to others. Yet, she was told about this and it was the reason why she rolled joints. She also stated that once or twice a week, she rolled a joint or two for accused and that she used to do this both when she shared a cell with accused and also when she did not. She further stated that they had on occasion smoked joints together. Upon being asked as to whether accused charged other prisoners for the joints she gave them, she stated that she did not remember about this and that she would not be present when she gave joints to others but prisoners used to talk about it. Yet a moment later she stated that she shared a cell with accused and that she would thus be present when others went to obtain joints from accused. According to her, third parties would enter the cell, obtain a joint from accused and leave. Urry then confirmed the statement which she had released on 16th May 2012 and added that although

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<sup>5</sup> A fol. 22 and 23 of the records.

<sup>6</sup> A fol. 86 to 99 of the records.

<sup>7</sup> A fol. 89 of the records.

initially accused did not charge her for the joints as they shared a cell, later when she returned to prison, she sold her the said joints.

**Ramona Vassallo**, who at the time was also an inmate in the same division, stated at the time of the incident, she was outside the cell, in the division. She stated that prison officers had gone in the said cell, whilst there were accused and Urry, and had found some cannabis in the cell. She further stated that in her statement she had admitted to having smoked cannabis once or twice in prison and that she had smoked in a yard, with others. In this respect, she stated that when this happened the cannabis was being shared by all and that Urry and accused were also present, but she did not know who had supplied the cannabis. She could not remember who handed her the joint either on those occasions. After reference was made to her statement released on 16th May 2012, witness stated that accused and Urry used to hang together a lot and reiterated that they smoked cannabis in a group. She never smoked in the cell, she was never alone with accused when they smoked and it was Urry who used to roll the joints. She reiterated again and again that she did not know who handed her the joint when they smoked together, because they smoked in a group.

According to the report drawn up by **expert Pharmacist Mario Mifsud**, he was handed over a document by Inspector Jurgen Vella, containing a transparent plastic bag that held a sealed Government of Malta envelope on which were written the words “Insp. J. Vella, 3/E/1377/2012”. Said envelope contained three cigarettes of Rothmans and du Maurier brand with missing tobacco and two joints.<sup>8</sup> Said expert concluded that the two joints contained cannabis resin. The total weight of the tobacco and cannabis resin inside the two joints was 1.29 grams. Cannabis resin is controlled by law in Part III, Section 8 of the Chapter 101 of the Laws of Malta.<sup>9</sup>

Accused chose to testify during these proceedings.<sup>10</sup> She referred to the statement which she released on 15<sup>th</sup> May 2012 and confirmed the contents thereof. She further stated that Urry lied when she released a statement against her and that she shared her cannabis with Urry and Ramona Vassallo as they were heroin users and used to be sick. She stated that she did not deal in drugs, but that she shared her cannabis with the two, in her cell, where they smoked cannabis together. She stated that that it was not true that Urry paid her in return. In cross-examination, she stated that cannabis helped Vassallo and Urry when they had heroin withdrawal symptoms and that they used to ask her for cannabis themselves. She confirmed that Urry made cannabis joints for her occasionally and denied that Urry acquired joints from her in exchange for packets of cigarettes or that she

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<sup>8</sup> These can be seen in the photographs exhibited in the report drawn up by PC 1392 Kevin Buhagiar, a fol. 60 *et seq* of the records.

<sup>9</sup> This report is exhibited a fol. 44 *et seq* of the records.

<sup>10</sup> A fol. 175 to 183 of the records.

received any payment in return. She further stated that she did not know why Urry alleged this and turned against her and that she had no incident with Urry in prison.

**Considered further that:**

Preliminarily, the Court cannot but comment on the testimony of WCO 1 and WCO 6, that is to say the two correctional officers who conducted the search within accused's cell. In the Court's view, it is reasonable in all circumstances to expect those engaged in a search to furnish detailed and precise evidence relating to the circumstances of a case. The Court notes that the identity of the inmate sharing cell six with the accused was wrongly indicated by said officers, who both stated that this was then occupied by accused and Urry, when in actual fact it results from the records of the case that this was not the case.

With reference to 14th May 2012, the Court is satisfied from the evidence adduced that accused was in her cell, number six, together with Christan Urry when, on the basis of information relayed by another inmate that drugs were being consumed in cell number six, correctional officers proceeded to the said cell, where they found Urry and accused together. Urry, who had been rolling cannabis joints for accused, threw away said joints, which landed on a shelf. Although Urry states that she had handed over the resin to accused, these were not found by the correctional officers or at least, no mention was made of such resin.

On the basis of accused's statement, which she confirmed on oath during her deposition in these proceedings, and in which she admits that the two joints found in her cell by the two correctional officers on 14<sup>th</sup> May 2012 were indeed hers and in the light of Urry's statement of 16<sup>th</sup> March 2012 which she also confirmed on oath, whereby she states that she had been rolling cannabis joints for accused when the officers entered the cell, there is no doubt that the two joints found in accused's cell belonged to accused. Furthermore, on the basis of the conclusions reached by expert Pharmacist Mario Mifsud that said joints contained cannabis resin, neither is there any doubt that accused was in possession of cannabis resin in terms of charge (c). Said charge (c) has thus been proved in terms of law.

In respect of charge (b), however, there is no evidence whatsoever in the records of these proceedings that indicate that it was accused who had actually introduced cannabis resin, a prohibited item, within the precincts of the prison. This charge has thus not been proved.

As regards charge (a), which contemplates the offence of dealing in cannabis resin, whereas the Prosecution alleges that accused sold cannabis joints to Urry and this on the basis of the second statement released by Urry, which she

confirmed on oath both before the Inquiring Magistrate and also during these proceedings, on the other hand, the defence claims that such dealing was tantamount to trafficking by sharing in terms of the proviso of Section 22(9) of Chapter 101 of the Laws of Malta. Indeed both in her statement and during these proceedings, accused claims that she merely shared cannabis joints with another two inmates, Urry and Vassallo and that she never obtained any payment in return.

From the records of the proceedings, it clearly results that on the day in question cell number six was occupied by the accused, Rita Bugeja and Alberta Amato. Christan Urry had, for some time prior to this period, shared this same cell with accused, with whom she enjoyed a good relationship at that time. It so happened however that during the time that Urry was in Mount Carmel Hospital due to her drug dependence, drugs were found in cell number six. According to Urry, accused had alleged that these were Urry's. On her part, Urry reiterated that the resin then found could not have been hers as at the time she was not residing within the Facility. According to Urry, when she returned to Corradino Correctional Facility from Mount Carmel Hospital, she was assigned a different cell and her relationship with the accused had soured on account of accused's allegations in her regard.

There is no doubt either from the evidence adduced that accused procured cannabis resin joints to Urry and Vassallo. In her statement, which she subsequently confirmed on oath, accused admits as much, stating that the joints found in her cell were to be smoked by Urry, Vassallo and herself and that this was not the first time that they had shared cannabis joints. She further states that they had been doing so "*for a couple of weeks*". On the other hand, Urry states that although accused shared cannabis joints with her at the time when they also shared a cell prior to her being admitted to Mount Carmel Hospital, she also bought two joints from accused in exchange for four packets of cigarettes, two weeks prior to accused's arrest, further claiming that accused also procured joints to other inmates. On her part Vassallo also admits to having smoked cannabis joints with accused and Urry, though she also claims that others smoked with them too and that she did not know who procured the cannabis joints when this happened.

In respect of Vassallo's testimony, it is amply clear that Vassallo was reticent in identifying the inmate who procured her with cannabis. Although the statement which she had originally released to the police was read out to her during her testimony, the content of such statement is not *per se* admissible as evidence, once she did not confirm it on oath, but it may be utilised merely for the purpose of establishing the credibility or otherwise of the witness. As held in the judgement delivered by the Court of Criminal Appeal on 26th January 2001, in the names **Il-Pulizija vs Victor Gauci**:

*“Kif dejjem gie ritenut, in linea generali, bl-eccezzjoni ta’ xi reati partikolari, meta tigi esebata stqarrija ta’ xi xhud, bhal ma gara fil-kaz in ezami, dak li hemm f’dik l-istqarrija qatt ma ghandu valur probatorju izda jintuza biss ghall-fini tal-kontroll ta’ dak ix-xhud sabiex il-Qorti tkun tista’ tiddeciedi jekk dak ix-xhud hux kredibbli jew le f’dak li jkun qed jixhed quddiemha waqt il-proceduri u fil-presenza ta’ l-akkuzat. Jekk il-Qorti tasal sabiex ma temminx dak li x-xhud ikun qed jghid quddiemha, ma ghandhiex, b’daqshekk, tissostitwixxi dik ix-xhieda guramentata b’dak li x-xhud ikun qal fl-istqarrija tieghu mhux guramentata. Dik l-istqarrija tintuza biss, kif intqal, sabiex tigi kkontrollata l-kredibilita` tax-xhud, sabiex il-Qorti tara jekk dak li qed jixhed hux veritier jew le.”*

Although Vassallo had claimed *a tempo vergine* that accused had occasionally offered her a drag whilst she would be smoking a joint, this was not confirmed by Vassallo during her testimony, as she reiterated that whilst she did occasionally smoke cannabis with others, she did not know who had procured the joints. It was clear from her testimony that Vassallo knew perfectly well who procured said cannabis joints, but did not want to divulge such information. Yet, accused herself admits to having occasionally shared her cannabis joints with Vassallo, who on her part, confirms that such sharing used to take place. At no stage does Vassallo state that she acquired cannabis against payment.

The Court is also taking into consideration the fact that initially Urry released two statements, the first of which was dated 15th May 2012. She then released a second statement on 16th May 2012, which she confirmed before the Inquiring Magistrate on the same date. Again although the content of the first statement is not admissible as evidence in itself, yet it may be used limitedly for the purpose of establishing the credibility or otherwise of the witness. Indeed, in her first statement, Urry had completely denied any connection with the cannabis joints found in accused’s cell or that she consumed any cannabis. She then went on to release a second statement through which she claimed otherwise and further alleged that accused had procured her with cannabis joints on two occasions against payment.

In respect of Urry’s testimony, it seems to the Court that Urry still bore a grudge against accused in connection with a previous incident in which cannabis had been found in the cell which she then shared with accused. Indeed, although this had nothing to do with the present case, in the first part of her testimony during these proceedings, she recounts how she had been questioned by the police in connection with this find and goes on to deny any involvement, as she had been at Mount Carmel Hospital at the time. She further states that when questioned by the police about the present case, it transpired that accused had been found in possession of cannabis resin on various occasions and that she had told the police *“li dik mhux taghha u jista jkun li hija tieghi ghax jien xbajt diehla u hierga*



*programmi. U ovja ma jistax ikun hux*".<sup>11</sup> The Court further notes that in her testimony, Urry does not stop short at confirming that accused had procured her with cannabis joints against payment but also states that accused also procured third parties with cannabis joints. In this respect, however, although in parts of her testimony she states that she was never actually present when accused provided joints to other inmates, but had heard from others that this was the case, later on in another part of her testimony she states otherwise and claims that she shared a cell with accused and was therefore present when accused procured joints to other inmates. The Court further notes that in terms of Urry's deposition and also Vassallo's, accused did not know how to roll joints and thus Urry rolled them for her. On her part, Urry states that she rolled one or two cigarettes, once or twice a week, which can hardly be deemed inconsistent with personal use on the part of accused or at most sharing.

On the basis of the considerations made above about Urry's testimony, taking into consideration also Vassallo's testimony and that notwithstanding the fact that Vassallo did not identify accused as being the person who procured cannabis joints for smoking, her testimony was indicative of sharing, and taking also into account the fact that *a tempo vergine* accused immediately assumed responsibility for the joints found in her cell and admitted to having shared her cannabis joints with Urry and Vassallo, considering further that besides Urry's testimony there is no proof that accused procured cannabis joints to other inmates against payment, the Court deems accused's version as the more credible and reliable of the two versions.

Having reached such conclusion however, the Court notes that the sharing of cannabis joints with others is still deemed to be tantamount to dealing in drugs in terms of law, subject to the proviso of Section 22(9) of Chapter 101 of the Laws of Malta, which allows the Court discretion as to the punishment to be meted out. For these reasons, the Court deems that charge (a) has been proved to the degree required by law in so far as said charge refers not to 14th May 2012 but to the weeks prior to said date.

Finally, by means of charge (d) accused is being charged with being a recidivist in terms of a judgement delivered by the Criminal Court on 2nd May 2012. The Prosecution exhibited a true copy of two judgements – one delivered by the Criminal Court as presided by Mr. Justice Dr. Michael Mallia on 2nd May 2011 (and not 2012 in terms of charge (d)) and another delivered by the Court of Criminal Appeal on 23rd October 2014, both referring to Indictment No. 34/2007 and in the names 'The Republic of Malta vs Rita Bugeja'.<sup>12</sup> It is clear that it was through the latter judgement of the Court of Criminal Appeal that accused's

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<sup>11</sup> A fol. 89 of the records.

<sup>12</sup> A fol. 132 to 146 of the records.

conviction in that case became final and definitive, namely on 23rd October 2014. This means that at the time of the present case, accused was not a recidivist in terms of law and thus, charge (d) has not been proved.

### **Considerations on Punishment**

For the purpose of the punishment to be inflicted, the Court is taking into consideration that despite the fact that accused did not register a guilty plea during these proceedings, yet she cooperated with the police during its investigation.

It is also taking into consideration accused's adjourned criminal record which consists of a conviction for conspiracy to deal in drugs, importation and possession of drugs in circumstances denoting that these were not for personal use, in respect of which accused was sentenced to twelve years imprisonment and a fine (*multa*) and two convictions for drug possession within Corradino Correctional Facility, one referring to April 2012 and another to June 2012, in respect of which accused was sentenced to terms of effective imprisonment.

Whilst accused is being found guilty of trafficking by sharing in respect of charge (a), the Court notes that in such cases, the proviso of sub-section (9) of Section 22 of Chapter 101 of the Laws of Malta provides the Court with the discretion not to apply the mandatory term of imprisonment applicable to offences referred to in sub-article (2)(b)(i) – as is the offence of dealing in drugs – after considering all the circumstances of the case, including the amount and nature of the drug involved, the character of the person concerned, the number and nature of any previous convictions, including convictions in respect of which an order was made under the Probation Act. Although the joints found in possession of accused contained a minimal amount of drugs, on the other hand the circumstances of the case lend more gravity to the present charge, considering that she committed the offence whilst being detained in a correctional facility in connection with other drug related offences, including serious ones, and having shared cannabis with other inmates. Furthermore, accused's convictions are all drug-related. In any case, in terms of Section 33A of Chapter 9 of the Laws of Malta, once the offence in question was committed by accused whilst she was detained at Corradino Correctional Facility, the Court is precluded from applying the provisions of Sections 21, 28A and Chapter 446 of the Laws of Malta, and the applicable punishment must be increased by one or two degrees.

### **Conclusion**

For these reasons, the Court after having seen Sections 8(a), 8(b), 22(1)(a), 22(2)(b)(i) and (ii) and the proviso of Section 22(9) of Chapter 101 of the Laws of Malta, Regulations 4 and 9 of Subsidiary Legislation 101.02, Sections 17(h) and 33A of Chapter 9 of the Laws of Malta and Section 2 of Chapter 260 of the

Laws of Malta, finds accused not guilty of charges (b) and (d) brought against her and acquits her thereof, but finds her guilty of charge (a) in so far as this relates to the weeks prior to 14<sup>th</sup> May 2012 and charge (c) and condemns her to a term of **ten (10) months effective imprisonment** and a **fine (multa) of six hundred euro (€600)**, which by application of Section 14(2) of Chapter 9 of the Laws of Malta may be paid by the person sentenced in consecutive monthly instalments of twenty five euro (€25), the first payment being due within one month from today, so however that if she defaults in one payment, any remaining balance will become immediately due and shall be converted into a term of imprisonment according to law.

In terms of Section 533 of Chapter 9 of the Laws of Malta, the Court condemns Rita Bugeja to pay the expenses relating to the appointment of expert Mario Mifsud, amounting to the sum of three hundred, ninety eight euro and eighteen cents (€398.18) and those relating to the appointment of PC 1392 Kevin Buhagiar, amounting to the sum of thirty euro and twenty six cents (€30.26), totalling such expenses to the sum of four hundred, twenty eight euro and forty four cents (€428.44). Said expenses shall be paid within twelve months from today.

The Court orders that the joints and items exhibited are destroyed, once this judgement becomes final and definitive, under the supervision of the Court 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