



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

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

**The Police  
(Inspector Jonathan Cassar)**

**vs**

**Juldeh Baldeh**

**Case Number: 240/2019**

**Today the 30<sup>th</sup> September 2020**

The Court,

Having seen the charges against Juldeh Baldeh, 20 years, son of Modou and Isa Baldeh, born in Sarakunda, Gambia on the 10<sup>th</sup> October 1998, residing at number 42, St. Rita Street, Sliema and holder of Italian Residence Permit bearing number 112771946, Italian Identity Card bearing number AY6976576 and Italian Travel Document bearing number MD0039736.

Charged with having on the 01<sup>st</sup> October 2019 and/or the previous three months in the Maltese islands

1. Produced, sold or otherwise dealt with the whole or any portion of the plant cannabis in terms of section 8(e) of the Chapter 101 of the Laws of Malta.

2. 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 the Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use.
3. 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.

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

Having seen the Order of the Attorney General<sup>1</sup> issued in terms of section 22(2) of Chapter 101 of the Laws of Malta for this case this case to be tried summarily by this Court sitting as a Court of Criminal Judicature.

Having heard the evidence and the submissions of the parties.

Having seen the acts of the proceedings.

Having considered

This case is based on events which took place in the early hours of the 1<sup>st</sup> October 2019.

### **The Evidence**

The two police officers primarily involved in this case were produced as witnesses and gave evidence before this Court:

**PC101 Raznai Gaffarena**<sup>2</sup> explained that following a report that dark skinned persons were selling drugs in St Geroge's Street Paceville the police intervened, first conducting observations. Whilst at St George's Road the witness noticed Dawda Cessay being approached by what he described as

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<sup>1</sup> The Order was issued both in the Maltese and the English languages; ref Doc JC1 at folio 10 and Doc JC2 at folio 11.

<sup>2</sup> Deposition at folio 33 et seq.

the "initial dealer", after which Cessay would walk down St George's Road and return soon after handing over something to the "initial dealer". In the early hours of the 1<sup>st</sup> October 2019, after hours of observations, PC101 and his colleague followed Cessay who went to St George's Bay; the assistance of their colleagues from the RIU was requested. At St George's Bay Dawda Cessay was arrested with two other men: the accused and Ebrima Sonko. Dawda Cessay was found to be in possession of one sachet containing a green substance, two hundred and fifty one Euros (€250) in his pocket, a lighter and two mobile phones. Juldeh Baldeh was found in possession of seven paper bags, a sachet containing a green substance and a mobile phone. Following his arrest and whilst being escorted to the police head quarters Baldeh told PC101 that the drugs had been given to him by Cessay.

Under cross-examination<sup>3</sup> PC101 Raznai Gaffarena specified that observations started on the 30th September 2019 at about 10.00pm and they continued until the arrest of the accused at about 01.30 on the 1st October. He also confirmed that the accused was first noted at St George's Bay and not at St George's Road. He also specified that when they saw the accused with Dawda Cessay and an other person on the beach, after having followed Cessay, they suspected that the accused was holding the drugs for Cessay, so he and his colleague asked for assistance from the RIU and they intervened when the RIU arrived. PC101 said that whilst they were waiting for RIU they were at a distance where they could see the accused and the other two men but could not see exactly what they were doing.

**PC1391 Etienne Spiteri<sup>4</sup>** was the police officer who was conducting the observations with PC101. He confirmed that during these observations they noted Dawda Cessay being approached by an other person, and that immediately following this approach Cessay would walk down St George's Street returning soon after and handing over something to the person who would have approached him before. The witness also confirmed that at a certain point they followed Cessay and the same group of persons down St George's Road to St George's Bay where Baldeh and Cessay were arrested. PC1391 confirmed what items were found on each of the persons arrested and what Baldeh said regarding the drugs.

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<sup>3</sup> Ref folio 253 et seq.

<sup>4</sup> Deposition at folio 36 et seq.

Under cross-examination<sup>5</sup> PC1391 Etienne Spiteri confirmed that when he and his colleague decided to follow Dawda Cessay from St George's Road they then saw him on the beach (St George's Beach) with other persons so they asked for assistance from the RIU who came after about fifteen minutes. In the meantime he and his colleague continued observing Cessay and the other persons at a distance to make sure that they don't move from there; when the RIU arrived they intervened.

**Inspector Jonathan Cassar**<sup>6</sup>, the prosecuting officer, gave an overview of the investigation carried out and what was reported to him by PC101 and PC 1391.

**Dawda Cessay** was called to give evidence before this Court but he chose to exercise his right to silence. However he had released a statement to Inspector Jonathan Cassar, and he had confirmed that statement on oath before a Magistrate<sup>7</sup>. In this statement Dawda Cessay confirmed that when he was arrested he was in possession of 1.11grs of cannabis grass which he bought from Juldeh Baldeh. He also confirmed that he knew Baldeh and that they had each other's mobile phone number saved as a contact in their mobile phone. Cessay was shown the drugs found in Baldeh's bag and he claimed that he had no knowledge of them. Cessay also claimed that he asked Baldeh to do his hair but he denied having put drugs in Baldeh's bag, he also denied having sold drugs to Baldeh. Being shown some message exchanges with various persons which the prosecuting officer understood to refer to drug trafficking, Cessay claimed not to know what the messages were and insisted that he does not sell drugs. He also stated in his statement that he did not touch the drugs that were found in Baldeh's bag.

During the course of the proceedings various items of evidence were exhibited:

- An evidence bag containing seven paper balls and one plastic sachet which were found in a black bag belonging to the accused<sup>8</sup>.
- A mobile phone (Huawei) found in the possession of the accused<sup>9</sup>.
- Two mobile phones (a Samsung and an iPhone) found in the possession of Dawda Cessay<sup>10</sup>.

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<sup>5</sup> Deposition at folio 262 et seq.

<sup>6</sup> Deposition at folio 20 et seq.

<sup>7</sup> The relative *proces verbal* is exhibited at folio 41 to folio 56.

<sup>8</sup> Doc JC12 presented by Inspector Jonathan Cassar (folio 24).

<sup>9</sup> Doc JC13 presented by Inspector Jonathan Cassar (folio 24).

- An evidence bag containing the sachet found in the possession of Dawda Cessay<sup>11</sup>.

A number of experts were appointed in order to analyze the various items exhibited: Keith Cutajar to analyze the mobile phones, Gilbert Mercieca to analyze the substances, Dr Marisa Cassar as a DNA expert, PS169 Jurgen Schembri as an expert in chemical enhancement, and architect Nicholas Mallia.

**Keith Cutajar** analyzed the mobile phones that were found in the possession of Juldeh Baldeh and Dawda Cessay. From his deposition<sup>12</sup> and his report<sup>13</sup> it results that Baldeh and Cessay had a number of common contacts. Moreover it also resulted that there were some messages exchanged between Baldeh and two persons which are of relevance to these proceedings: i.e. exchanges with persons listed in the contacts as Dan Licari and Manuel Vitali. The exchange with Dan Licari starts on the 30th September 2019 at 15:33hrs and ends that same day at 16:36hrs. This exchange starts with Dan Licari informing Baldeh that he is in Malta and asking if *"he can hook him up"* and then if Baldeh can help with *"a 40 bag"* with Baldeh replying *"yes of course"*. After discussing where to meet Baldeh asks Dan Licari *"what do you want weed or"* to which Dan Licari replies *"yes green bud please"*. Baldeh then tells him *"ok you can come"*. Messages then continue ending with confirmation that Dan Licari arrived at the designated place. There are a number of exchanges with Manuel Vitali<sup>14</sup>; the first is on the 18th September starting at 05:19hrs. In this exchange Vitali contacts Baldeh asking for weed, Baldeh says that he will try to find, and eventually he says that he did not find but will tell him (Vitali) if he does find; this exchange ends at 05:25hrs. Later that day at 21:26hrs Baldeh contacts Vitali asking him if he needs anything; three consecutive messages read: *"do you need something"*, *"i have"*, *"if you need you can let me know"*. Vitali answers at 23:40hrs answering *"yes"* and proposing that they meet on the beach; Baldeh replies that he is already there. On the 21st September 2019 there is an other exchange starting at 01:04hrs; this exchange is started by Baldeh who asks how Vitali is and they agree to meet on the beach since Baldeh is already there with some friends. An other exchange is on the following day, the 23rd

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<sup>10</sup> Doc CA4 presented by the exhibits officer Chistian Abdilla (folio 60)

<sup>11</sup> Doc AA2 presented by Exhibits Officer Andre Azzoprudi (folio 63).

<sup>12</sup> Deposition at folio 92 et seq.

<sup>13</sup> Dok KC1 at folio 96 et seq.

<sup>14</sup> Vitali is the owner of telephone number 393 505 372719; there is reference to one of the messages quoted in the statement of the accused.

September 2019, starting at 19:26hrs; Vitali asks where Baldeh is and "do you have something". Baldeh replies that he is at home and Vitali responds by asking whether he should wait for him; Baldeh says yes and asks "do you want some". On the 25th September 2019 at 01:06hrs Vitali contacts Baldeh to ask how he is and to inform him that he is going to the beach; Baldeh does not respond to these messages. There is a similar exchange the following day, the 26th September 2019 at 00:50hrs, initiated by Baldeh; in this exchange Baldeh informs Vitali that he is going to be at the beach and on being asked whether he will still be there at 4am he says yes and they agree to meet later. There is a similar exchange later that day starting at 21:33 hrs. Then on the 27th September 2019 at 20:54hrs Vitali contacts Baldeh to ask: "I have two tourists looking for grass, I think 10 €. Do you give him your number and do you feel with them? if you want". In the ensuing exchange Baldeh agrees to contact these two persons; Vitali gave him a contact number and specified that they are a male and a female and that the contact number is of the female also specifying her name. Baldeh then confirms that he is contacted these persons. Following this there are two messages from Vitali on the 21<sup>st</sup> October 2019<sup>15</sup> asking "do you remember me".

**Gilbert Mercieca** was appointed to analyze the substance that was seized from the accused and to compare it with that seized from Dawda Cessay. From his testimony<sup>16</sup> and report<sup>17</sup> it results that the paper bags and sachet found in the possession of the accused contained cannabis; the total weight of these seven paper bags was 34.50grs and that of the small sachet was 0.987grs. The witness also confirmed that the substance found in the possession of Cessay was cannabis and that it could have the same origin as that found in the possession of the accused.

**Dr Marisa Cassar** confirmed that on examining the plastic in which the drugs seized from Baldeh and Cessay were wrapped she found a mixed DNA profile of two contributors<sup>18</sup>. On comparing these profiles with those of the accused and of Dawda Cessay it was established that there were some alleles that matched both the accused and Dawda Cessay but these weren't enough to statistically confirm that the accused and Cessay were the two contributors<sup>19</sup>.

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<sup>15</sup> Baldeh was arrested on the 1<sup>st</sup> October 2019.

<sup>16</sup> Deposition at folio 167 et seq

<sup>17</sup> Dok GM1 at folio 171 et seq

<sup>18</sup> Ref deposition at folio 161 / 162 and her report Doc MC1 at folio 163 et seq.

<sup>19</sup> Ref deposition at folio 191 / 192 and her report Doc MC3 at folio 193 et seq.

**PC169 Jurgen Schembri**<sup>20</sup> examined the bags in which the drugs were wrapped however no finger prints were visible for developing.

**Architect Nicholas Mallia**<sup>21</sup> confirmed that within a walking distance of 100 meters from where the accused was arrested at St George's beach there were three establishments where youths habitually gather: The Beer Garden, Hugo's Terrace and EF Language School.

The accused, **Juldeh Baldeh** released a statement and also gave evidence before this Court. In his statement<sup>22</sup>, and on being shown the seven paper balls/bags and plastic sachet, the accused stated that he had bought the small sachet for himself but the paper balls were not his but of Dawda Cessay whom he describes as his friend and someone whom he got to know here in Malta; both the accused and Cessay had each other's mobile phone number saved in the contacts of their mobile phone. Asked how those drugs came to be in his bag the accused claims that Cessay put them there. He specified that he (the accused) had just come from work and Cessay asked him to do his hair and then he (Cessay) put them in his bag. The accused also said that he has been buying Cannabis from Cessay since he first got to know him and that he does not buy or use any other type of drug. He claimed that he buys twenty Euros worth of Cannabis once a week. Regarding a particular message exchange on his mobile phone with number 393 505372719 Baldeh explained that those messages were exchanged with an Italian man whom he normally meets at the beach; when they meet the Italian asks "about grass" so he (Baldeh) calls Cessay. He also claims that he was going to give the seven paper balls back to Cessay. This statement was confirmed on oath by Juldeh Baldeh before a Magistrate prior to his arraignment<sup>23</sup>. After confirming his statement on oath before the Magistrate, Baldeh added that he works in Paceville in a place called Miracles and he normally works late, till around 12 and around 2 in the night time; in the day time around 5 to 11 and in the night time around 8 to 2. He also claimed that before starting work in the morning he goes to relax on the beach because he lives Sliema.

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<sup>20</sup> Deposition At folio 199 et seq and report Doc JS1 at folio 202 et seq.

<sup>21</sup> Deposition at folio 239 et seq and report Doc NM1 at folio 242 et seq.

<sup>22</sup> Doc JC7 at folio 26.

<sup>23</sup> The relative *proces verbal* is exhibited at folio 67 to folio 85.

When he was giving evidence before this Court<sup>24</sup> Baldeh stated that he works at a restaurant, called Middle East, in St Julians and that he works from 7.00pm till 2.00am when he goes to relax on the beach for an hour then he goes back to work till 11.00am. On the day in question he was at work and when he finished his shift he went to the beach and met Sonko and they started chatting. After some time Dawda Cessay came and Cessay asked Baldeh to do his hair; where they were sitting there was no light so they moved to the steps where there was sufficient light. Cessay then asked Baldeh to put something in his bag. Baldeh stated that in this bag he had his working clothes and one gram of smoke (cannabis) which he got from Cessay the night before; he uses this one gram over four or five days. Baldeh also explained that his bag has three zips and that they were all closed when he went to the beach. Once on the steps Baldeh started doing Cessay's hair using a pin and soon after the police came but when the police came his bag was open because Cessay had put something in the bag. Baldeh claims that he did not know what Cessay put in his bag and that he only saw it when the police took it out. Baldeh also claimed that when he was being led away by the police Cessay told him not to tell the police. When the police took out the drugs from the bag Baldeh admitted that the bag was his but he also told them that he doesn't sell drugs; he was not asked anything about the plastic bag containing the cannabis. He was then taken in a police car and taken to the Police General Headquarters. In the car he told the policeman who was driving the car that he had been caught with cannabis but that it wasn't his. Once at the Police Head Quarters he was taken before Inspector Jonathan Cassar who once again informed him of his right to consult a lawyer but Baldeh refused this right and he then made a statement which was also confirmed on oath before a Magistrate. On his statement being read out to him in Court, Baldeh claimed that although in the statement he had said that he knew that Cessay put drugs in his bag in reality Cessay did not tell him what he was going to put in his bag and in fact he (Baldeh) did not know what Cessay put in his bag. In his testimony he also claimed that although when he was confirming the statement on oath before Magistrate Dr Stafrace Zammit he said that he works late around 12 and 2 in the nighttime, there was some mistake because he works from 7pm to 2am then from 4am to 11am. Under cross-examination and on being asked whether he ever dealt in drugs Baldeh claimed that he never sold drugs however he confirmed that he received a WhatsApp message from someone asking him for drugs and he

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<sup>24</sup> Deposition at folio 283 et seq.



referred him to Dawda. Baldeh insisted that he did not know that Cessay put drugs in his bag.

## **The Charges**

Through these proceedings two main charges have been proffered against the accused: that of dealing in cannabis and of possession not for his personal use. The accused is also being charged with the aggravating circumstance of having committed these offences within 100 metres of the perimeter of a school, youth club or centre, or such other place where young people habitually meet.

### The First Two Charges

Having considered

The evidence adduced shows that in the night between the 30th September 2019 and the 1st October 2019, whilst in St George's Road St Julians, Dawda Cessay was being approached by a third party (who himself had been approached by some other persons before) following which Cessay would walk down St George's Road towards St George's Bay and return soon after. On returning he would hand over something to that person who had approached him. This happened a number of times. At a certain point the police followed Cessay down St George's Road to the bay where he went up to the accused and an other person; all were arrested soon after. It also results that both the accused and Cessay had drugs in their possession when they were arrested. Both had a small sachet containing a similar amount of cannabis (0.987grs and 1.1grs respectively) however the accused also had seven (similarly sized) paper bags containing a total of 34.5grs of cannabis. From the analysis carried out by Gilbert Mercieca the cannabis found in the possession of the accused and that found in the possession of Cessay could have the same origin. This asertion can to a certain extent be corroborated by what Cessay and the accused themselves say since since Cessay claims that he bought that 1.1gr from the accused, whilst the accused claims that he bought the 0.987grs from Cessay.

The accused claims that he was merely holding the seven paper bags for Cessay, not knowing what they contained, after Cessay asked to put them in his (Baldeh's) bag after they met on the beach. The accused also claims that immediately before his arrest he had been at work and that he had just gone

down to the beach to relax before his next shift when Cessay came along and asked him to do his hair. However the accused cannot be given credibility in making these assertions.

It appears from the acts of these proceedings that the accused contradicted himself regarding various aspects of his version of events. In his statement, confirmed on oath before a Magistrate, he claimed that he worked in a place called Miracles; before this Court, also under oath, he said it is called Middle East. He also gave different working hours in the statement and in his deposition before this Court. More importantly in his statement he said that he knew that Cessay was going to put drugs in his bag when he (Cessay) asked to put the seven paper bags in his bag. Testifying before this Court however, he claims that he did not know what the contents of the paper bag put in his bag by Cessay were, and that he only got to know that Cessay had put drugs in his bag when the police told him that the paper bags contained cannabis.

In this regard there are a number of considerations to be made. Accused claims that Cessay put the paper bags in his bag whilst he was doing his hair and before the police approached them. Irrespective of whether accused knew what was in those paper bags there is no logic in this assertion. Cessay had been at St Julians since at least 10.00pm when he was first observed by PC101 and PC1391. In all of this time PC101 and PC1391 did not see the paper bags and it was only on searching Baldeh's bag that they found out about them. So if they were in his possession, Cessay must have had a good place where to keep them hidden, whether on his person or elsewhere, a bag if he had one<sup>25</sup>. Once at the beach and now seated on the steps with Baldeh doing his hair there was no reason why Cessay had to move the drugs from wherever they were to Baldeh's bag, especially since the police had not yet approached them and he could not have known that they were about to be arrested. Furthermore, and with regards to Baldeh's eventual assertion that he did not know what was in the bags, the Court finds this very hard to believe given the appearance of the bags, the odour they must have had, and Baldeh's knowledge that Cessay sold drugs.

In view of the above, whilst not being in a position to determine where the accused used to work and what his hours were, the Court, after having seen the accused testify before it and having considered all the evidence adduced,

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<sup>25</sup> They could not have been elsewhere because walking down from St George's Road to the beach that final time the police did not observe Cessay stopping to collect those paper bags from anywhere.

is convinced that the accused not only knew that the seven paper bags in his bag contained cannabis but it is also convinced that those paper bags had been in his bag for some time.

The evidence adduced also shows that in the month of September the accused had been in contact with at least two persons and exchanged messages clearly referring to the supply of drugs. The exchange with Dan Licari was on the afternoon of the 30th September 2019, less than twelve hours before Baldeh's arrest; from that exchange it emerges very clearly that Licari wanted cannabis (weed<sup>26</sup>), "a bag of 40", and that the accused was ready to supply him with that "weed" or direct him to someone who could so supply him.

There were various exchanges with Manuel Vitali throughout the month of Setemebr 2019 all of which show that Vitali approached the accused to acquire something from or through the accused. In two particular exchanges however, those of the 18th September and the 27th September, specific reference is made to cannabis ("weed" and "grass" respectively). In the first of these exchanges it seems that Vitali wants the drug for himself whilst in the second exchange he is asking on behalf of third parties, two tourists. In this case the accused accepts to supply these tourists with "grass" and even confirms to Vitali that he has contacted them. The accused admits, both in his statement and before this Court, that he was in contact with Vitali and that whenever Vitali wanted drugs he used to refer him to Cessay since he knew that Cessay sold drugs.

Having considered

In terms of section 22(1B) of Chapter 101 of the Laws of Malta "*dealing*", ("*traffikar*" in the Maltese version of this Act) .... *with reference to dealing in a drug, includes ....., manufacture, exportation, distribution, production, administration, supply, the offer to do any of these acts, and the giving of information intended to lead to the purchase of such a drug*<sup>27</sup> *contrary to the provisions of this Ordinance.*

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<sup>26</sup> From his statement it is very clear that the accused refers to cannabis either as weed, grass or smoke.

<sup>27</sup> Emphasis of the Court.

The principle that an offer to supply drugs falls within a definition of dealing in drugs as set out in section 22(1B) was also reaffirmed in the judgement in the names *Police vs Eric Lawani*<sup>28</sup> where it was held that

*In terms of Section 22(1B) of the Dangerous Drugs Ordinance, even an offer to supply drugs amounts to dealing in drugs and since it is irrelevant whether any such substance is actually supplied following such offer, the offer in itself being sufficient to constitute the completed offence of dealing in drugs,*

The Court in that judgement went on to refer to another judgement in the names *Il-Pulizija vs Ronald Psaila*<sup>29</sup>,

*Minn din id-disposizzjoni tal-Ligi johrog car li r-reat ta' traffikar jikkonfigura anki jekk persuna toffri li taghmel wahda mill-azzjonijiet indikata f'dan l-artikolu. Fit-test ingliz, il-kelma "joffri" hija trodotta bil-kelma "offer". Issa stante li ma hemmx fl-Ordinanza definizzjoni ta' din il-kelma, allura ghall-finijiet ta' interpretazzjoni, din ghandha tittiehed fis-sinifikat ordinarju taghha, u cioe` li, spontaneament jew fuq rikjesta, direttament jew indirettament, persuna turi, bil-fatt jew bil-kliem, id-disponibilita` taghha li taghmel wahda mill-azzjonijiet indikati. In propositu huma interessanti l-osservazzjonijiet maghmula fil-Blackstone Criminal Practice 2001 – (11th Ed. B20.29) fuq l-interpretazzjoni tal-frasi "Offering to Supply" kontenuta fil-Misuse of Drugs Act 1971 s. 4. "An offer may be made by words or conduct ... Whether the accused intends to carry the offer into effect is irrelevant; the offence is complete upon the making of an offer to supply"*

The Court of Criminal Appeal, in the same judgement given in the case *Il-Pulizija vs Ronald Psaila*, also confirmed that an offer to supply does not constitute an attempted offence but the completed offence of "dealing":

*appena l-appellant accetta li jaqdi lill-persuna li kienet cemplitlu immaterjalizza r-reat ta' traffikar fir-raza tal-cannabis u mhux, kif donnu qed jippretendi l-appellant, ir-reat ta' tentattiv ta' traffikar.*

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<sup>28</sup>A judgement given by the Court of Magistrates on the 15<sup>th</sup> February 2016.

<sup>29</sup> *Il-Pulizija vs Ronald Psaila* given at first Instance on the 12<sup>th</sup> October 2001 and confirmed on appeal on the 8<sup>th</sup> January 2002.

From the wording of section 22(1B) of Chapter 101 of the Laws of Malta and from the jurisprudence abovequoted there can be no doubt that the term dealing in drugs is a very wide term and includes in it, as a completed offence, any offer made to supply drugs and the giving of any information (eg the name of a supplier and his contact details) which might lead someone to acquire drugs.

There can be no doubt that the messages exchanged between the accused and Dan Licari and Manuel Vitali show that the accused was offering to supply drugs and consequently dealing in drugs. Even if the Court were to accept the assertion made by the accused that he was merely referring persons (who contacted him seeking to acquire drugs) to Cessay, this will still fall within a definition of dealing in drugs.

Having established that Baldeh was in possession of drugs, circa 35grs of cannabis over which he had effective control, when he claims that he uses about one gram of cannabis over four or five days and that he had his weekly dose in a separate sachet, which he bought the night before, and which was also found in his bag, it can be safely said that those 35 grams were not for his personal use.

In view of the above the first two charges are sufficiently proven.

### The Third Charge

The defendant is also being charged with the aggravating circumstance of having committed the abovementioned offences in or within a distance of one hundred meters of a place where youths habitually meet, this in terms of the second proviso of section 22(2) of Chapter 101 of the Laws of Malta.

In the judgement in the names Police vs Abdikarim Isman Omar<sup>30</sup> the Court of Criminal Appeal held that *this particular aggravating circumstance could only be proven by objective means*. It went to consider that the crime of which the accused was found guilty took place in Dragonara Road in Paceville. The Court of Appeal considered that Dragonara Road is a fairly long road and *the fact that it is common knowledge that young people*

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<sup>30</sup> A judgement given on the 29<sup>th</sup> October 2018.

*frequent Paceville is not of itself sufficient to safely conclude that the crime took place in or within the said one hundred meters, more so when not all areas of Paceville are invariably frequented by young people let alone on a habitual basis.*

In an other judgement given by the Court of Criminal Appeal<sup>31</sup> it was held that for this aggravating circumstance to subsist it need not be shown that at the time the offence was committed the club or centre was open and that there actually were any young people present. It was also held that neither is it necessary to prove any specific intent to deal in drugs in a place habitually frequented by young people.

*Meta l-legislatur ipprova li r-reat ikun aggravat (fis-sens li l-piena tizdied bi grad) jekk isir “fi, jew gewwa distanza ta’ mitt metru mill-perimetru ta’, skola, club jew centru taz-zghazagh, jew xi post iehor simili fejn normalment jiltaqghu iz-zghazagh...” huwa kien qed jipprova ghal kriterju oggettiv u determinat biss mid-distanza proprju ghax il-postijiet imsemmija huma tali li lejhom jew qribhom tfal u zghazagh itendu li jiggravitaw indipendentement mill-hin tal-gurnata jew mill-jum tal-gimgha, u indipendentement minn jekk l-iskola, club, centru ecc. ikunx dak il-hin miftuh jew maghluq. Din id-disposizzjoni hekk dejjem giet interpretata, u hekk korrettement interpretatha u applikatha l-ewwel qorti fissentenza appellata. Kif tajjeb osservat l-ewwel qorti: “Imkien fil-proviso m’hemm xi indikazzjonijiet ta’ hinijiet jew jiem. Lanqas ma tidher fil-proviso xi referenza ghal xi htiega ta’ xi intenzjoni specifika – jigifieri li wiehed ikun jaf jew deliberatament mar hdejn skola. Il-proviso huwa redatt f’termini assoluti u interpretazzjoni flessibbli tmur kontra l-ispina dorsali tal-Kapi 31 u 101 li huma intizi biex ikunu ta’ deterrent ghal min jipprova jazzarda jitraffika d-droga.”*

Baldeh was arrested at St George’s Bay. From the architect’s report it is shown that within a walking distance of 100 meters from where he was arrested there are three places habitually frequented by youths: The Beer Garden, Hugo’s Terrace and EF Language School.

It should be pointed out that for purposes of the provision of law on which this third charge is brought the place frequented by youths should be within

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<sup>31</sup> In the names *Il-Pulizija vs Jason Xuereb* given on the 9<sup>th</sup> June 2009.

radius of 100 meters from where the actus reus took place. The Court appointed architect however, on determining that there were these three establishments in the vicinity of where the accused was arrested, proceeded to determine the walking distance between the point from where Bladeh was arrested and each of The Beer Garden, Hugo's Terrace and the EF Language School. The walking distance to Hugo's Terrace and the EF Language School, according to the route plotted by the architect, is over 90 meters. Since the architect calculated the walking distance rather than the position within, or out of, a hundred meter radius, from where Bladeh was arrested, it cannot be definitively concluded that these two establishments fall within the one hundred meter radius.

The same cannot be said of the other establishment: The Beer Garden. This is within a walking distance of 39 meters from the point where Bladeh was arrested and clearly within the hundred meter radius.

Having considered

With regards the penalty to be meted out, the Court took into consideration the nature of the offences of which the accused is being found guilty as well as the nature and quantity of drugs found in his possession. The Court also took into consideration his clean conviction sheet and his age.

Wherefore the Court, after having seen sections 8(d), 8(e), 22(1)(a), 22(2)(b)(i) and the second proviso of section 22(2) of Chapter 101 of the Laws of Malta and Regulation 9 of Legal Notice 292 of the year 1939 finds defendant guilty of the charges brought against him and condemns him to **eighteen (18) months imprisonment** and a **fine of one thousand Euros (€1,000)**. Furthermore and by application of section 533 of Chapter 9 of the Laws of Malta the Court is ordering the accused **to pay to the Registrar of this Court, the sum of one thousand nine hundred sixty seven Euros and seventy two cents (€1,967.72)** representing expenses incurred in the employment of experts<sup>32</sup>. The Court is also **confiscating the mobile phone exhibited as Document JC13**.

In conclusion the Court is also ordering **the destruction of the drugs exhibited as Document JC12** once this judgement becomes final and executive, and on confirmation by the prosecuting officer that the said drugs

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<sup>32</sup> It should be pointed out that the Court has ordered payment of the expenses incurred relative to the reports drawn up by the experts Keith Cutajar, Gilbert Mercieca, Dr Marisa Cassar and Nicholas Mallia.

are not required in connection with any other proceedings. The destruction is to be carried out 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**