



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

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

**Today, the 12<sup>th</sup> October, 2020**

**The Police**  
**(Inspector Godwin Scerri)**

**vs**

**Fabio Ignazzitto**

The Court

Having seen the charges brought against Fabio Ignazzitto, 31 years of age, son of Giuseppe and Rosolia nee' Di Perna, born in Sicily on the 14<sup>th</sup> January 1988, residing at number 32, 'Blue Waters' Flats, Giulio Street, St. Paul's Bay and holder of Italian identification document number AV4950878.

Charged with having had in his possession, on the 11<sup>th</sup> March 2019 at around 13:15hrs, whilst in Haleb Street, St. Paul's Bay, 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.

And also of having in his possession the whole or any portion of the plant Cannabis in terms of Section 8(d) of the Chapter 101 of the Laws of Malta.

The Court was requested to order the accused to pay all necessary Court fees in terms of Article 533(1) of Chapter 9 of the Laws of Malta.

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

These proceedings refer to events which took place on the 11th March 2019 in Triq il-Hallel St Paul's Bay.

**Inspector Godwin Scerri**, the prosecuting officer, gave evidence before this Court<sup>2</sup> to give an overview of the facts of this case and of the investigation carried out. He specified that the defendant was stopped by the traffic wardens on account of a traffic violation and on stopping him the traffic wardens suspected that defendant was smoking a joint. After PS1026 went on site and eventually arrested him, the defendant was taken to the police station and Inspector Scerri took his statement.

**PS1026 Brandon Gauci**<sup>3</sup> explained to the Court that on the 11th March 2019 he was on duty at the Qawra Police Station when, at about 12:45hrs, Local Wardens CO71 and CO774 called for assistance since they had just checked a vehicle in Hallel Street St Paul's Bay and they suspected that there were drugs. PS1026 went on site and he found the defendant sitting in the driver's seat in the vehicle bearing registration number LDD 885. In the search the witness conducted in the vehicle he found various items: a bottle with a suspected joint and a bag containing a substance suspected to be cannabis grass. On finding these items the defendant was arrested and taken to the

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<sup>1</sup> Exhibited at folio 4.

<sup>2</sup> Deposition at folio 14 et seq.

<sup>3</sup> Deposition at folio 10 et seq.

police station. Soon after a search was conducted at defendant's residence, Flat 32, Blue Waters Triq Guilio St Paul's Bay but nothing suspicious was found there.

**PC788 Keith Scerri**<sup>4</sup>, who accompanied PS 1026, confirmed the facts as explained by PS1026; he also confirmed that a substance suspected to be cannabis was found in the vehicle.

**CO701 Malcom Gilford**<sup>5</sup> and **CO774 John Naudi**<sup>6</sup> were both produced as witnesses. They confirmed that CO71 Malcolm Gilford stopped the defendant, who was driving a Mazda Demio, because the vehicle had a broken headlamp. On approaching the vehicle CO71 smelt the distinct smell of cannabis so he called his colleague who was close by. They asked the defendant, who was insisting that he had no illegal substances, to go out of the car. They looked inside the car and when they saw the cigarettes and some substance they called the Qawra police station. When PS102 and PC 788 arrived they (the police officers) searched the vehicle. The suspicious objects were seized by the police. The traffic wardens accompanied the two police officers and the defendant to the police station.

In the course of these proceedings an expert, **Gilbert Mercieca**, was appointed to analyze the objects and substance seized from defendant. From his deposition<sup>7</sup> and report<sup>8</sup> it results that there were eight partially smoked cigarettes in a metal container, and a plastic bag containing a green substance. The eight cigarettes resulted positive for both tobacco, nicotine and Delta THC (cannabis); the green substance was confirmed to be cannabis. The cannabis which was found in the bag weighed 118.64 grams and has an estimated value of two thousand two hundred and fifty four Euros (€2,254).

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<sup>4</sup> Deposition at folio 26 et seq.

<sup>5</sup> Deposition at folio 41 et seq.

<sup>6</sup> Deposition at folio 43 et seq.

<sup>7</sup> At folio 30 et seq.

<sup>8</sup> Doc GM1 at folio 32.

The defendant, who chose not to give evidence before the Court, released a statement which is exhibited in the acts of the proceedings<sup>9</sup>. In this statement the defendant admitted that the green substance found in the car was cannabis (he referred to it as marijuna) and that he bought it the day before his arrest, for his personal use. He specified that he bought one hundred and thirty grams for four hundred and thirty Euros and that before his arrest he had already taken two or three grams from the packet to make a joint. In his statement the defendant also indicated from where he bought this cannabis.

A final witness in these proceedings was **Giusi Bronchato**, defendant's partner, who was called to give evidence by the defendant<sup>10</sup>. She explained that she and the defendant have been in a relationship for a number of years and they have a son, with an other child soon to be born. She confirmed that the defendant has a drug problem and that he smokes four or five joints every day. She also said that he used to buy drugs in large quantities because it was cheaper to buy it this way. She also said that since the day of his arrest he has stopped using drugs. Under cross examination she said that defendant stopped using drugs on his own initiative and without seeking any professional help. She also stated that defendant never used drugs in the presence of third parties.

Having considered

By means of these present proceedings the defendant is being charged with both simple possession and aggravated possession of cannabis.

From the evidence adduced there can be no doubt that the defendant had in his possession 118grams of cannabis and eight partially smoked joints. In reality defendant does not contest this fact however he claims that those drugs were for his own personal use.

Our law does not set out what criteria have to be satisfied in order for possession to be deemed "not for personal use". In fact very often determining

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<sup>9</sup> Doc GS 2 at folio 17.

<sup>10</sup> Deposition at folio 49 et seq.

whether the drugs found were for personal use or not can present some difficulty.

In the judgement given by the Court of Criminal Appeal in the names Pulizija vs Marius Magri<sup>11</sup> it was held that:

*.... 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 spaccata.*

In this judgement the Court went to state that in these cases the Court must be satisfied that the circumstances in which drugs are found show that they were not intended for personal use. There can be no hard and fast rule as to what these circumstances may be, since one case will vary from the other. One single circumstance however, including the amount of drugs found, may be sufficient to show that the drugs were not for personal use provided that the Court is convinced of this beyond reasonable doubt.

*Il-principju regolatur f'dawn il-kazijiet hu li l-Qorti trid tkun sodisfatta lill hinn minn kull dubju dettat mir-raguni w a bazi tal-provi li jingabu mill-prosekuzzjoni li l-pussess tad-droga in kwisjtoni 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. (Ara App Krim. "Il-Pulizija vs Carmel Degiorgio" [26.8.1998]. Meta l-ammont tad-droga ikun pjuttost sostanzjali, din tista' tkun cirkostanza li wahedha tkun bizzejjed biex tissodisfa lill-Qorti li dak il-pussess ma kienx ghall-uzu esklussiv tal-hati. (Ara. Appell Kriminali: "il-Pulizija vs Carmelo Spiteri" [2.9.1999].)*

*Illi pero' kif gie ritenut minn din il-Qorti, kif preseduta, kull kaz hu differenti mill-iehor u jekk jirrizultawx ic-cirkostanzi li jwasslu lill-gudikant ghall-konvinzzjoni 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 jaghmlu il-gudikant u jekk il-konkluzzjoni li*

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<sup>11</sup> Decided on the 12th May 2005.

*jkun wasal ghaluha l-gudikant tkun perfettament raggungibbli bl-uzutal-logika w l-buon sens u bazata fuq il-fatti, ma jispettax lil din il-Qorti li tissostitwiha b'ohra anke jekk mhux neccessarjament tkun l-unika konkluzzjoni possibbli. (App. Krim. "Il-Pulizija vs Brian Caruana" [23.5.2002]).*

This judgement and the principles emerging therefrom have been consistently upheld by our Courts.

From the evidence adduced in this case there appears to be only one circumstance which may be taken as indicative of possession not for personal use: the amount of drugs found. One hundred and eighteen grams is not an insignificant amount of cannabis. Such an amount may in certain cases be taken to denote possession not for personal use, however there are other factors which have to be taken into consideration.

Defendant claims to be a regular user of cannabis. The partially smoked joints, kept in a metal container found in his car, lend credibility to this assertion since there is no forensic or other evidence to suggest that those joints had been used by third parties.

Other than the cannabis, which was kept in one single bag, and the partially smoked joints, no other objects normally associated with the trafficking or sharing of drugs were found, whether in the vehicle driven by the defendant or in his residence.

In view of this and in the absence of any other evidence, the single circumstance of the amount of drugs found, in this case, does not convince the Court that those drugs were not exclusively for defendant's personal use.

Having considered further

With regards to the penalty to be meted out the Court took into consideration the nature of the charge of which defendant is being found guilty, his clean conviction sheet, and his cooperation with the police. The Court is also taking into consideration the amount of drugs found in defendant's possession.

Wherefore the Court, whilst not finding the defendant guilty of the first charge and acquitting him therefrom, after having seen sections 8(d), 22(1)(a), and 22(2)(b)(ii) of Chapter 101 of the Laws of Malta and Regulation 9 of Legal Notice 292 of the year 1939, finds defendant guilty of the second charge brought against him and by application of section 22 of Chapter 446 of the Laws of Malta **discharges him on condition that he does not commit an other offence in the period of two years**. By application of section 533 of Chapter 9 of the Laws of Malta the Court is ordering the defendant to **pay the Registrar of this Court the sum of three hundred and twenty four Euros and fifty cents (€324.50)** representing expenses incurred in the employment of experts.

The Court is also ordering **the destruction of the drugs and other objects exhibited as Document BG2** 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.

The Court explained to the defendant in ordinary language the significance of this judgement and of the consequences should he commit an other offence in the period of two years.

**DR. DOREEN CLARKE**  
**MAGISTRAT**