



Criminal Court

Hon. Judge Giovanni M. Grixti, LL.M, LL.D.

Bill of Indictment No. 12/2018

The Republic of Malta

Versus

Joseph Papa Smith

Today, 1st July, 2020

The Court,

Having seen the charges brought against the accused **Joseph Papa Smith**, holder of Ghanaian Passport number H2632329, by means of Bill of Indictment No. 12 of the year 2018 whereby the Attorney General in the First Count premised :

1. That, on the night between the twelfth (12th) and the thirteenth (13th) of March of the year two thousand and sixteen (2016), Customs Officers stationed at the Arrivals Section at the Malta International Airport, Luqa, stopped a passenger with the name of Joseph Papa Smith who had just landed in Malta from on board flight KM0643 from Catania to conduct a random scan of his luggages out of suspicion

that he could be carrying illegal substances. When the Customs Officers asked the accused regarding the contents of his luggages, at first he replied that he was carrying food but on seeing that Customs Officers were proceeding to inspect them, he confessed to be carrying the drug Cannabis. The Customs Officers conducting the search opened Joseph Papa Smith's luggages and found a black jacket containing one (1) plastic bag with a set of small weighing scales and other four (4) bags containing a substance which when tested yielded positive results for the presence of the drug Cannabis. It was at this point that the Customs Officers informed the Police in order for further investigations to be conducted;

That, the Police repaired immediately on site where the accused was arrested after his rights were administered to him. The Police also requested for a Magisterial Inquiry to be carried out and the substance suspected to be the illegal drug Cannabis was passed on to the expert appointed as part of the Magisterial Inquiry for analysis. Infact, Dr. Godwin Sammut, concluded that the substance seized from the accused contained tetrahydrocannabinol that is, the main chemical constituent of the dangerous drug Cannabis. The expert concluded that the Cannabis seized from the accused weighed approximately two point one kilograms (2.1kg) with a purity of six (6) per cent and carried a total street value ranging between twenty thousand eight hundred and five Euro and fifty cents (€20,805.50) and fifty eight thousand two hundred fifty five Euro and forty cents (€58,255.40);

That Cannabis is a dangerous drug specified and controlled under the provisions of Part One (1), First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta. Furthermore, Joseph Papa Smith was not in possession of any valid and subsisting import or possession licence or authorisation from the President of Malta granted in pursuance of the said law, and was not authorised by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) or by another authority given by the President of Malta, to be in possession of this drug in terms of Regulation 9 of the said Regulations, and was likewise not in possession of a valid prescription in terms of the said Regulations.

By committing the abovementioned acts with criminal intent, the accused Joseph Papa Smith rendered himself guilty of importing or causing to be imported or of taking any steps preparatory to importing the dangerous drug (Cannabis) into Malta on the thirteenth (13) of March of the year two thousand and sixteen (2016), and this in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

Wherefore, the Attorney General, in the name of the Republic of Malta, based on the facts and circumstances narrated above, accuses Joseph Papa Smith of being guilty of, on the thirteenth (13th) March of the year two thousand and sixteen (2016), having, with criminal intent, imported or caused to be imported or of having taken any steps preparatory to importing the dangerous drug (Cannabis) into Malta and this in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

Wherefore, the Attorney General, in the name of the Republic of Malta, demands that the accused Joseph Papa Smith be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and that the articles in respect of which the offence was committed be forfeited in favour of the Government and any such articles be so destroyed or otherwise disposed of and that all moneys or other movable property and the entire immovable property of the accused be forfeited in favour of the Government of Malta even if the said monies, movable property or immovable property are situated in any place outside Malta and as is stipulated and laid down in Articles 2, 7, 12, 14, 15, 15A, 20, 22(1)(a),(1B),(2)(a)(i),(3A)(a)(b)(c)(d)(7), 22A, 24A, and 26 of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and of Articles 17, 23, 23A, 23B, 23C and 533 of the Criminal Code, Chapter 9 of the Laws of Malta or to any other punishment applicable according to law to the declaration of guilt of the accused.

2. That, under the circumstances indicated in the First Count of this Bill of Indictment, on the thirteenth (13th) day of the month of March of the year two thousand of sixteen (2016), Joseph Papa Smith was in possession of the said dangerous drug Cannabis in circumstances denoting that it was not intended for the personal use of the same accused, but was destined to be trafficked in the Maltese market;

That Cannabis is a dangerous drug specified and controlled under the provisions of Part One (1), First Schedule of the

Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta. Furthermore, Joseph Papa Smith was not in possession of any valid and subsisting import or possession licence or authorisation from the President of Malta granted in pursuance of the said law, and was not authorised by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) or by another authority given by the President of Malta, to be in possession of this drug in terms of Regulation 9 of the said Regulations, and was likewise not in possession of a valid prescription in terms of the said Regulations.

By committing the abovementioned acts with criminal intent on the thirteenth (13th) March of the year two thousand and sixteen (2016) and during the previous weeks before this date, in Malta, the accused Joseph Papa Smith rendered himself guilty of being in possession of a dangerous drug (Cannabis) as specified in the First (I) Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta when he was not in possession of an import authorization issued by the Chief Government Medical Officer in pursuance of the provisions of Part III of the Ordinance, and when he was not licensed or otherwise authorized to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorized by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were supplied to him for his personal use, according to a medical prescription as provided in the said regulations and this in breach of the 1939 Regulations of the Internal Control of Dangerous Drugs (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance,

Chapter 101 of the Laws of Malta and which drug was found under circumstances denoting that it was not intended for his personal use.

Wherefore, the Attorney General, in the name of the Republic of Malta, based on the facts and circumstances narrated above, accuses Joseph Papa Smith of being guilty of, on the thirteenth (13th) March of the year two thousand and sixteen (2016) and during the previous weeks before this date, in Malta, having, with a criminal intent, been in possession of the dangerous drug Cannabis, as specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta when he was not in possession of an import or an export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of part III 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 authorized by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were supplied to him for his personal use, according to a medical prescription as provided in the said regulations and this in breach of the 1939 Regulations on the Internal Control of Dangerous Drugs (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and which drug was found under circumstances denoting that it was not intended for his personal use.

Wherefore, the Attorney General, in the name of the Republic of Malta, demands that the accused Joseph Papa Smith be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and that the articles in respect of which the offence was committed be forfeited in favour of the Government and any such article be so destroyed or otherwise disposed of and and that all moneys or other movable property and the entire immovable property of the accused be forfeited in favour of the Government of Malta even if the said monies, movable property or immovable property are situated in any place outside Malta and as is stipulated and laid down in Articles 2, 8, 12, 20, 22(1)(a)(2)(a)(i)(3A)(a)(b)(c)(d)(7), 22(A), 24A and 26 of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and of Regulations 2, 8, 9 and 16 of the 1939 Regulations on the Internal Control of Dangerous Drugs (G.N. 292/1939) and of articles 17, 23, 23A, 23B, 23C and 533 of the Criminal Code, Chapter 9 of the Laws of Malta or to any other punishment applicable according to law to the declaration of guilt of the accused.

3. That, under the circumstances indicated in the first two (2) counts of this bill of indictment, the accused Joseph Papa Smith, was arrested by the Police on the 13th March 2016 after the Customs Officials stationed at the Malta International Airport, on performing a luggage scan on the luggages of the accused, identified a substance that tested positive for the dangerous drug Cannabis. The accused was administered his rights by the Police, arrested, and after consulting with a lawyer of his choice, he confessed to the Police that this was not his first time in Malta. He stated that

he had come to Malta on other times and during any such time he used to acquire the dangerous drug Cannabis for his personal use from a person in Valletta who he failed to identify to the Police. The accused mentioned that he bought Cannabis grass for his personal use on different occasions from this same person in Valletta. It was this same person who then asked Joseph Papa Smith if he could procure him more drugs from Sicily and the accused admits to the Police that the drugs he was caught with at the Malta International Airport were destined to this same person ;

That, in the circumstances the accused had in his possession the whole or any portion of the plant Cannabis and Cannabis is a dangerous drug specified and controlled under the provisions of Part One (1), First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

By committing the abovementioned acts with criminal intent on the thirteenth (13th) March of the year two thousand and sixteen (2016) and during the previous weeks before this date, in Malta, the accused Joseph Papa Smith rendered himself guilty of being in possession (otherwise than in the course of transit through Malta or the territorial waters thereof) in Malta of the whole or any portion of the plant Cannabis as specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

Wherefore, the Attorney General, in the name of the Republic of Malta, based on the facts and circumstances narrated above, accuses Joseph Papa Smith of being guilty of, on the thirteenth (13th) March of the year two

thousand and sixteen (2016) and during the previous weeks before this date, in Malta, having been in possession (otherwise than in the course of transit through Malta or the territorial waters thereof) of the whole or any portion of the plant Cannabis with criminal intent, as specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

Wherefore, the Attorney General, in the name of the Republic of Malta, demands that the accused Joseph Papa Smith be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for a term of not less than twelve (12) months but not exceeding ten (10) years and to a fine (multa) of not less than four hundred and sixty five Euro and eighty seven cents (€465.87) but not exceeding twenty three thousand and two hundred and ninety three Euro and seventy three cents (€23,293.73) and the forfeiture of all articles in respect of which the offence was committed in favour of the Government and any such articles be so destroyed or otherwise disposed of and as is stipulated and laid down in articles 2, 8(d), 12, 20, 22(1)(a)(2)(a)(ii) and 26 of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and of Regulations 2, 8, 9 and 16 of the 1939 Regulations on the Internal Control of Dangerous Drugs (G.N. 292/1939) and of Articles 17, 23, 23A, 23B, 23C and 533 of the Criminal Code, Chapter 9 of the Laws of Malta or to any other punishment applicable according to law to the declaration of guilt of the accused.

Having seen the application jointly signed by the Attorney General and Counsel to the accused, presented in the registry

of this Court on the 23rd June, 2020 whereby, the applicants, whilst making reference to Article 453A(1) of the Criminal Code, humbly request this Honourable Court that in the event that Joseph Papa Smith admits to all charges proffered against him in the bill of indictment, the punishment to be awarded by this same Court, will consist of a term of imprisonment of seven (7) years together with the imposition of a fine (multa) of fifteen thousand Euros (€15,000) together with the other sanctions and consequences that are mandatorily prescribed by Law upon conviction in terms of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, including the confiscation of any monies and other movable and immovable property of the accused in accordance with the law;

Having seen all the records of the case, including those of the compilation of evidence before the Court of Magistrates (Malta) as a Court of Criminal Inquiry;

Having seen that during today's hearing the accused **Joseph Papa Smith**, in reply to the question as to whether he was guilty or not guilty of the charges proffered against him under the three counts of the Bill of Indictment, accused registered a plea of guilt to all three charges;

Having then warned the accused in the most solemn manner of the legal consequences of such plea and allowed him ample

time to retract it and this in accordance with Article 453 of Chapter 9 of the Laws of Malta;

Having seen that the accused, after being granted such time, and after confirming that he had been allowed sufficient time to consider his plea; that he fully understood the charges proffered against him; that he was fully aware of the punishments prescribed by the law for the charges proffered against him and that he was fully aware of the consequences of the application signed by his legal counsel together with the Attorney General and that the signature on the said application was made under his hand voluntarily, persisted in his statement of admission of guilt;

In consequence whereof, this Court declares **Joseph Papa Smith** guilty of the three counts in the Bill of Indictment, namely that :

1. On the thirteenth (13th) March of the year two thousand and sixteen (2016), having, with criminal intent, imported or caused to be imported or of having taken any steps preparatory to importing the dangerous drug (Cannabis) into Malta and this in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

2. On the thirteenth (13th) March of the year two thousand and sixteen (2016) and during the previous weeks before this date, in Malta, having, with a criminal intent,

been in possession of the dangerous drug Cannabis, as specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta when he was not in possession of an import or an export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of part III 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 authorized by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were supplied to him for his personal use, according to a medical prescription as provided in the said regulations and this in breach of the 1939 Regulations on the Internal Control of Dangerous Drugs (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and which drug was found under circumstances denoting that it was not intended for his personal use.

3. On the thirteenth (13th) March of the year two thousand and sixteen (2016) and during the previous weeks before this date, in Malta, having been in possession (otherwise than in the course of transit through Malta or the territorial waters thereof) of the whole or any portion of the plant Cannabis with criminal intent, as specified in the First Schedule of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

Having seen articles 2, 7, 8(d), 10(1), 12, 14(1), 15A, 20, 22(1)(a)(1B)(2)(a)(i)(ii) (3A) (a)(b)(c)(d)(7), 22A, 24A and 26 of the Dangerous Drugs Ordinance Chapter 101 of the Laws of

Malta, regulations 9 and 16 of the 1939 Regulations on the Internal Control of Dangerous Drugs (G.N. 292/1939) and articles 17, 23, 23A, 23B, 23C and 533 of the Criminal Code, Chapter 9 of the Laws of Malta;

The Court is of the opinion that the sanction and measure proposed in the joint application as aforesaid in this case should be upheld and that there is no reason to proceed with the trial of the cause and, therefore, having explained to the accused the consequences of his request, condemns the said **Joseph Papa Smith** to a term of imprisonment of seven (7) years and the imposition of a fine (multa) of fifteen thousand Euros (€15,000) which punishment is that requested and agreed to by the parties and which fine (multa) shall be converted into a further term of imprisonment of one year according to Law, in default of payment within the time prescribed by law.

Furthermore condemns the said Joseph Papa Smith to pay the sum of two thousand, nine hundred and thirty three euros and eleven eurocents (€2,933.11) being the sum total of the expenses incurred in the appointment of court experts in this case [namely report by PS 422 N Caruana, report by PS 404 Paul Camilleri, report by scientist Godwin Sammut, report of PS 659 Jeffrey Hughes, report of Joseph Mallia, report of Dr Martin Bajada and report by Dr John Seychell Navarro] in terms of Article 533 of Chapter 9 of the Laws of Malta;

Moreover, orders the forfeiture in favour of the Government of Malta of all the property involved in the said crimes of which he has been found guilty and other moveable and immovable property belonging to the said Joseph Papa Smith.

Furthermore, orders the destruction of all the objects exhibited in these proceedings, consisting of the dangerous drugs and/or objects related to the abuse of drugs, which destruction shall be carried out by the Assistant Registrar of the Criminal Court, under the direct supervision of the Deputy Registrar of this Court who shall be bound to report in writing to this Court when such destruction has been completed, unless the Attorney General files a note within fifteen days from today declaring that said drugs are required in evidence against third parties.