Court of Criminal Appeal

Hon. Madam Justice Consuelo Scerri Herrera, LL.D., Dip Matr., (Can)

Appeal number 188/2020

The Police

Vs

Juldeh Baldeh

Today the,5th January, 2021

The Court,

Having seen the charges brought against **Juldeh Baldeh** holder of Italian Residence Permit bearing number 112771946, Italian Identity Card bearing number AY6976576 and Italian Travel Document bearing number MD0039736, before the Court of Magistrates (Malta) as a Court of Criminal Judicature of having on the 01st 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 judgment meted by the Court of Magistrates (Malta) as a Court of Criminal Judicature proffered on the 30th of September 2020 whereby the Court, 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 found defendant guilty of the charges brought against him and condemned 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 ordered 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[1]. The Court also **confiscated the mobile phone exhibited as Document JC13**.

In conclusion the Court ordered **the destruction of the drugs exhibited as Document JC12** once this judgement became final and executive, and on confirmation by the prosecuting officer that the said drugs 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.

[1] 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.

Having seen the appeal application filed by Juldeh Baldeh in the Registry of this Court on the 13th of October 2020 whereby this Court was requested to revoke and cancel the judgement delivered by the Court of Magistrates (Malta) on the 30th September 2020 in the case in the above mentioned names and declares appellant not guilty of the charges brought against him and acquits him of all the charges brought against him and in case that appellant is found guilty as charged or on any of the charges brought against him to impose a different penalty than that decided by the Court of First Instance, including the order regarding the payment of Court expenses, and which will be more in consonance with the facts of this case and with the personal circumstances of appellant.

Having seen the acts of the proceedings;

Having seen the updated conduct sheet of the appellant, presented by the prosecution as requested by this Court.

Having seen the grounds for appeal of Juldeh Baldeh:

The grounds of appeal of appellant are clear and manifest and consist in the following:

1. As has been confirmed by the Court of First Instance in its judgement this case is based on events which took place in the early hours of the 1st October 2019 in St. George's Bay, St. Julian's and not before. This is also confirmed by the Third Charge namely that of having, "Committed these offences in or within 100 meters of the perimeter of a school, youth club or centre, or such other place where young people habitually meet in breach of article 22 (2) of Chapter 101", which is actually an aggravation of the first two charges. Actually, in order to establish the distance from where the three persons, including appellant, were arrested, the Court of First Instance had appointed, at the request of the Prosecution, architect Mr. Nicolas Mallia, who had based his report on the relevant distances between the place of arrest, that is the stairs in St. George's Bay where the appellant was doing the rasta hair of Dawda Casey and places where allegedly youth meet in the area of St George's Bay, St. Julian's.

Therefore, any reference in the evidence to any other occasion which does not fall within the parameters of the third charge, which is actually an aggravation of the other two charges, that is in the early hours of the 1st October 2019, should not be considered for the purpose of finding guilt on any of the two charges and to which the third charge refers.

In actual fact however, the Court of First Instance based its decision of guilt also on facts which may have happened prior to the 1st October 2019 by interpreting messages found on the mobile phone of appellant. However, in these messages there is no reference whatsoever to what had actually happened during the period when the two Police Officers Gaffarena and Spiteri arrested the appellant at around 2.00 a.m. of the 1st October 2019. In actual fact what these two Police Officers testified about the appellant was that they found him near Dawda Casey when the arrest took place and that at that place, that is St. George's Bay no drug dealings had taken place.

Furthermore the Court of First Instance relied also on the statement, confirmed on oath, released by Dawda Casey, who however refused to testify in this case since criminal proceedings were pending against him and which were still pending against him when the defence had closed its case this case and the case deferred for judgement. Because of this Dawda Casey could not be cross-examined by appellant. The other accused, Sonko, also refused to testify since criminal proceedings were still pending against him and which were still pending against him when the defence had closed its case in this case and the case was deferred for judgement. Because of this appellant could also not bring him to testify in his defence.

2. The report of Court appointed expert architect Nicholas Mallia is useless in this case since his conclusions, which he described as being based on common sense rather than on *il buon senso*, refer to distances taken from the stairs in St George's Bay where the appellant was arrested, and where according to the Police Officers conducting the observations no activity related to drugs had taken place. Furthermore, no one of the Police Officers conducting the observations had testified

about any youths roaming the area. It is the Prosecution that has to prove this aggravation relating to the other two charges beyond any reasonable doubt.

3. In so far as the First Charge is concerned, apart from the fact that the section 8(e) of Chapter 101 in the Charge Sheet does not include the word "Produces", as for example the law does in Sec. 8(b), and of which (namely "produced") appellant was also found guilty, there is no proof whatsoever that in the early hours of the 1st October 2019, as declared by the Court of First Instance in its judgement stated to be the case by having declared that, "*This case is based on events which took place in the early hours of the 1st October 2019*",

Had produced (sic!), sold or otherwise dealt with the whole or any portion of the plant Cannabis in terms of Section 8 (e) of Chapter 101. Not only has the Prosecution not brought any evidence in this regard but also accused denied all these charges in all his statements, including those on oath before the duty Magistrate and the Court of First Instance, in the sense that on the 1st October, 2019 he did not commit any of these crimes. Nobody testified that accused had produced (sic!) or sold or otherwise dealt with the whole or any portion of the plant Cannabis on the 1st October, 2019. This notwithstanding the Court of First Instance did find him guilty of this charge because primarily he made a mistake in his written statement when he said he worked at Middle East restaurant; his working hours mentioned in the written statement did not tally with what he had said before the Court; and "more importantly because in his statement he said that he knew that Casey was going to put drugs in his bag when he (Casey) asked to put the seven paper bags in his bag".

The Court of First Instance did not accept appellant's denial of this charge both in his written statement, confirmed on oath, and in his evidence before the Court itself.

The reasoning of the Court of First Instance was that the Police officers who were observing Dawda Casey did not see any paper bags in his hands. However, these same Police Officers had stated that Casey was going up and down between the restaurants area and St George's Bay whenever he was involved in a drugs deal whilst no drug deals had taken place in the bay itself. Therefore it is probable that

these drugs were being kept by Casey in the bay and when he asked appellant to do his hair he wanted to have what had remained of the drugs on sale in appellant's bag which was the only bag on site and where they would be more secure.

In arriving at a conclusion of guilt on circumstantial evidence, as appears to be the case in so far as this charge is concerned, one has to be very careful about the interpretation of such evidence since, as it is well known, whilst circumstances do not speak, and therefore cannot lie, they may however deceive. Therefore before arriving at a conclusion of guilt from facts in evidence the judge of facts has to be sure that there are no other co-existing circumstances and/or other direct testimony which would weaken or destroy such inference or conclusion.

In order that indirect or circumstantial evidence may be made use of to consider whether one may draw an inference of guilt, the fact or facts examined must be unambiguous or unequivocal meaning that these must be definite or unmistakable or clearly point out to only one conclusion.

Therefore, circumstantial evidence, only if certain and pointing to one direction, may be taken into consideration to make an inference of guilt.

Circumstantial evidence may also be used in favour of the accused. If indirect evidence shows that probably accused is not guilty or that there is a reasonable doubt as to his guilt, then it means that an inference must be made that he is not guilty.

Indirect or circumstantial evidence must always be narrowly examined because although circumstances do not lie they may deceive.

On the other hand, if direct evidence, such as the reliable evidence of an accused, who in the evaluation of his evidence has to be treated like any other witness, annuls or weakens circumstantial evidence pointing towards guilt, then a reasonable doubt would be raised in the case of the Prosecution.

Furthermore, although appellant tried several times to bring in his defence the owner of the Middle East restaurant to confirm his working times and that on the 1st

October, 2019 he was working there till around 2.00 a.m., the Prosecution did not succeed to bring him over to give evidence for the defence after several attempts during which time appellant was being held under preventive arrest and this since the 1st October, 2019.

Nevertheless, it is the Prosecution which had the burden of proving this charge against the appellant beyond reasonable doubt whilst appellant had no such burden to prove himself to be innocent. This notwithstanding appellant chose to prove that he is not guilty and he respectfully submits that he succeeded to do so at least on a balance probabilities.

4. In so far as Second Charge is concerned, appellant by his own admission, was in possession of almost one gram of Cannabis, as found by the Court appointed expert, and it was proved, at least on balance of probabilities, that it was for his own personal use. Therefore, this 'Possession' does not fall within the parameters of this charge which refers to the possession of Cannabis not for his own personal use. Nevertheless, and in any case, in this case of almost one gram of cannabis, the provisions of Chapter 537 (Drug Dependency – Treatment Not Imprisonment Act) should have applied.

In so far as the seven (7) small pouches wrapped in black and white stripped paper containing altogether 34.5 grams of cannabis, as found by the Court appointed expert are concerned, appellant denied they belonged to him and explained why these were found in his bag. There is no proof whatsoever that accused even touched these drugs in any manner not even for one single moment. The conclusions by the Fingerprints and DNA experts leave us neither here nor there in so far as appellant is concerned. In the sense, it is true that these drugs were not intended for appellant's own use both because these did not belong to him and because no proof was made that he had an intention to do anything with them and this exactly because these did not belong to him. So in this case the Prosecution did not succeed to prove beyond reasonable doubt that in such circumstances accused was <u>in possession with intent to deal.</u>

In his evidence before the Court of First Instance appellant confirmed what he had said in his statement to the Police, confirmed on oath, that these were put in his bag by Dawda Casey when appellant was about to do his hair. Before the Court of First Instance he explained that he came to know that these wrappings contained cannabis after the Police took them out of his bag. There is no evidence beyond reasonable doubt that these drugs belonged to appellant.

It is up to this Honourable Court as to whether to believe that appellant came to know that the wrappings contained cannabis before or after these were put in his bag. In this regard, it must be pointed out that before and during making his Statement to the Police appellant, true through his own fault, failed to consult a lawyer both before the taking down of his written statement and during the taking down of the statement. It is also true that an incriminating statement, legally received in evidence, which may be believed in its entirety or partly or not at all, may serve as a basis for finding guilt. But an incriminating statement does not automatically lead to the finding of guilt because the onus of proving guilt beyond reasonable doubt still rests with the Prosecution. In the circumstances of this case appellant humbly prays this Honourable Court to consider the fact that since he did not think he had committed any criminal offence as regards the seven wrapping found in his bag he did not feel the need to engage a lawyer and wanted to tell the Police all he knew. In actual fact the only offence he believed he had committed, confirmed both in the statement to the Police and confirmed on oath during his evidence before the Court of First Instance is that he was in possession of some cannabis grass for his own personal use. Appellant implores this Honourable Court to consider that persons in front of a Police Inspector may commit genuine errors in what they may say. This is precisely why today a suspected person does not only have the right to speak to a lawyer before any interview with the Police taken place but he has also the right to have a lawyer present during the interrogation. In any case one may not just say that declining to speak to lawyer is a fatal mistake which cannot be reversed at all. This on the principle that the Prosecution has to prove its case against accused beyond any reasonable doubt. Actually it is possible that even an incriminating statement may not be relied upon, totally or partly, if there is direct

or circumstantial evidence that may be relied upon and which contradicts what is said in the alleged incriminating statement.

But just for argument's sake let it be assumed that appellant knew what Dawda Casey had put in appellant's bag was cannabis. Does this amount to the crime of possession under section 8 (d) of Chapter 101? And the more so 'not for this own personal use'?

Chapter 101 does not define "*Possession*" and therefore it is up to our Courts to define what the legislator intended by "*possession*" in this case.

Since this is a crime the Prosecution has to prove beyond reasonable doubt both the *actus reus* and the *mens rea* of this crime.

In so far as the *actus reus* is concerned, like in all cases, and even so in the case of contraventions, the *actus reus* must proved to have been done voluntarily.

Is there any proof beyond reasonable doubt that the putting of the cannabis grass in appellant's bag was done by appellant or at appellant's request? The evidence shows that this was put in appellant's bag by Dawda not at appellant's request or will.

Would knowledge on the part of appellant of the contents change the situation when it was not appellant who invited Dawda to put the incriminating object in his bag? In other words, would such knowledge amount to the required *mens rea*?

It is said that the test of '*Possession*' is the intention to control.

Possession can either be '*Physical*' or '*Constructive'/'Legal'*.

In so far as Physical Possession' is concerned it can be '*Manual*' or '*Non-Manual'* when it is on his person. It is '*Constructive*' or '*Legal*' when notwithstanding not being in 'Physical Possession' one has the legal right to possess the object in question. Consistent with '*Constructive*' or '*Legal*' Possession is the legal right on the part of the possessor to have physical possession of the thing whenever he wants to possess it physically, that is having the legal right to keep it for himself.

However, mere acquiescence in the presence of the incriminating object does amount to criminal possession.

In the English case of Hussain (1961 – 2 Q.B. 567) the Court of Criminal Appeal was concerned with the situation in which the appellant, a merchant seaman sharing a cabin with two other people was present when two persons came into his cabin and hid an illicit drug. The Court quashed his conviction for an offence of unlawfully possessing dangerous drugs, explaining that the test of possession was control and that a mere consenting to the disposition of the drug would not establish possession as distinct from, inter alia, a willing receipt of and hiding of the goods in questions on behalf of somebody else.

As in the above-mentioned case, in this case, appellant did not have any control whatsoever on the object that was put in his bag neither when it was put nor at any time in the future. In this regard, would a drug trafficker give someone a certain amount of drugs, valued at €674 by the Court Expert in this case, without asking for payment or any another consideration?

In the circumstances of this case appellant respectfully submits it was not proved beyond reasonable doubt that he was in the voluntary physical or constructive possession of the drugs in question with the necessary accompanying mens rea from the moment the drugs were put in his bag until the Police intervened.

In conclusion, for all these reasons, appellant humbly submits that he should be acquitted of all charges brought against him since in his humble opinion his conviction is not safe and sound.

5. Even if this Court were to arrive at the conclusion that accused is guilty of any or of both charges brought against him, the punishment of eighteen months imprisonment and a fine of €1000 euro imposed upon him was in appellant's humble opinion exaggerated since there are seven elements which indicate a lesser sentence. These are:

i. The relatively young age of appellant;

ii. The clean Good Conduct Sheet of appellant;

iii. The possession of the drugs in the second charge was for a very short period of time, not for his own use because he was never the owner of the drugs and not for dealing.

iv. The relatively small amount of cannabis involved.

v. The lack of judgement on the part of appellant both at St George's Bay, at Police H.Q. and before the Inquiring Magistrate which more than anything else had put accused in this situation which up till now has already caused him more than twelve months in effective imprisonment;

vi. The fact that the Court of First Instance did not consider that the crime mentioned in the second charge was designed for the commission of the crime mentioned in the First Charge;

vii. The fact that no reference was made in the judgement to Section 17 of the Criminal Code; and

viii. The fact that appellant tried to help the Police as much as he could about the real drug trafficker in this case and therefore the provisions of Section 29 of Chapter 101 should apply.

6. Another ground of appeal is that relating to the Court Expenses which appellant was ordered to pay.

In this regards it must be stated that even in case that appellant is found guilty as charged he should not be burdened with the paying of those expenses which were not directly or indirectly relevant in the finding of his guilt as has been confirmed by the Honourable Court of Criminal Appeal in the case **The Republic of Malta vs Kingsley Wilcox** [2]. This is the case of the expenses related to the two reports produced by Mr. Keith Cutajar and the report produced by Dr. Marisa Cassar.

Furthermore, in so far as other reports by Court Experts are concerned, it is being humbly submitted that these reports were also used in two other cases related to same facts of the present case, namely the case against Dawda Casey and the case against Sonko, who though both of them had criminal proceedings instituted against

[2] Decided on the 20th January, 2020.

them separately from those of the appellant, all the three cases, including that against appellant, were heard for most part of them simultaneously and all same reports were exhibited in the three different criminal proceedings. Therefore, appellant should only be ordered to pay one third of these expenses on the principle that it is not just and fair that the Administration of Justice enriches itself at the expense of a person found guilty.

The Court heard the parties make their oral submissions.

Considers further.

That the facts in brief are as follows:

1. That on the 30th September, 2019 PC 101 Raznai Gaffarena and PC 1391 Etienne Spiteri were observing individuals allegedly selling drugs in St. George's street Paceville;

2. PC 101 Raznai Gaffarena explained[3] that when someone was going to buy drugs, the initial dealer would go to a dark skinned male wearing a blue shirt which was later identified to be Dawda Ceesay, Dawda would then walk down to St George's street and moments later would return to give drugs to what PC 101 Raznai Gaffarena describes as the 'initial dealer' and then the drug transaction would proceed;

3. After several hours of observation on the 1st October 2019 in the early hours of the morning, members of this group including Dawda were followed to St. George's Bay where these Police Officers understood that the drugs were being hidden or kept on the bay;

4. Police officers called for RIU assistance who arrested individuals, including the accused Juldeh Baldeh. In the bag of the accused, the Police found 7 black and white wrapping containing cannabis, a mobile phone, an identity card and one sachet containing green substance.

[3] In his testimony dated the 10th of October 2019.

5. The accused confirmed that the sachet was his, while the 7 paper balls belonged to Dawda. Questioned about a conversation on whatsapp where someone told him that two tourists need to buy grass, the accused explained that he knows this boy from Italy so they normally meet at the beach. He explained that if they meet, he normally asks him about grass and when he asked him, the accused called Dawda and he goes to sell him.

6. Charges were subsequently issued against the accused.

That the appellant in his appeal submits that as has been connfirmed by the Court of First Instance in the judgment, this case is based on events which took place in the early hours of the 1st October, 2019 in St. George's Bay, St. Julians and not before. He submits that this is also confirmed by the third charge that of having '*Committed these offences in or within 100 meters 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 appellant submits that any reference in the evidence to any other occasion which does not fall within the parameters of the third charge, which is actually an aggravation of the other two charges, that is in the early hours of the 1st October 2019, should not be considered for the purpose of finding guilt on any of the two charges and to which the third charge refers. That the Court of First Instance based its decision of guilt also on facts which may have happened prior to the 1st October 2019 by interpreting messages found on the mobile phone of appellant. In these messages there is no reference whatsoever to what had actually happened when the two Police Officers Gaffarena and Spiteri arrested appellant at around 2.00am of the 1st October 2019. What these two police officers testified about appellant was that they found him near Dawdy Casey when the arrest took place and that at that place, that is St. George's Bay no drug dealings had taken place.

That the Court of First Instance relied also on the statement, confirmed on oath, released by Dawda Casey, who however refused to testify in this case since criminal proceedings were pending against him and which were still pending against him

when the defence had closed its case and the case was deferred for judgment. That the other accused, Sonko also refused to testify since criminal proceedings were still pending against him and which were still pending against him when the defence had closed its case and the case was deferred for judgment. That because of this, the appellant could also not bring him to testify in his defence.

He submits that the report of Court appointed expert architect Nicholas Mallia is useless in this case since his conclusions, which he described as being based on common sense rather than on *il buon senso*, refer to distances taken from the stairs in St. George's Bay where appellant was arrested, and where according to the Police Officers conducting the observations no activity related to drugs had taken place. He submitted that no one of the Police Officers conducting the observations had testified about any youths roaming the area. It is the prosecuton that has to prove this aggravation relating to the other two charges beyond any reasonable doubt.

That in relation to the first charge is concerned, he submitted that apart from the fact that section 8(e) of Chapter 101 in the charge sheet does not include the word 'Produces' as for example the law does in sec. 8(b) and of which (namely "produced") appellant was also found guilty, there is no proof whatsoever that in the early hours of the 1st October 2019, as declared by the Court of First Instance in tis judgement stated to be the case by having declared that '*This case is based on events which took place in the early hours of the 1st October 2019*' had produced, sold or otherwise dealt with the whole or any portion of the plant Cannabis in terms of section 8(e) of Chapter 101. That not only has the prosecution not brought any evidence in this regard but also accused denied all these charges in all his statements, including those on oath before the duty Magistrate and the Court of First Instance, in the sense that on the 1st October 2019 he did not commit any of these crimes. He submits that nobody testifed that the accused had produced (sic!) or sold or otherwise dealt with the whole or any portion of the plant Cannabis on the 1st October 2019. The Court of First Instance did not find him guilty of this charge because it did not believe appellant because appellant primarily made a mistake in his written statement when he said he worked at Miracles restaurant whilst before the Court of First Instance he

had said he worked at Middle East restaurant, his working hours mentioned in the written statement did not tally with what he had said before the Court, and "*more importantly because 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*". That the Court of First Instance did not accept appellant's denial of this charge made both in his written statement, confirmed on oath, and in his evidence before the Court itself.

The appellant submits that the reasoning of the Court of First Instance was that the Police Officers who were observing Dawda Casey did not see any paper bags in his hands. However, these same Police Officers had stated that Casey was going up and down between the restaurants area and St. George's Bay whenever he was involved in a drugs deal whilst no drugs deals had taken place in the bay itself. Therefore it is probable that these drugs were being kept by Casey in the bay and when he asked appellant to do his hair he wanted to have what had remained of the drugs on sale in appellant's bag which was the only bag on site and where they would be more secure.

That in arriving at a conclusion of guilt based on circumstantial evidence, as appears to be the case in so far as this charge is concerned, one has to be very careful about the interpretaiton of such evidence since, as it is well known, whilst circumstances do not speak, and therefore cannot lie, they may however decieve. Therefore before arriving at a conclusion of guilt from facts in evidence, the judge of facts has to be sure that there are no other co-existing circumstances and/or other direct testimony which would weaken or destroy such inference or conclusion.

That in order that indirect or circumstantial evidence may be made use of to consider whether one may draw an inference of guilt, the fact or facts examined must be unambiguous or unequivocal, meaning that these must be definite or unmistakable or clearly point out to only one conclusion.

That the appellant tried several times to bring in his defence the owner of the Middle East restaurant to confirm his working times and that on the 1st October 2019 he was working there till around 2.00 am, the Prosecution did not succeed to bring him over

to give evidence for the defence after several attempts during which time appellant was being held under preventive arrest and this since the 1st October 2019. That it is the Prosecution which had the burden of proving this charge against appellant beyond reasonable doubt whilst the appellant had no such burden to prove himself to be innocent. The appellant chose to prove that he is not guilty and he respectfully submits that he succeeded to do so at least on a balance of probabilities.

Considers;

That the **first** charge brought against the accused reads '*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*'.

As rightly indicated by the appellant, article 8(e) of Chapter 101 of the Laws of Malta does not include the word 'produces' but reads '*sells or otherwise deals in the whole or any portion of the plant Cannabis (excluding its medicinal preparations)*'. The First Court found guilt under this article in that he sold or dealt with the whole or portion of the plant Cannabis and therefore not that he produced such drug.

That the **second** charge reads '*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****;*'

The Court makes it clear that these charges may result even if the **third** charge which is an aggravation regarding committing these offences within the 100 metre distance from the paramter of the school, club or a similar place where youngsters habitually meet does not result. So contrary to what the appellant submitted, evidence in relation to other occasions which do not fall within the parameters of the third charge should still be considered for the purpose of finding guilt of any of the two charges and to which the third charge refers. Furthermore, the charges refer to the '*01st October 2019 and/or the previous three months on the Maltese islands*' so the Prosecution had to prove that what is alleged took place either on the 1st of October 2019 and/or in the previous three months. This notwithstanding the fact that the

First Court in the appealed judgment noted that '*This case is based on events which took place in the early hours of the 1st October 2019.*'

The Court will start by in brief making reference to the relevant evidence produced.

Inspector Jonathan Cassar in the sitting dated 10th October, 2019 testified that on the 1st of October, 2019 at around 2am drugs squad personnel namely PC 101 Raznai Gaffarena and PC 1391 Etienne Spiteri after conducting observations at St George's Bay following alleged drug trafficking by African nationals acceded to the arrest of three people of Gambian nationality two of whom were Juldeh Baldeh holder of Italian travel document bearing number MD 0039736, Italian Identity card bearing number AI 6976576 and Italian Residence Permit bearing number I 12771946 whom he recognised in Court and Dawda Cessay holder of Italian identity card number AX 1626807 whom he also recognised in Court.

He explained that inside the backbag of Juldeh Baldeh 7 black and white balls, the wrapping was black and white containing approximately 5 grams Cannabis grass each along with a small plastic sachet containing around one gram Cannabis grass was discovered, whereas on the person of Dawda Ceesay an identical ball as that found in the possession of Juldeh Baldeh was discovered this time containing 1. 11 grams Cannabis Grass. They were arrested, given all their rights and conveyed to the GHQ lock up. The following morning on the 1st of October, 2019 the first to be interrogated was Juldeh Baldeh who after being given all his rights and the usual caution decided not to consult with a lawyer prior to the interrogation. In a nutshell what Juldeh Baldeh stated was that he works in St Julians and after work he repaired at the St George's Bay and upon request of Dawda Ceesay who was doing his hair, Dawda Ceesay asked Juldeh Baldeh to place the seven balls found in his backbag, in Juldeh's backbag inside his backbag and that was why when the police intervened the seven balls where found inside Juldeh's backbag. As for the one gram of Cannabis inside a plastic sachet, Juldeh admitted that it was his, the supplier was in fact Dawda Ceesay from whom he buys around 20 grams worth of Cannabis grass per week. He stated that he did this on a weekly basis and has been doing so for around 2 months since he has been in Malta.

Furthermore upon looking at messages inside Juldeh's Baldeh phone it resulted that he has Dawda's phone number saved and following certain messages which indicated drug trafficking such as for instance a particular message whereby an Italian guy from an Italian number was asking for drugs, Juldeh stated that yes, this Italian guy is an acquintance of his, he knows that Dawda sells drugs so he speaks to him so that he would refer him to Dawda. That was Juldeh Baldeh's version of events and he insisted that he would like to give his statement under oath.

Dawda Ceesay was next to be interrogated. The inspector gave an explanation of what this person stated but since Dawda Ceesay did not testify in the proceedings, **the Court will not be referring to what Dawda Ceesay stated in his statement.** The First Court referred to the statement released by Dawda Ceesay and as confirmed before the Magistrste, however this Court makes it clear that the Court could not consider such statement and anything said by Dawda Ceesay in view that Dawda Ceesay is a co-accused even though in separate proceedings and in fact chose not to testify before the First Court[4] and so the accused was not given the opportunity to cross-examine him.

The Inspector also explained that a confrontation took place between Dawda Ceesay and Juldeh Baldeh. The Inspector explained that from the mobile phone of Juldeh Baldeh, if one goes through the message, one would immediately understand that there is drug trafficking going on. That when confronted with these messages, he was very short in his answers. Among other evidence he exhibited as doc JC12 an evidence bag with number L 00451618 containing 7 paper balls and '*whatever the wrapping might be containing Cannabis grass five grams each and one plastic sachet containing Cannabis grass approximately one gram which was found in Juldeh Baldeh's possession*'. As Doc JC 13 he presented a Huawei mobile phone IMEI 867269036957192 found in Juldeh Baldeh's possession. He also presented evidence in the case **Police versus Dawda Ceesay** such as doc JC 19 being a Samsung mobile phone IMEI 35843078417570/01 and 35843007841757801 and as doc JC 20 an Iphone

[4] During the sitting dated 27th February 2020 Dawda Ceesay was called as a witness by the prosecution and after being cautioned of his right at law not to say anything that can incriminate him in view of a proceeding pending against him, he availed himself of the right not to give evidence.

IMEI 353843088439217. In the possession of Dawda Ceesay 250 euros in cash were discovered. As Dok JC18 he presented evidence bag S 01493716 containing 1. 11 grams Cannabis grass.

PC 101 Raznai Gaffarena during the sitting dated 10th explained that on the 30th September 2019, PC 1391 along with himself received a report that dark skinned individuals were selling drugs in St George's street, Paceville. Accordingly an observation was affected where after several hours of surveillance it could be noted that dark skinned individuals were selling drugs indeed. During their observations, they noted that when someone was going to buy drugs, the intial dealer would go to a dark skinned male wearing a blue shirt which was later identified as Dawda Ceesay, to which Dawda would then walk down to St George's street and moments later would return to give drugs to the initial dealer and then the drug transaction would proceed. After several hours of observation on the 1st of October, 2019 in the early hours of the morning members of this group including Dawda were followed to St. George's bay to which they could understand that the drugs were being hidden or kept on the bay. Acting on what they had noted during the night, RIU assistance was requested so they could affect searches on those members that were followed to St. George Bay and suspected of holding drugs for the rest of the group. Searches were made and at 2am three persons were arrested for drug possession respectively. Dawda Ceesay which was found holding one sachet containing green substance suspected to be Cannabis, two five one Euros which were found in his pocket, two mobile phones and one lighter.

On the person of Baldeh Juldeh seven black and white wrapping bags which contained what was suspected to be Cannabis, one mobile phone, one identity card and one sachet containing green substance were found. Sonko Ebrima was arrested with these persons. Upon finding those drugs all three persons were given their rights and they were informed that they were going to be escorted to GHQ lock up for further investigations. Whilst Juldeh Baldeh was escorted by the witness and his colleague, Juldeh told them that the drugs were given to him from Dawda before they arrived and told them that the main person in Paceville was Dawda, delivering

drugs and transporting drugs from the group to the group. The witness identified document JC 12 as the things that were elevated in regards to Juldeh Baldeh and identified the things elevated and exhibited as Doc JC 18 in the case Police versus Dawda Ceesay.

PC 101 Raznai Gaffarena testified in cross-examination on the 7th July, 2020 where he confirmed that on that occasion before arresting the accused in the case, he and his colleagues had in a previous day on the 30th September conducted observations and confirmed that he had stated that during their observations they noticed that when someone was going to buy drugs the initial dealer would go to a dark skinned male wearing a blue shirt which was later identified as Dawda Ceesay. He explained that when he said in the next day he explained that the observation started late at night on the 30th and the observation continued on the following day in the morning hours of the 1st of October. It was late in the evening until early in the morning. It was around 10pm when they started and continued until the next day in the early hours of the morning. They had information regarding these particular cases so they went there on the information that these transactions were happening not just at that time also before. The observations on the 1st October which started from 10pm till when they arrested these persons, more or less till he asked for assistance from the RIU it was till 1:30. They called RIU assistance when they had everything confirmed and knew that those three people on the bay most likely had drugs and that is when they requested RIU assistance. When they had more or less confirmation that either those of the three persons had drugs on them. Baldeh was already stationery at the bay. It was about ten minutes before 2 am. Asked '*am I correct that you did not see Baldeh doing anything in connection with the drugs?*' replied '*we did not see him do anything no but the suspicion was if I may add that Juldeh Baldeh was holding the drugs for Dawda Ceesay. That was the suspicion.*' He explained that '*we did not see him do anything. He was stationary on the bay when we proceeded to the arrest.*' He could not see if Baldeh was cutting the hair of the other since they were a little bit a far, '*I would say fifty metres because I mean there were sun beds. We were observing from near a place were there were sunbeds and we were a little bit away from us like fifty metres more or less near a shop where locals drinks are sold*'. The lenght of 4 to 5 times of this hall. They could not

identify whether someone was cutting the hair of someone or not but obviously through the observations that they had reasonable suspicion that these persons were holding drugs and could not identify if they were cutting his hair. Enough distance to observe what was happening but not enough distance to know exactly the details if he was cutting his hair or not. He had enough suspicion but could not see exactly what was happening. He explained that '*I cannot say exactly what he was doing but obviously through what we saw and also through the observation that we did from the previous night and that night we had reasonable suspicion to ...that he was holding either drugs or he was part of the member of this group*'. He did not see someone giving him drugs. He explained that '*he became involved in our suspicions because Dawda Ceesay was identified as someone as a main interest person*', '*even that night...on the 1st of October and Dawda Ceesay made contact with Juldeh Baldeh so that is why became a person of interest*'. Juldeh Baldeh was identified on St George's Bay as a person of interest.

PC 1391 Etienne Spiteri testified on the 10th October, 2019 and stated that on the 30th September, 2019 he and PC 101 received a report that dark skinned individuals were selling drugs in St George's street. After a few hours of observation it could be noted that these dark skinned people were in fact selling drugs. It was noted that when someone needed to buy drugs, the primary dealer would go to meet another dark skinned individual, he was wearing a blue shirt which we later identified as Dawda Ceesay and who he identified in Court. Dawda would walk down in St George's street and then he would return shortly after to hand over the drugs to the primary dealer and the drugs were being sold at that moment. On the 1st of October, 2019 at 1:45am the same group of dark skinned individuals included Dawda Ceesay headed to St George's bay and therefore they followed them. They could note that the drugs were either hidden in the bay or that the drugs were on themselves. They requested for assistance of the RIU so that they can conduct the searches over suspicion of holding drugs. At 2am, they arrested them, the two persons over drug possession. These persons were Dawda Ceesay which had one sachet containing green substance suspected to be Cannabis, two hundred and fifty one Euros in his pocket, two mobile phones and one lighter. Along with him there was Juldeh Baldeh whom he recognised in Court who had seven black and white wrapping bags which were

suspected to be Cannabis and one identity card. These two persons were arrested over possession of drugs and their respective rights were given. Both of them were escorted to the General headquarters for further investigations. Whilst himself and PC 101 were escorting Juldeh Baldeh, Juldeh Baldeh stated that the seven black and white plastic wrapping bags of Cannabis were not his but were of Dawda Ceesay and that Dawda was the main person who was distributing the drugs.

The witness recognised the evidence bag with seven black and white bags of Cannabis marked as Doc JC 12 and also recognised the substance elevated and found in doc JC 18 in the lawsuit Police versus Dawda Ceesay.

PC 1391 Etienne Spiteri testified in cross examination on the 7th July, 2020 who confirmed that on the 30th September, 2019 he and PC 101 Gaffarena received a report that dark skinned individuals were selling drugs in St George's Street. He stated that '*on that day during the observation the only person that way really distinct regard his ... was Dawda Ceesay but on the 1st of October...*' Asked whether he saw Juldeh Baldeh on the 30th September replied that the light was poor, it was dark and it was difficult to see everyone. He explained that he saw a group of people that were dark skinned and with them, he was sure that there was Dawda Ceesay. He could identify Dawda Ceesay but at the moment he could not see Baldeh because it was dark. That they came from somewhere from St George's Street. St.George's street is exactly infront of the Hugo Pizza and Pasta. There is a car park and they were in the car park and in the entrance of the car park. Around 70 metres maximum 90 from the bay. He explained that '*at around 1:45am during that day so 1st October we called for the RIU assistance in order to perform some searches, knowing that we were only two persons and they were more than us for safety*'. Asked '*so at that time when you called the RIU these persons were not in St George's Bay*' replied '*yes, of course they, as soon as they were at St George's Bay we could assume that the drugs were either on them or hidden in the bay area that is why we called for the assistance of the RIU to perform some searches without anyone getting hurt.*' He confirmed that when he said the same group, it was the same group of the day before. As soon as they arrived at St George's Bay, the RIU arrived. At 1:45am they moved '*as soon, there isn't that much of a walk. As soon as*

we saw them that they were seated and relaxed without raising any suspicions we called for the RIU assistance and at around 2am we arrested them'. He confirmed that the RIU took about 15 minutes to arrive, they did not intervene before the RIU arrived. In those 15 minutes that were observing the group in front of the kiosk, '*We did not do anything*'. He explained that '*Myself and PC 101 we could not do anything because we were outnumbered but they were, one of them, let's say, I don't remember actually but I don't know ...the RIU, because we did not do anything ...*' He does not remember them doing anything. He explained that '*we were paying attention that if someone went away we would notice where they were heading to try to go after them as well*'. He confirmed that then they arrived on the bay. Asked '*so when they were in the bay until the RIU arrived you did not see them doing anything?*' replied '*the problem was in order not to give them attention, in order not raise any suspicions we had an eye on them yes but we could not see in detail because we did not want to get caught*'.

He confirmed that what he saw on 30th of September in the evening was that when someone needed to buy drugs, the primary dealer would go to meet another dark skinned individual. He was wearing a blue shirt and which they later identified as Dawda Cessay. There were observations on two separate days. On the 30th September he could not identify Baldeh. He does not know if he was there or not because he could not identify him. On the 1st October in the bay it was not the same activity but the ssme group. He did not see him do anything around the same time. The first time that he could identify Juldeh Baldeh was when they made the arrest. Asked '*so you did not see Juldeh Baldeh doing anything*' replied '*the first time that I have identified him yes it was on...*' He does not know how long Juldeh Baldeh was there with this group.

Christian Abdilla during the sitting dated 24th of October, 2019 presented formally doc JC 13 allegedly containing a Huawei Mobile phone IMEI number 867269036957192 presented by Inspector Jonathan Cassar Exhbit number is KA/370/2019 in Police against Juldeh Baldeh. These were exhibited formally in the lawsuit Police versus Dawda Ceesay. The document is exhibited as doc CA1. He also exhibited KA/371/2019 Police against Dawda Ceesay containing JC 19 samsung

mobile phone and doc JC 20 iphone presented by Inspector Jonathan Cassar on the 10th October, 2019. The document is marked as Dok CA2, together with the exhibits therein listed are exhibited formally in the lawsuit Police versus Juldeh Baldeh.

Andre Azzopardi testified during the sitting dated 24th October, 2019 where he formally presented exhibit number KB/467/2019 which contains document JC 12 in which there is a sealed evidence bag with 7 papers containing Cannabis grass 5 grams and a sachet which contains Cannabis grass 1 gram. This exhibit was presented in the case the Police against Juldeh Baldeh and is being presented in the case the Police against Dawda Ceesay. He formally presented exhibit KB/469/2019 which contains document JC 18 evidence bag in which there is 1 gram of Cannabis grass. This exhibit was presented in the case Police against Dawda Ceesay and was also presented in the case the Police against Juldeh Baldeh.

Keith Cutajar during the sitting dated 21st November, 2019 testified that in line with his Court appointment dated 24th October, 2019 he was asked to examine dok JC 13 which included Huawei mobile phone of mark 80ULII. This phone was pin protected but the password was provided and it was fully examined. The same phone had a SIM card and an SD card installed and both were fully examined. Associated with this phone, there was a *'What'up cloud data base and marked under a certain individual Maka Valy.'* The number is 00356 77982160. This cloud data base was successfully downloaded. From just the extraction of the date from this phone, he had to undertake a cross match analysis with another two phones marked as doc CA4. These phones, one Samsung phone and the iphone were fully examined and cross match analysis undertaken. In his report, he included the primary contacts which all these three phones along with the I cloud and also What's up extractions made special cross matching reference. There were primarily a number of individuals which are documented on page 26 of his report. There is a list which is fully documented in the report. Apart from the data which is extracted from this phone, the data pertinent to these specific individuals, these specific contacts are extracted separately in separate folders for easier finding and referencing. He presented this in case 249/2019 **Police versus Juldeh Baldeh**. He explained that on

page 28 there is a USB of circa 60 gig of data exhibited there and also the evidence which contains JC 13. The report was exhibited in the acts Police versus Juldeh Baldeh and is being marked as KC 1. Given that the SIM service is disconnected and in this case of the Samsung phone, the Samsung does not store what they call the actual number inside this particular android version but what he can make reference to is that there is a what's up installed on this phone and 'what's up' they cannot just install any 'what's up' on the phone. Basically one needs to synchronise with the number of the SIM card which is present. The number is 00356 77982160.

He also testified in relation to 251-2019 Police versus Dawda Cessay.

Ketih Cutajar also testified on the 20th December, 2019 where he explained that an extension of his appointment dated 16th of December, 2019 where he was requested to provide an additional copy to the defence on a USB provided with the data which he presented in the previous sitting and also there is a copy of the original report in the same USB. The report is marked as Doc KC3.

Dr Marisa Cassar testified on the 20th December, 2019. She analysed exhibit K/B/469/2019 which was a piece of plastic that wrapped suspected drug and from it she obtained a DNA profile. It is a mixed DNA profile but it is a partial DNA profile. This is in the case **Police against Dawda Ceesay**. In Police against Juldeh Baldeh, she analysed the exhibit K/B/467/2019 where there were seven small pouches of plastic in which a drug was kind of inside and another small piece of cling film holding suspected drug and again she found a mixed profile probably of two contributors.

Gilbert Mercieca testified on the 20th December, 2019 that in the case **Police versus Juldeh Baldeh** he was asked to examine the exhibit JC12. Inside this exhibit, there were seven pieces of paper that were black and white that contained a green substance and also a small piece of plastic that contained a green substance. He analysed the green substance within these papers basically and this was confirmed to be parts from the cannabis plant with 8.27 per cent of the inside. The estimated value on this case was of €674 with the total weight of 35.49 grams and was also

asked to cross match these with what he analyzed in the case of Police versus Dawda Ceesay. He calculated the ratio in this material and explained that when the ratio is similar, it indicates that the two plants or the two materials inside these bags had a similar origin and he could conclude that these could have a similar origin. This was exhibited as Doc GM1.

Dr Marisa Cassar testified again during the sitting dated the 6th February, 2020 where she explained that she had to do a comparison analysis between the buccal swabs of Juldeh Baldeh and Dawda Ceesay with the DNA profiles that were obtained from the analysis of samples KB469/2019 and sample KB 467/2019. From the analysis although there were some alleles that matched, there wasn't enough information to conclude that Dawda Ceesay and Juldeh Baldeh were contributors to these samples. It could not be confirmed.

PC 169 Jurgen Schembri testified during the sitting dated the 6th February, 2020 where he explained that on the 24th January, 2020 he was given two documents by Dr Marisa Cassar. These documents were given with separate submission forms. One which was for Juldeh Baldeh and the other one for Dawda Ceesay with two separate documents. He explained that in the case of Juldeh Baldeh he was given by Dr Marisa Cassar document JC 12 on the 24th January, 2020. Following chemical and visual examinations using CNA fuming and BY-40 there were no fingermarks to be developed. The report together with the exhibit is marked as doc JC 12. The witness also presented a copy of JS1 to be filed inthe acts Police versus Juldeh Baldeh and a copy of the report filed doc JS 2 a copy of which was being filed in the proceedings against Dawda Ceesay

Architect Nicholas Mallia testified during the sitting dated 3rd June, 2020. He testified that he was asked to attend a site visit and prepare a report regarding the hundred metre distance between the alleged point of arrest and the areas or points where youths could gather. That the site visit was done in the presence of the accused and three points were identified as potential areas where youth can be gathered. Less than a hundred metre distance was recorded for both all three cases and that has been reported in his report that includes a drawing showing these

distances. The report is marked as Doc NM1. He did not confirm whether these places were open for business at that point in time. He testified that there was an element of common sense applied and that no reference to the law was made.

The Court will make reference to the statement released by the **accused Juldeh Baldeh** on the 1st October, 2019. He confirmed that he has no problem with English and that he knows why he was arrested. Asked '*I am showing you Evidence Bag No NO5243837 containing 7 paper balls containing Cannabis grass weighing roughly 5 g each and 1 sachet Cannabis Grass wieghing roughly 1g. What can you tell me about them?*' replied '*The paper balls are not mine and tthe small one is mine I buy it to smoke.*' Asked '*You are telling me that they are not yours, whose are they then?*' replied '*It's Dawda's*'. It's the guy arrested, the rasta guy. He knows him well. He is his friend, they know each other here in Malta. He has not known him much, three or four months since he came here. He was shown a photo marked as Dok JB and confirmed that it is Dawda he is referring to. He confirmed that he has eachother mobile numbers saved on their phones. That '*He normally contacts me.*' Asked '*Can you explain what happened this morning since you are saying that the 7 paper balls with cannabis grass found in your possession are Dawda's and not yours?*' replied '*Ok I was just coming from work because normally after work I go to the beach. He told me to do his hair and he put the stuff in my bag.*' Asked '*Did he tell you that he was going to place those drugs in your bag?*' replied '*Yes he told me that yes of course.*' Asked '*Did you know it was Cannabis?*' replied '*Yes*'. Asked '*From where did you buy the Cannabis you're saying its' yours?*' replied '*From him he's the only one who used to sell me.*' He bought it last night for 20 euros. '*I gave him 50 Euro and he gave me 30 Euro back.*' Asked '*For how long have you been buying Cannabis Grass from him?*' replied '*Since we knew eachother.*' The other guy that got arrested lives with Dawda. Asked '*What can you tell me about the cocaine found in his possession?*' replied '*Actually I don't know nothing about that.*' He only bought weed from Dawda, no other drugs. He normally buys for 20 euro once a week. Asked '*Have you ever sold Cannabis Grass or drugs?*' replied '*No I only buy and smoke but I don't sell.*'

The accused in his statement was also asked '*On your whatsapp I found a conversation from number +393505372719 where someone is telling you that has two tourists who need to buy grass. What's this?*' replied '*This man I know this boy is from Italy so we normally meet at the beach. If we meet he normally asks me about grass and when he asks me I call Dawda and he goes to sell him.*' This has been going on occasionally. Dawda sells drugs '*What I can tell you is weed if sells anything else I don't know.*' He is hundred percent sure that Dawda touched the drugs found in his possession. Asked '*What were you going to do with the drugs found in your possession?* replied '*I was going to give them back to Dawda.*' He also stated that '*I am going to tell you one thing. Dawda normally buys 50g and makes it in 5g and take it to Paceville. He buys 50g every day and if it finishes he buys more.*' He does not know from whom but from some Maltese guys.

The accused confirmed the statement on oath before Magistrate Dr Claire L. Stafrace Zammit per fol 142 et sequitur on the 2nd October, 2019. He also stated that '*actually I work in Paceville and normally work late around 12 and around 2 in the night time and int he day time I normally work like around 5 to around 11. In the night time around 8 to around 2. I normally works there in Paceville, the places is Miracles. But actually after working normally goes to the beach. I normally go there to relax, maybe hour or two hours before I go and start in the morning, because I live in Sliema, so to me after working I go to Sliema*'.

He testified that '*if you see Dawda put his stuff inside my bag, I was making his hair. That's why he put it there.*' Asked '*So you were doing Dawda's hair and he put the stuff in your bag?*' replied '*Yeah. So at that time the Police came and get me. So yesterday Dawda was telling me that the stuff is mine, because he has no money to defend himself.*'

The accused **Juldeh Baldeh** testified before the First Court on the 30th July,2020. He explained that he was working in St Julians Middle East, which is a restaurant, before he was arrested. He worked from around 7 till 2, '*After 2 I go to relax on the beach after an hour...I come back until 11.*' He only has one hour to relax. He worked from 7 in the evening till 2 in the morning and then he was supposed to go back to work at 4 o'clock in the morning until around 11. When he finished working at 2 o'clock, he went to the beach where he went for the site enquiry. When he arrived at

the beach he only met Ibrahim Sonko who is accused in other proceedings. They sat chatting normally and Dawda came after. Dawda is the person who is in the other proceedings. Dawda told the accused that he wanted to make his hair. Asked if he is a barber replied that '*in Gambia I make it.*' He learnt in Africa. He explained that '*when he told me to make his hair after I told him you have to wait tomorrow...close, we go there because there is light...where we were sitting we did not have light there, so from there he told me ok I want to put something in your bag*'. The accused was the only one with a bag. In the bag he had his working clothes, he used it for work. Besides his working clothes, he also had one gram of smoke which he bought from Dawda before they arrested them, the night before. He uses this gram for four or five days. It was not the first time that he bought from Dawda. He bought before. The accused put it in a small bag. This consisted of marijuana, cannabis grass. It was in a small plastic bag. His bag has three zips, this one gram was in the first zip it was in the smaller one. His bag was closed when he went to the beach, all the zips were closed. Dawda told him to make his hair and went on the steps to make his hair. Dawda was on the second step up. That '*he was sitting and I was standing*'. Sonko was sitting beside. It takes ten, fifteen minutes. He was doing the hair with a pin.

He had not finished doing the hair, explaining that '*I was still making when the police officers came behind me. He told me police so I surrender...*' The officers were wearing '*normal dress*' who came to arrest all of them. There were one tall and one short. The second one came after ten, fifteen minutes. The first made the handcuffs and then the other came. When the police came his bag was not fully closed because Dawda told him '*I want to put something in your bag.*' but that he did not ask him what it was. Asked '*did you see what he was putting in your bag?*' replied '*no, I did not see it, until the time the police opened the bag they removed it.*' Asked whether he saw what it was made of replied '*no, it was like in the plastic like plastic*'.

He explained that '*he told me that I want to put something in your bag and I told him ok you can put it there but after you take it and he told me ok, so he put it inside the bag so I am making his hair, the police came to arrest and after the arrest they opened the bag and they see it. So I talk..take me to prison and no, and he told me no, go to the police officers but don't tell*

them. He. told told me to go with the officers and ... I told him I will go with the officers but I have to go ...walk and he told me no, you have to go with the oficers you know but don't tell them'. When the police man told him that he is a police he surrendered, put his hand up. He testified that '*he took the pin and threw it*'. Asked if he then opened the bag or he took him away, replied '*no, he searched me first*'. He explained that '*he search me first because he searched the bag. So he searched*', that '*after he opened the bag. He opened the big zip and saw the drugs so he removed it*'. The drugs was cannabis grass. Asked '*did you know that it was cannabis?*' replied '*no, after the time the officers...*' the officers told him. '*I told the officers that this is not my own because I told them that I don't sell drugs. That is what I told them*'. The officer opened it, took everything out even his clothes and showed him the plastic bag. I told him that it was not my own. He told him that the bag is his own, he uses it for work but that he does not sell cannabis grass. He did not ask him about the plastic bag and then he told him that '*ok we go to... and we talk about that*'. He explained that '*after we go...the stairs, the inspector was the one who sit with me and talk with me, so he asked me how everything happened. I explained it to him*'. That they put them behind the grid, he handcuffed them there, so after the second one he came. He handcuffed him somewhere there until more officers came. After that, they separated them, they took him by car. When he was in the car he was asked what is the problem and '*I told him that they caught me with cannabis grass*'. That '*I told him they caught me with cannabis grass. He told me is it my own and told him no it is not my own.*' He thinks that they took him to Floriana and that he told them that he wants to make a phone call to his boss to inform him.

He was informed of his rights and his right to speak to a lawyer. That '*I told him I am going to give him my information but I do not need any lawyer here.*' He confirmed that he was ready to confirm it on oath and was brought before a Magistrate. It was not the first time that he went on that beach after work. The last time it was on Sunday. He confirmed that the signature on the statement is his. Regarding evidence shown, he said that he was shown Dawda's pictures, pictures of Ceesay. He was not shown anything else before the statement, not even the drugs. The accused was read his statement by the defence lawyer.

The defence lawyer stated '*and then he asked you did he tell you that he was going to place those drugs in your bag and you said yes, he told me that of course. And then he asked you did you know it was Cannabis and you said yes. That is not what you told us here*', replied '*no, sorry because of he told me I am going to put something in your bag. He did not tell me exactly that it was Cannabis grass.*' He knew it was cannabis when the officers arrested them. He confirmed that when the plastic bag was put in his bag, he did not know it was cannabis '*He just tell me that I am going to put something in your bag but I did not ask what is this you know.*' The drug was bought not on the same night he was arrested but the night before. In the statement he was asked about a message found on Whatsapp where in the statement he had explained that he knows this boy from Italy and that they normally meet on the beach, that if they meet he normally asks him for grass and the accused calls Dawda and he goes to sell him. He explained that '*because I normally like if the boy tells me he needs I tell him ok and... Dawda*' This went on sometimes '*it is not everyday because the boy calls me ...two weeks holiday with his friends*'. He once again regarding the drugs found in his possession said that he did not know they were drugs, '*He said I am putting a bag inside your working bag and I said ok. And he told me after...I take it back and I said no, problem.*' The person on the photo attached to the statement is Dawda. Regarding when he confirmed the statement on oath before the Magistrate, about the addition he added to his statement before the Magistrate he explained that he works around 7 to 2 not till 12 as written in the testimony before the Magistrate. He relaxes for one hour and then from 4 o'clock till 11 in the morning. After 11 he goes straight home and returns for work at 7 in the evening until 2 and goes back at around 4 till 11. He lives in Sliema Ferries. He explained that '*Dawda told me go with the police but don't tell them it's my own. That is what he told me. I told him no.*' He told him that the day they arrested them in the same place. That '*he told me go with the police but don't tell me its my own. I told him no, I am supposed to go to work.*' This was when the police arrested them already, he was not in the car but before he was taken to the car.

He once again stated that he did not know it was Cannabis but that after he knew it. He did not touch that bag.

In cross-examination he stated that he never trafficked Cannabis grass. He never sold any cannabis grass because he was working. Asked about the fact that in his statement and under oath before the Magistrate he confirmed that he knew that the stuff which Dawda put in his bag was cannabis and that he was going to give it back he explained that '*actually the time the police arrest me is the time when ...confirm it was cannabis grass so that it why I told the inspector yes, but at that time I did not know it was cannabis grass. I knew it was a bag but I did not know it was cannabis grass and I did not ask him., is this cannabis grass? I did not ask him that, so I ...all that*'. He stated that he did not know it was cannabis. He said that '*I will place something inside your bag but he did not tell me this is cannabis and I did not ask him. It was only the three of us sitting there, so I was not...*' He said that '*I was not expecting...that it was going to be cannabis grass inside my bag. We were only three, three of us there so I am the only one who was having a bag, my working bag so he told me make my hair for me. I want to put this thing in your bag but I did not ask him what is it.*' He explained that he had said that he knew it was cannabis because he confirmed it from the officers, that is why he confirmed that it was cannabis grass.

He confirmed that he understands English. He once again reiterated that he did not know that it was Cannabis that Dawda was putting in his bag.

Considers;

That the **first charge** reads '*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*'. The date in question is the 1st October 2019 and/or the previous three months on the Maltese Islands. This means that the Prosecution had to prove that on the 1st of October, 2019 and/or the previous three months, the accused produced, sold or otherwise **dealt** with the whole or any portion of the plant Cannabis.

Article 8(e) of Chapter 101 of the Laws of Malta provides that:

'*If any person -*'

'*(e) sells or otherwise deals in the whole or any portion of the plant Cannabis (excluding its medicinal preparations), he shall be guilty of an offence against this Ordinance.*'

Article 22(1B) of Chapter 101 of the Laws of Malta at the time of the alleged offence use to read:

'*For the purposes of this Ordinance the word "dealing" (with its grammatical variations and cognate expressions) with reference to dealing in a drug, includes cultivation, importation in such circumstances that the Court is satisfied that such importation was not for the exclusive use of the offender, 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*** *contrary to the provisions of this Ordinance:*

(...)'

From the evidence tendered by PC 101 Raznai Gaffarena and PC1351 Etienne Spiteri it results that on the 30th October, 2019 from observations they could note that when someone needed to buy drugs, the primary dealer would go to meet another dark skinned individual wearing a blue shirt later on identified to be Dawda Ceesay and Dawda Ceesay would then walk down in St George's street and then he would return shortly after to hand over the drugs to the primary dealer and the drugs were being sold at that moment. That on the 1st October, 2019 at 1:45am the same group of dark skinned individuals including Dawda Ceesay headed to St George's bay. That they could note that the drugs were either hidden in the bay or that the drugs were on themselves. They requested assistance of the RIU to conduct searches over suspicion of holding drugs and were arrested at 2am. Dawda Ceesay had one sachet containing green substance suspected to be Cannabis, two mobile phones, 250 euros in his pocket[5] and one lighter. The accused Juldeh Baldeh had seven black and white wrapping bags which were suspected to be Cannabis, 1 mobile phone, 1 sachet containing green substance to be cannabis and 1 identity card.

The Court notes that the Prosecution presented the statement of Dawda Ceesay released on the 1st October, 2019 marked as Dok JC1 and found at fol 48 et sequitur. However, in view that Dawda Ceesay did not testify in these proceedings, the Court

[5] PC101 Raznai Gaffarena in his testimony dated the 10th of October 2019 indicates 251 euros were found in the pocket of Dawda Ceesay.

cannot take cognisance of this statement. For the same reason, the Court also cannot take cognisance of the sworn testimony released by Dawda Ceesay before the Magistrate on the 2nd October, 2019. The First Court in the appealed judgment in some instances referred to what Dawda Ceesay stated in the statement and before the Magistrate, however since Dawda Casey is a co-accused in separate proceedings he refused to testify in these proceedings, and therefore the accused could not cross-examine him. In view of this, the Court is discarding any reference to what Dawda Ceesay stated in his statement dated the 1st October, 2019 and in his sworn testimony given before the Magistrate dated the 2nd October, 2019, during which he confirmed the statement before the Magistrate.

The accused in his statement dated the 1st October, 2019 marked as Dok JC7 and found at fol 26 et sequitur stated that the paper balls are not his and the small one is his, that he bought it to smoke. He alleges that the seven paper balls with Cannabis are of Dawda. He explained that he came from work and went to the beach and that he, the Court understands with reference to Dawda told the accused to do his hair and that he put the stuff in his bag.

In the statement he was asked '***Did he tell you that he was going to place those drugs in your bag***?' replied ***'Yes he told me that yes of course***.' Asked ***'Did you know it was Cannabis***?' replied '***Yes***.' He had bought the Cannabis from Dawda. This was also confirmed before the Magistrate when the statement was confirmed on oath. On the other hand when the accused gave his testimony before the First Court on the 30th July, 2020 he stated that '*he told me to make his hair after I told him you have to have to wait tomorrow...close, we go there because there is light...where we were sitting we did not have light there, so from there he told me ok I want to put something in your bag*' since he was the only one with a bag. He explained that besides his working clothes before he met Dawda, he also had one gram of smoke which he bought from Dawda. That '*He told me, I want to put something inside your bag*.', '***but me I did not ask him what is that'***. When asked whether he knew that they were drugs replied '*no, no. He said I am putting a bag inside your working bag and I said ok. And he told me after...I take it back and I said no, problem.*' In cross examination, he stated that '*actually the time the police arrest*

me is the time when ...confirm it was cannabis grass so that it why I told the inspector yes, but at that time I did not know it was cannabis grass. I knew it was a bag but I did not know it was cannabis grass and I did not ask him, is this cannabis grass? I did not ask him that, so I ...all that'. He states that he confirmed it to be cannabis from the Police officers.

However, the Court considers that from the statement released by the accused, it is clear that the accused knew that what was in his bag was cannabis. The questions in this regard in the statement are clear and leave no doubt that the accused knew that the paper balls or ball wrappings contained cannabis and not as the accused tries to give the impression during his testimony that he confirmed this from the police officers. The Court therefore has no doubt that the accused knew what the paper bags contained, this also in view that the accused knew that Dawda Ceesay trafficked drugs.

For the purposes of the **second charge** which reads '*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;***' the Prosecution had to prove that the accused had in his possession the whole or portion of the plant Cannabis and that this was not intended for his own personal use. The Court considers that even if it had to believe the accused that the seven bags of drugs belonged to Dawda, since it was sufficiently proven on the basis of what the accused stated in his statement that the accused knew that the drugs in his possession was Cannabis and on his own admission stated that the small sachet was for his use, while the paper bags were given to him by Dawda to hold them while he did his hair, it is clear that the drugs wrapped in black and white paper or other material were not intended for his personal use. The accused in his appeal submits that if for argument's sake it is assumed that the appellant knew what Dawda Caasey had put in his bag was cannabis, whether this amounts to the crime of possession under section 8(d) of Chapter 101 and whether '*not for his own personal use*'. He submits that Chapter 101 does not define 'possession' and that it is up to our Courts to define what the legislator intended by 'possession'

in this case. That the Prosecution has to prove beyond reasonable doubt both the *actus reus* and *the mens rea* of this crime.

The appellant submits that the evidence shows that this was put in appellant's bag by Dawda not at appellant's request or will. Regarding this submission, the Court considers that even if the appellant was to be believed in that Dawda put the bags with drugs in the bag of the accused, from the evidence it does not result that this was done behind the back of the accused or against his will. The accused could have easily said no. The accused himself confirms in his statement that Dawda asked him to put it in his bag. It is not about inviting Dawda to put the incriminating object in the bag but the fact that he allowed Dawda to do so. The accused also makes submissions regarding physical, 'Constructive'/Legal' possession. He submits that mere acquiescence in the presence of the incriminating object does not amount to criminal possession. He also made reference to the English case of Hussain.

In the judgment in the names **'Il-Pulizija Spettur Jesmond J. Borg Vs Lawrence Fabri'**[6] the Court considered that:

*'Issa qabel xejn jinghad illi l-ligi taghna mkien ma' tispecifika illi l-pussess irid ikun wiehed bl-intenzjoni ta' spacc. Il-ligi titkellem dwar il-pussess li jindika li dan mhuwiex ghall-uzu esklussiv tal-hati u ghalhekk l-argument ta' dritt li iressaq 'il quddiem l-appellanti huwa bir-rispett ibbazat fuq premessi legali zbaljati. Illi l-appellanti jaghmel referenza ghal-legislazzjoni ingliza u cioe' il-Misuse of Drugs Act 1971 billi hemmhekk il-ligi titkellem car u tond fuq **"possession with intent to supply**", bil-Prosekuzzjoni allura trid necessarjament tipprova tali intenzjoni u cioe' li ser isir xi forma ta' traffikar, haga li mhijiex indikata fil-ligi taghna li titkellem biss dwar il- pussess ta' droga li jindika li dan mhuwiex ghall-uzu esklussiv tal-hati, u mhux il-pussess bl-intenzjoni ta' l-ispacc. Illi ghalhekk ghalkemm kif inghad, hemm din id-distinzjoni fina bejn il-legislazzjoni taghna u dik Brittanika, l-prova hija l-istess dwar l-inferenza li tista' issir mill-gudikant. Madanakollu jerga' jigi ribadit illi l-prova fil-ligi ingliza hija wahda iktar iebsa fuq il-Prosekuzzjoni li trid necessarjament tipprova l-intenzjoni ta'l- ispacc kuntrarjament ghal-ligi taghna fejn l-intenzjoni trid tkun tali li tindika li din ma kenitx ghall-uzu esklussiv tal-hati. Dan huwa indikat b'mod car fis-*

[6] Decided by the Court of Criminal Appeal on 27th April, 2017 (Appeal number: 243/2016)

sentenza il-Pulizija vs Jason Mallia li din il-Qorti ser taghmel referenza ghaliha meta hemm imghallem superjorment:

"Dak li l-ligi tirrikjedi hu li jigu pruvati cirkostanzi li jissodisfaw lill-Qorti sal-grad tal-konvinciment morali "li dak il-pussess ma kienx ghall-uzu esklussiv tal-hati". Fi kliem iehor, jekk persuna jkollha pussess ta' droga li mhix bi hsiebha tuza, tali pussess ikun jammonta ghal pussess mhux ghall-uzu esklussiv tal-pussessur, anke jekk il- pussessur ikun ghadu ma ddecidiex kif bi hsiebu jiddisponi altrimenti minn dik id-droga. Bil-kelma "uzu" il-legislatur ried ifisser "konsum", u cioé li l-pussessur juza huwa stess dik id-droga ossia jabbuza minnha billi jikkonsmha. Ghalhekk, persuna li ma jkollhiex il-hsieb li tuza d- droga izda li zzomm dik id-droga ghandha minghajr raguni valida skond il-ligi biex eventwalment tara x'taghmel biha, ikollha mhux biss pussess ta' dik id-droga, izda dak il-pussess ma jkunx jista' jinghad li hu ghall- uzu esklussiv taghha[7]"

Illi maghmula din id-distinzjoni xorta wahda bhal fil-ligi ingliza l-prova tista issir minn inferenza tac-cirkostanzi tal-kaz fejn il-gurispridenza brittanika tindika hekk.

"Evidence from which intent to supply may be inferred will include at least one or, more usually, a combination of the following factors:

- *Possession of a quantity inconsistent with personal use.*
- *Possession of uncut drugs or drugs in an unusually pure state suggesting proximity to their manufacturer or importer.*
- *Possession of a variety of drugs may indicate sale rather than consumption.*
- *Evidence that the drug has been prepared for sale. If a drug has been cut into small portions and those portions are wrapped in foil or film, then there is a clear inference that sale is the object.*
- *Drug related equipment in the care and/or control of the suspect, such as weighing scales, cutting agents, bags or wraps of foil (provided their presence is not consistent*

[7] 02/09/1999 (This reference is found in the third (3) footnote of the cited judgment)

with normal domestic use).

- *Diaries or other documents containing information tending to confirm drug dealing, which are supportive of a future intent to supply, for example, records of customers' telephone numbers together with quantities or descriptions of drugs.*

- *Money found on the defendant. was considered in R v Batt (1994) Crim. LR 592. It is not necessarily evidence of future supply. It may be evidence of supply in the past but on its own the money is not evidence of a future intent to supply.*

- *Evidence of large amounts of money in the possession of the defendant, or an extravagant life style which is only prima facie explicable if derived from drug dealing, is admissible in cases of possession with intent to supply if it is of probative significance to an issue in the case R v Morris (1995) 2 Cr. App. R. 69.*

- *Extravagant lifestyle, but only when that is of probative significance to an issue in the case.*[8]*"*

Fil-fatt l-artikolu 3(3) tal-UN Convention Against Illict Traffic in Narcotic Drugs jistabilixxi ai fini tal-pussess aggravat tad-droga illi:

"Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article ***may be inferred from objective factual circumstances****."*

Dan ifisser allura li aktar mill-kwantita jew ammont ta' droga li tinsab fil- pussess tad-delinkwent, huma ic-cirksotanzi kollha tal-kaz u x'inferenza tista issir mill-istess li ghandha tiggwida lill-gudikant meta si tratta tar-reat tal-pussess aggravat ta' droga ikun x'ikun l-ammont , kwalita jew kwantita ta' droga involuta. Illi l-qrati Maltin jiggwidaw lil min hu imsejjah biex jiggudika illi ghalkemm l-ammont ta' droga misjuba ghand il-persuna suspettata hija indikattiva madanakollu mhux din ic-cirkostanza biss hija indikattiva tal-pussess aggravat u allura imxew fuq dak stabbilit fil- Konvenzjoni tal-Gnus Maghquda surriferita. Illi allura l-Ewwel Qorti iggwidat b'dawn il-linji gwida gurisprudenzjali u legali sewwa ghamlet meta minn ezami tac-cirkostanzi tal-kaz setghet fid-diskrezzjoni fdata lilha bil-ligi tinferixxi illi d-droga li instabet fil-pussess ta'l-appellanti kienet tali li tindika li din

[8] www.cps.gov.uk (This reference is found in the fourth (4) footnote of the cited judgment)

ma kenitx intiza ghall-uzu esklussiv tieghu.

Maghmula allura dawn il-kondsiderazzjonijiet ta' dritt huwa bil-wisq evidenti li l-interpretazzjoni li l-appellanti qed jintenta jaghti lir-reat addebitat lilu ma huwiex wiehed ghal kollox korrett billi qed jistrieh iktar fuq id-definizzjoni moghtija fid-dritt ingliz iktar milli dak lokali fejn il-ligi mkien ma' tindika illi l-pussess irid ikun wiehed "with intent to supply" izda wiehed li "mhux ghall-uzu esklussiv tal-hati" distinzjoni sottili hafna li madanakollu ma igorrx mieghu l-piz iebes li hemm fuq il-prosekutur brittaniku kuntrarjament ghal prosekutur malti. Kwindi anke dan l- aggravvju qed jigi rigettat.[1]

From the report of Gilbert Mercieca marked as Dok GM1 at fol 171 et sequitur it resulted that the evidence bag L00451618 containing seven small pouches containing a green material wrapped in black and white striped paper weighed 34.50g, while the small pouch of green material wrapped in a plastic bag weighed 0.987g. From the sample taken by the expert, it resulted that the illegal substance identified was Cannabis.

The appellant in his appeal submitted that possession of one gram of cannabis did not fall within the parameters of this charge which refers to the possession of Cannabis not for his own personal use. In the case of almost one gram of Cannabis, the appellant submits that the provisions of Chapter 537 (Drug Dependency - Treatment Not Imprisonment Act) should have applied. The Court in this regard considers that the accused was charged with aggravated possession which would also include simple possession on the basis of the principle *il piu compretende il meno*. No request was made by the defence for the Court to be converted into a Drugs Court.

The appellant submits that the appellant through his own fault failed to consult a lawyer both before the taking down of his written statement and during the taking down of the statement. He submits that it is true that an incriminating statement, legally received in evidence, which may be believed in its entirety or partly or not at all, may serve as a basis for finding guilt but an incriminating statement does not automatically lead to the finding of guilt because the onus of proving guilt beyond

reasonable doubt still rests with the Prosecution. That he did not think that he had committed any criminal offence as regards the seven wrappings found in his bag, he did not feel the need to engage a lawyer and wanted to tell the Police all he knew. That the only offence he believed he had committed, confirmed both in the statement to the Police and confirmed on oath during his evidence before the Court of First Instance is that he was in possession of some cannabis grass for his own personal use. He submits that persons in front of a Police Inspector may commit genuine errors in what they may say. He submits that it is possible that even an incriminating statement may not be relied upon, totally or partly, if there is direct or circumstantial evidence that may be relied upon and which contradicts what is said in the alleged incriminating statement. The accused released his statement on the 1st October 2019. He signed a declaration of refusal for legal assistance where he was informed that prior to any questioning, he is allowed to communicate privately with a lawyer or legal procurator of his choice either in person or by means of telephone, and the right of having such lawyer present and to participate effectively during questioning. The accused renounced to such right. This declaration is marked as Dok JC8 and found at fol 29. PC 66 Jonathan Pace testified on the 10th October 2019 and confirmed that he was present during the statement and recognised his signature and that of Inspector's Cassar as well as the refusal of legal aid, that is the refusal of a lawyer where he also recognised his signatures and of the Inspector.

The statement was also confirmed before the Magistrate with some additions. The Court therefore considers that there is absolutely no reason to discard the statement released by the accused. The Court also considers that it is the prosecution that has to prove beyond reasonable doubt the charges brought against the accused, this may include reliance on what is stated during an interrogation by the accused himself or other evidence. The accused on the other hand does not need to prove anything and if he chooses to prove something, it is enough that this is proven on a balance of probabilities.

The Court considers that at the time that the accused accepted that the drugs are kept in his bag, irrespective of whether these were being sold by him or by Dawda, it

meant that the accused was in possession of drugs which were not for his exclusive use. This more so, since the accused himself states that Dawda trafficked drugs, so by keeping the drugs in his bag, he was also aiding the trafficking of drugs. The appellant submits that the Prosecution did not succeed to prove beyond reasonable doubt that in such circumstances accused was in possession with intent to deal. The Court however notes that the Prosecution does not need to prove that possession was **intended for dealing but that it was not intended for one's exclusive use**, that it was not intended for his own consumption. The appellant submits that there is no evidence beyond reasonable doubt that these drugs belonged to the appellant. The Court however considers that the fact that these black and white paper balls of Cannabis were found in the bag of the accused and that the accused in his statement stated that they were put in his bag by Dawda Ceesay and that he knew that they contained cannabis confirm that they were not intended for his own use and even if the accused were to be believed in that these did not belong to him but that Dawda put them in his bag, the fact that they were found in his possession and he himself alleges that Dawda sells drugs, confirms that **there is no doubt that the Court was correct in finding guilt of the second (2nd) charge.**

Considers further;

That the First Court in the appealed judgment apart from other considerations, noted:

'*... 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 observeved by PC101and PC1391. In all of this time PC101and 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 bagif he had one*[9]*. Once at the beach*

[9] 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. (This reference is found in footnote twenty five (25) in the appealed judgment)

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 know 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 appearence of the bags, the odour they must have had, and Baldeh's knowledge that Cessay sold drugs.

In view of the abaove, 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, 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.'

That in relation to the 1st charge, even if this Court had to discard the above consideration made by the First Court and to note that there is not enough evidence confirming that the accused was selling or dealing with Cannabis on the 1st of October, 2019, the Court considers that the findings of the Court expert Keith Cutajar in the phone of the accused confirm that the accused was dealing with drugs.

The Court will be making reference to the USB pen drive filed with the report marked as Dok KC1 of Court expert Keith Cutajar. In this USB pen drive, there are 'WhatsApp QR' messages in a WhatsApp account where the nickname is 'Maka Valy' and the phone number is '35677982160'. The Court understood that this is a WhatsApp cloud extraction undertaken on contact number 0035677982160 with the name 'Maka Valy'. Court expert Keith Cutajar during his testimony was asked for the mobile number regarding this report and explained '*given that that the SIM service is disconnected and in this case of the Samsung phone, the Samsung doesn't store what we call the actual number inside this particular android version but what I can make reference is that there is a What's up installed on this phone and What's up just to explain briefly you cannot just install any What's Up on your phone. Basically you need to synchronise with the number of the SIM card which is present. So that can be an easier ... of verification of the number which was highlighted in my report I can read out the number but it is present in my*

report.' He explained that the number is 0035677982160. The Court clarifies that the phone seized from the accused is of the brand Huawei not Samsung, the Samsung is one of the phones seized from the other accused. Whatsapp cloud extraction on this phone was according to the report of Keith Cutajar in connection with the number 0035677982160. The Court notes that on the statement released by the accused on the 1st October 2019 marked as Dok JC7 at fol 26 et sequitur, on the part dedicated to the details of the accused, the mobile number of the accused is indicated as 77982160. This therefore confirms that it was the accused that received and sent the following messages on WhatsApp.

Dan Licari on the 30th September, 2019 asked '*How are you? I'm in Malta if you are around and can hook me up*', in another message Dan Licari asks '*...think you can help with a 40 bag?*' and where the accused replied '*Of course we're you now*'. Dan Licari sent '*I'm just across Spinola Bay- where would be easiest to meet you?*' and replied '*Do you know sliema*'. Apart from other messages, the following message sent to Dan Licari also results: '*What do you need weed or*' and Dan Licari replied '*Yes-green bud please*'. Another message sent to Dan Licari reads '*Okay you can come*'. Dan Licari replies '*I will be there in 20min*' and the accused replied '*Okay if you are there just send me massage*'. An incoming message is '*I'm here*' and the reply is '*Okay am coming*'. Another message from Dan Licari reads '*I'm on the water side-should I go across the street?*' and replied '*We're you am there*'.

Other whatsApp messages included a conversation with **Manuel Vitale dated the 18th September 2019** sent '*Do you have*', replied '*What*' and Manuel Vitale replied '*Weed*'. After a few messages, he sends to Manuel Vitale '*No not today no weed if I have I will tell you*'. Other messages were later on sent to Manuel Vitale including '*Do you need something*', '*I have*', '*If you need you can let mi know*'. Manuel Vitale sends messages such as '*We can meet in one hour*', ' *In the beach*', '*If for you it's ok*' to which he replies back '*Am there bro*'. Manuel Vitale writes '*Ok perfect*'. Apart from other messages, it results that on the 23rd of September, 2019 Manuel Vitale writes '*Do you have something?*', '*I wait you?*' and replies '*Yeah bro*', '*Do you want some*'.

On the 27th September, 2019 Manuel Vitale Manuel Vitale sent '*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*' and replies '*Yeah bro no problem*' and '*Give him*'. Manuel Vitale replies '*Ok*' and sends him the number and name and '*I'm a boy and a girl, the number is the girl. See you bro, enjoy*' another text reads '*They are a male and a girl the number is the girl. enjoy*' He replies to Manuel Vitale '*Ok bro thanks*', '*I tex him*'. Manuel Vitale texts '*Let me know*' and replies '*Okay but right now am working*'. Manuel Vitale then writes '*Ok, talk with them*'.

As rightly considered by the First Court 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. The accused Juldeh Baldeh in his statement was asked '*On your whatsapp I found a conversation from number +393505372719*[10] *where someone is telling you that had two tourists who need to buy grass. What's this?*' replied '*This man I know this boy is from Italy so we normally meet at the beach. If we meet he normally asks me about grass and when he asks me I call Dawda and he goes to sell him.*' Asked '*for how long has this been going on?*' replied '*Occasionally*.' This statement was confirmed on oath on the 2nd October, 2019 before the Magistrate. When the accused testified before the First Court on the 30th July, 2020 and was asked about his statement that '*he asked you on your Whatsup I found a conversation from number 393505372719 where someone is telling you that has two tourists who need to buy grass. What's this? And you said this man I know this boy is from Italy so we normally meet on the beach, If we meet he normally asks me about grass and when he asks me I call Dawda and he goes to sell him, correct?*' replied '*yeah, because I normally like if the boy tell me he needs I tell him ok and...Dawda*' He defined occasionally as meaning '*sometimes, it is not everyday because the boy calls me ...two weeks holiday with his friends*'.

That as rightly stated by the First Court that '*Even if the Court were to accept the assertion made by the accused that he was merely refering persons (who contacted him seeking to acquire drugs) to Cessay, this will still fall within a definition of dealing in drugs*.'

[10] The contact Manuel Vitale on the WhatsApp on the phone of the accused has the same number - 393505372719

The First Court referred to the judgment in the names '**The Police (Inspector Nikolai Sant) vs Eric Lawani**'[11] where the Court had considered 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, it would have been of no consequence in this case had it not been proved to the degree required by law that the substance found in Omissis's possession was actually cannabis grass. As stated in the judgement delivered by this Court, differently presided, on 12th October 2001, in the names* ***Il-Pulizija vs Ronald Psaila****, which was subsequently confirmed by the Court of Appeal in its judgement delivered on 8th January 2002 (Appeal No: 187/2001):*

"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"*** *(vide kazistika indikata – pg. 776)."*

In the judgment in the names '**Il-Pulizija v. Ronald Psaila**'[12], the Court considered that:

[11] Decided by the Court of Magistrates (Malta) as a Court of Criminal Judicature on the 15th February, 2016 (Case Number: 268/2015)

[12] Decided by the Court of Criminal Appeal on 8th January 2002 (Appeal number: 187/2001)

'It-tieni aggravju ta' l-appellant hu fis-sens li dak li ghamel l- appellant ma kienx jammonta ghal traffikar. L-appellant jaghmel referenza ghall-Artikolu 22(5) tal-Kap. 101 kif ukoll ghas-sentenza ta' din il-Qorti tal-31 ta' Mejju, 2000 fl-ismijiet Il-Pulizija v. Matthew John Migneco. Din il-Qorti, pero`, tara li la l-Artikolu 22(5) u anqas is-sentenza ta' Migneco ma huma relevanti ghal dan il-kaz. L-appellant instab hati skond l-ewwel imputazzjoni ghas-semplici raguni li d-definizzjoni ta' traffikar fl-Artkolu 22(1B) tal-Kap. 101 tinkludi l-att ta' minn joffri li jipprovdi d-droga. Kif tajjeb osservat l-ewwel qorti fis-sentenza taghha, 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. Is-subartikolu (5) tal-Artikolu 22 ma johloqx ir-reat jew il-figura tat-tentattiv, izda semplicement jipparifika, ghall-finijiet ta' piena, it-tentattiv ta' kull reat kontra l-Kap. 101 (kif ukoll certi forom ta' komplicita` -- fid-dawl ta' l- Artikolu 43 tal-Kap. 9, hemm certament element ta' suprefluwita`) mar- reat ikkunsmat.'

Therefore as rightly considered by the First Court in the appealed judgment, the wording of article 22(1B) of Chapter 101 of the Laws of Malta and from jurisprudence quoted, there can be no doubt that the term '*dealing*' in a drug is very wide and includes as a completed offence <u>any offer made to supply drugs</u> and therefore includes the giving of any information which might lead someone to acquire drugs.

The Court therefore concludes that the Court could have legally and reasonably found guilt of the 1st and 2nd charges, the first on the basis of whatsapp messages found on the phone of the accused and which the accused in his statement and during these proceedings admitted that that he referred someone who asked for Cannabis to Dawda which therefore means that the accused dealt with the whole or any portion of the plant Cannabis and the second charge of possession of cannabis found in circumstances denoting that it was not for his exclusive use on the basis of the seven paper balls with Cannabis found in his possession which were not for his use.

Considers;

That the third charge reads '*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 appellant submitted that any reference in the evidence to any other occasion which does not fall within the parameters of the third charge, which is actually an aggravation of the other two charges, that is in the early hours of the 1st October ,2019, should not be considered for the purpose of finding guilt on any of the two charges and to which the third charge refers. As has already been considered by this Court, the first and second charge may result independently from the finding of guilt or otherwise of the third charge which is an aggravation of the first and second charge. For the purposes of this aggravation, the Prosecution only needs to prove that either the first charge or second charge or both were committed within a 100 meters of the perimeter of where young people habitually meet.

The second proviso of article 22(2)(b) of Chapter 101 of the Laws of Malta reads:

'*Provided further that where a person is convicted as provided in paragraph (a)(i) or paragraph (b)(i) and the offence has taken place in, or within 100 metres of the perimeter of, a school, youth club or centre, or such other place where young people habitually meet, or the offence consists in the sale, supply, administration or offer to do any of these acts, to a minor, to a woman with child or to a person who is following a programme for cure or rehabilitation from drug dependence, the punishment shall be increased by one degree.*'

The appellant submitted that the report of Court appointed expert architect Nicholas Mallia is useless in this case since his conclusions, which he described as being based on common sense rather than on *il buon senso*, refer to distances taken from the stairs in St. George's Bay where appellant was arrested, and where according to the Police Officers conducting the observations no activity related to drugs had taken place. No one of the Police Officers conducting the observations had testified about any youths roaming the area. It is the prosecuton that has to prove this aggravation relating to the other two charges beyond any reasonable doubt. The Court considers that the

accused was arrested in St. George's Bay and on his possession Cannabis was found. This therefore means that even if no sale of drugs was taking place on the date of the arrest, it results that he was in possession of drugs not for his exclusive use.

Architect Nicholas Mallia in his report marked as Dok NM1 at fol 242 et sequitur concluded that:

'*1. Id-distanza bejn l-allegat post ta' arrest (immarkat A) u l-istabbiliment Beer Garden (immarkat B), instab li kien ta'* ***39m****.*

2. Id-distanza bejn l-allegat post ta' arrest (immarkat A) u l-istabbiliment Hugo's Terrace (immarkat C), instab li kien ta' ***94.9m****.*

3. Id-distanza bejn l-allegat post ta' arrest (immarkat A) u l-iskola tal-Ingliż EF, (immarkat D), instab li kien ta' ***95.6m****.*'

According to the photos taken during the site inspection for which the accused was also present, it results that the arrest took place on stairs next to the kiosk in St. George's Bay. Even though no evidence of drug trafficking taking place on the beach was sufficiently brought, it results that the accused was in possession of Cannabis. The First Court considered that:

'*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 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 Terrcae 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 Baldeh 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.'

The First Court referred to the judgment in the name '**The Police (Inspector Jonathan Cassar) vs Abdikarim Isman Omar**'[13] where it was considered:

'*This particular aggravating circumstance could only be proven by objective means and it is manifestly evident from the records of the proceedings that there is no evidence that the crime of which the accused was found guilty took place in or within the said one hundred meters. Dragonara Road in Paceville is a fairly long road and the fact that it is common knowledge that young people 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 the judgment in the names **'Il-Pulizija v. Jason Xuereb'**[14], the Court considered that:

'*Meta l-legislatur ipprovda 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 jipprovdi ghal kriterju oggettiv u determinat biss mid- distanza* [15] *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 fis- sentenza appellata.*'

[13] Decided by the Court of Criminal Appeal on 29th October, 2018 (Appeal 3/2017)
[14] Decided by the Court of Criminal Appeal on the 9th of June, 2009 (Criminal appeal number: 379/2008)
[15] Distanza li tigi kalkolata f'linja dritta mic-centru ta' kwalunkwe punt fic-cirkonferenza – ara s-sentenza ta' din il-Qorti, kolleggjalment komposta, tas-27 ta' Ottubru 1997 fl- ismijiet **Ir-Repubblika ta' Malta v. Emmanuela Brincat**. (This reference is found in the first (1) footnote of the cited judgment)

The First Court therefore found guilt of this third charge which is essentially an aggravation. The Court considers that the First Court could reasonably and legally find guilt of this aggravation in relation to the second charge concerning aggravated possession of Cannabis, therefore confirms guilt of this aggravation. The Prosecution did not need to prove that young people were actually present at the time of the arrest but only that it is within 100 metres from where young people habitually meet.

Considers;

The appellant is also appealing from punishment. He submits that the punishment of eighteen (18) months imprisonment and a fine of one thousand euros (€1000) is exagerated since there are several elements which indicate a lesser sentence. These are the relatively young age of the appellant, the clean conduct sheet, that the possession of the drugs in the second charge was for a very short perod of time, not for his own use because he was never the owner of the drugs and not for dealing, the relatively small amount of cannabis involved, the lack of judgment on the part of the appellant both at St. George's Bay, at the Police H.Q. and before the Inquiring Magistrate, the fact that the Court of First Instance did not consider that the crime mentioned in the second charge was designed for the commission of the crime mentioned in the First Charge, the fact that no reference was made in the judgment to section 17 of the Criminal Code and the fact that the appellant tried to help the police as much as he could about the real drug traffficker in this case and therefore the provisions of section 29 of Chapter 101 should apply.

The Court considers that the Prosecution at no stage of the proceedings declared that the accused should benefit from article 29 of Chapter 101 of the Laws of Malta, as a result this article cannot be applied. Even though the First Court did not mention article 17 of Chapter 9 of the Laws of Malta, since the Court found the accused guilty of all charges brought against him, article 17(b) of Chapter 9 of the Laws of Malta applies.

The Court did not mention that the second (2nd) charge was designed for the commission of the crime mentioned in the First Charge. This Court considers that it is confirming guilt of the first charge regarding dealing with Cannabis on the basis of messages found on the phone of the accused, while guilt of the second charge is being confirmed on the basis of the seven paper balls with Cannabis found on the accused. Apart from the 7 paper balls with Cannabis, a piece of plastic with Cannabis was also found on the accused. So the offence subject to the second charge was not necessarily a means to commit the offence subject to the first charge.

The First Court took into account both the nature of the offences of which the accused was being found guilty as well as the nature and quantity of drugs found in his possession. The Court also took into consideration the clean conviction sheet and age of the accused. The Court considers that the eighteen (18) months imprisonment as well as the fine of one thousand euros (€1000) are within the parameters of the law and are towards the minimum established by law and therefore finds no reason to vary these punishments.

Considers;

That the appellant also appealed from the order of payment of court expenses. He submitted that he should not be burdened with the paying of those expenses which were not directly or indirectly relevant in the finding of his guilt. Reference was made to expenses related to the two reports produced by Mr. Keith Cutajar and the report produced by Dr Marisa Cassar. That in relation to the other reports of Court experts, the reports were also used in two other cases related to the same facts of the present case, namely the case against Dawda Casey and the case against Sonko. Therefore the appellant submitted that he should only be ordered to pay one third of these expenses and that it is not just and fair that the administration of justice enriches itself at the expense of a person found guilty.

As considered in the judgment in the names '**The Republic of Malta Vs Kingsley Wilcox**'[16]:

'66. The last grievance in this application concerns the order of the first court for appellant to pay for the costs of fees of court experts and this on two counts. In the first place he should not be made to pay for the total costs incurred when he is one of four persons undergoing proceedings on the same facts. Appellant is also contesting the fees of Dr Martin Bajada on the same basis and is also critical of the fees due to Mr. Joseph Mallia since no fingerprints matching his own were found on the packaging of the drug found in room 630 of the Tropicana Hotel;

67. Article 533 of the Criminal Code does not provide for all situations such as those alleged by appellant. Nonetheless, it is an established principle that a person found guilty of an offence should only be made to pay those costs which were directly or indirectly relevant to the finding of guilt. The report of fingerprint expert Mr. Joseph Mallia at a cost of €764.94 had no such bearing and will therefore be deducted from the cost payable by appellant. All expert reports in the present case were relevant to the finding of guilt. The report filed by Dr. John Seychell Navarro at a cost of €1,133.35 is pertinent solely to the searches regarding accused's moveable and immovable assets having been ordered by the Court of Criminal Inquiry;

68. Appellant's argument that since he is one of four persons standing trial on the same facts, albeit in separate proceedings, he should therefore not bear the costs of fees in those other trials can not be upheld by this Court. Appellant is making reference to an unknown and uncertain situation of costs in trials against third parties which are still sub judice and where it is not even known which expert reports will, if at all be exhibited.'

The First Court ordered the payment of expenses incurred relative to the reports drawn up by the experts Keith Cutajar, Gilbert Mercieca, Dr Marisa Cassar and Nicholas Mallia.

[16] Decided by the Court of Criminal Appeal on the 22nd January, 2020 (Bill of Indictment: 4/2015)

The Court underlines that even though the case of the accused and that of Ceesay Dawda were being heard together[17], no order for the evidence produced in one case to apply for the other case was made.

The report filed by Keith Cutajar and found at fol 96 et sequitur marked as Dok KC1 provides that he was to examine Dok JC13 (a Huawei mobile phone) and conduct a cross match analysis with the two mobile phones presented in the case of Police versus Dawda Ceesay which are presented formally in this case as Dok CA4 (a samsung mobile phone and iphone Dok JC19 and JC20)[18]. Since guilt of the first charge is based on the findings of this expert, there is no doubt that the Court should order the appellant to pay of expenses amounting to **€887.73** euros according to fol 125. Even though this report also included a cross match analysis with the phones found on Ceesay Dawda, it does not result whether this report was in toto filed in the proceedings against the other accused so the Court is ordering the accused to pay the entire amount. There is no doubt that the report of Keith Cutajar was used for the purposes of finding of guilt of dealing in drugs, this in view of whatsapp messages found on the phone of the accused.

Keith Cutajar at fol 159 marked as Dok KC3 presented a report with the additional copy of the USB that was submitted on the 21st of November 2019. The expenses according to fol 160 amounted to **€67.77** euros. This should therefore be paid in full by the appellant.

Guilt however was not found on the basis of the reports drawn up by Dr Marisa Cassar at fol 163 et sequitur marked as Dok MC1 and in her report marked as Dok MC3 at fol 193 et sequitur such that in the later report, it was considered that '*Għalkemm hemm xi 'alleles' (immarkati bl-aħmar) li jaqblu ma' ta' Juldeh Baldeh, statistikament ma ġiex ikkonfermat li Juldeh Baldeh huwa wieħed mill- kontributuri.*' In the copy of the report of Dr Marisa Cassar in the names 'Pulizija vs Dawda Ceesay'

[17] According to Court minutes of the sittings dated 10th October 2019 and 24th October 2019

[18] During the sitting dated the 24th October 2019, '*The Prosecution Officer is requesting for a technical expert to be appointed to examine Dok JC 13 (a Huawei mobile phone IMEI 867269036957192) and conduct a cross match analysis with the two mobile phones presented in the case the Police versus Dawda Ceesay whciha re presented formally in this case as Dok CA 4 (a Samsung Mobile phone and Iphone Dok JC 19 and JC 20).*' The Court upheld this request and appointed Keith Cutajar.

marked as Dok MC2 at fol 216 et sequitur, it was concluded that '*Mill-kampjuni analiżżati ħareġ profil ġenetiku parzjali w mħallat (2 kontributuri) fejn ma jistax jiġi eskluż li wieħed mill-kontributuri huwa raġel*'.' In view that guilt was not found on the basis of reports drawn up by Dr Marisa Cassar, the accused should not be condemned to pay such expenses.

In relation to the report filed by Mr Gilbert Mercieca[19] at fol 171 marked as Dok GM1 amounting to €**501.50** as calculated at fol 180, it does not result whether this report was also exhibited in the acts of the case against Dawda Ceesay. This related to the examination of the substance exhibited as JC12 in order to establish the nature of its contents and the value, and to conduct a cross match analysis with the exhibits presented in the case **Police vs Dawda Ceesay** (Dok JC 18) and from his testimony of Gilbert Mercieca dated 20th December, 2019 it results that even in the case against Dawda Ceesay, apart from examining substance exhibited in that case, he was to examine the substance exhibited in the acts of these proceedings and to determine whether that and the substance exhibited as Doc JC12 had simlar origin, so part of the results found for the purposes of one case were also used. However it does not result whether this report marked as Dok GM1 was filed in toto in the proceedings against the other accused. It was up to the accused to raise the issue before the First Court whether this report has been filed in the proceedings of the other acccused. The Court cannot at appellate stage order that only a share of the expenses are paid without any clear evidence that the report was also filed in the other proceedings.

The Court is however not ordering the payment of expenses of the report of Mr Gilbert Mercieca marked as Dok GM2 found at fol 220 et sequitur which was originally presented in the proceedings against Dawda Ceesay, where the expert like in the report marked as Dok GM1 concluded that '*The **Phenotype Ratio in Table 4**, and the **visual examination** of the exhibits in DOK JC18 and DOK JC12 (Examined in the*

[19] During the sitting dated 24th October 2019, it was minuted that '*The Prosecution Officer is also requesting for a chemical expert to be appointed in order to analyise the drugs presented in this case as Dok JC 12 (a sealed evidence bag with reference number L00451618 containing 7 paper balls containing 5g of cannabis grass and one plastic sachet contianing 1 gram of cannabis grass) and conduct a cross match analysis with the drugs presented physically in the case the Police versus Dawda Ceesay (a sealed evidence bag with reference no S01493716 allegedly containing 1.110 grams cannabis grass - Dok JC 18) which are exhibited formally in this case as Dok AA2.)*' The Court uphdeld the request and appointed Gilbert Mercieca.

report presented in the case Police vs Juldeh Baldeh) indicate that the herbaceous material derived from the cannabis plant identified in these two documents ***could have a similar origin.)***' However since the report marked as Dok GM2 was not the basis upon which guilt was found against the accused, the Court will not be ordering the payment of expenses of this report.

The Court also ordered the accused to pay the expenses in relation to the report of architect Nicholas Mallia found at fol 242 et sequitur and marked as Dok NM1. Since guilt of the third charge was partially also found on the basis of this report, the accused is to pay such expenses. From the report it results that a site inspection took place and the accused '*Juldek Baldeh*', Ebrima Sonko and Dawda Ceesay were present, however there is no evidence that this report was also filed *in toto* in such proceedings against the other accused and so the Court cannot order the payment of only a share of the expenses. Expenses according to the back of fol 247 amount to €**227.52** which the accused is being ordered to pay. The Court will not be considering expenses in relation to reports filed by other experts since they were not the basis upon which guilt was directly or indirectly found.

Therefore the total amount of expenses to be paid by the accused is €**1,684.52.**

The Court is therefore upholding limitedly the appeal of the appellant, by confirming where the First Court found guilt of all the charges brought against the accused and where it condemned the accused to eighteen (18) months imprisonment and to a fine of one thousand euros (€1,000). This Court orders that the fine is to be paid within six (6) months from today.

It is however revoking where the Court ordered the payment of one thousand, nine hundred, seventy six euros and seventy two cents (€1,967.72) in terms of article 533 of Chapter 9 of the Laws of Malta. The Court is instead in terms of article 533 of Chapter 9 of the Laws of Malta ordering the accused to pay the amount of one thousand, six hundred and eighty four euros and fifty two cents (€**1,684.52)** representing eight hundred, eighty seven and seventy three cents (€887.73) in relation to the report of Keith Cutajar marked as Dok KC1, the amount of sixty

seven and seventy seven cents (€67.77) in relation to the report of Keith Cutajar marked as Dok KC3, the amount of five hundred and one euro and fifty cents (€501.50) representing the expenses in relation to the report filed by Mr Gilbert Mercieca marked as Dok GM1 and the expenses in relation to the report of architect Nicholas Mallia marked as Dok NM1 amounting to two hundred and twenty seven euros and fifty two cents (€227.52). These expenses are to be paid by the appellant within six (6) months from today.

The Court confirms the order of the Court for the destruction of the drugs exhibited as Document JC12 after confirmation by the prosecuting officer that the said drugs are not required in connection with any other proceedings. **For this purpose, this Court is ordering the Prosecuting Officer to file a note in the acts of these proceedings within fifteen (15) days from the date of this judgment indicating whether the drugs exhibited as Document JC12 are 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 (15) days from the said destruction.

The Court orders that this judgment is notified to the Director of the Crminal Courts so that attention may be given for the recovery of the multa and expenses ordered by this same court.

(ft) Consuelo Scerri Herrera

Judge

VERA KOPJA

Franklin Calleja

Deputat Registratur