



**QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI**

**MAGISTRAT DR.
LAURENCE QUINTANO**

Seduta tat-22 ta' Awwissu, 2008

Numru. 360/2005

**The Police
(Inspector Nezrin Griscti)**

Versus

Perry Ingomar Toornstra

The Court

1. Having seen the charges laid against Perry Ingomar Toornstra 28 years of age, nationality Dutch, son of Peter and Annie nee Kreft, born at Tiel in Holland and residing at De Hennepe, 2364003 AK Tiel, presently residing at CCF Passport No N 20565224.

Accused that having on these Islands, on the 6th December 2004 and during the past month while being kept at the CCF

a) Had in his possession the drug cocaine specified in the First Schedule of the Dangerous Drugs Ordinance Chapter 101 of the Laws of Malta when he was not in possession of an import or an export authorization issued by the Chief Government Medical Officer in pursuance of the provisions of sections 4 and 6 of the Ordinance and when he was not licensed or otherwise authorized to manufacture or supply the mentioned drugs and was not otherwise licensed by the President of Malta or authorized by the Internal Control of Drugs Regulations (GN 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs was supplied to him for his personal use, according to a medical prescription as provided in the said regulations and this in breach of Regulation 9 of the Internal Control of Dangerous Drugs (GN 292/1939) as subsequently amended by the Dangerous Drugs Ordinance Chapter 101 of the Laws of Malta which drug was found **in such circumstances indicating that they were not intended for his exclusive use.**

b) Also of being found a recidivist as per article 49 and 50 of Chapter 9 of the Laws of Malta dated 12th June 2003.

2. The Court was asked to apply article 533 of Chapter 9 if the defendant is found guilty.

3. Having noted all the acts in the proceedings including the statement made by the defendant (page 2), his conviction sheet, the copy of his passport, the order of the Attorney General of the 19th July, 2005, the Proces-Verbal drawn up Magistrate Dr. Michael Mallia regarding a parcel addressed to Perry Ingomar Toornstra at the Corradino Correctional Facility, the confirmation of the experts appointed during the inquiry, and the report by Mr. Mario Mifsud.

4. Having heard the witnesses testify on oath.

5. Having heard the submissions made by the Prosecution and the Defence.

6. Has considered

The Facts

7. The facts of the case are as follows. Inspector Gixti was informed that an inmate at the Corradino Correctional Facility was found in possession of a substance alleged to be cocaine. The inmate had just received a parcel EK041500 which was delivered to him on the same date at about 11.00 am. The parcel was checked by PS 1404 Anthony Cutajar in the presence of the inmate. When the Palmolive tube was examined, three small capsules containing a hard substance was found. The inmate tried to take away the capsules and to swallow them. PS 1404 succeeded in retrieving the capsules after a scuffle with the inmate.

The Statement by the Defendant.

8. The defendant is at present serving a fifteen year prison term for importing ecstasy in the year 2000. In his statement the defendant admitted that he knew about the substance that had been sent to him. He also stated that it was intended for his personal use. He had not been responsible for the arrangements but he was waiting for a present from the Netherlands. A friend used to ring him up every month and he promised to send the defendant a present. He admitted that he had tried to hide the capsule and to swallow one of them. The defendant said that he had felt afraid and in a state of panic. When he was in Holland he used to smoke a lot of cocaine. The amount he received used to last him about a week.

Other Witnesses for the Prosecution.

9. PS 602 Jonathan Attard confirmed his report about the photos he had taken during the inquiry.

10. PS 1404 Anthony Cutajar stated that the parcel had a packet of marsh mallows, one packet of shaving cream, two packets of cream, a toothbrush, *Aquafresh* and a perfume. There was no sender on the parcel. The

defendant informed the witness that the he [the defendant] was expecting a parcel from abroad. He said that the sender could have been his mother or his brother. The witness noticed that the Palmolive container was oozing cream and he realized that it had not been properly sealed. The witness kept squeezing the container and three packets fell on the desk top. The defendant stood up and grabbed them and tried to put them in his mouth while the witness struggled with the defendant to preclude the latter from swallowing them. PC 477 told the witness that the defendant had vomited the other packet.

11. Mario Mifsud, the analyst appointed by the Court, concluded that the contents of the Palmolive packet consisted of three capsules weighing 9.865 grams, 10.570 grams and 9.582 grams respectively. The total weight was 30.017 grams of cocaine with a purity rate of 55%.

Witnesses for the Defence

12. The Defendant confirmed two statements: the one made during the inquiry and the one made before Inspector Nezrin Grixti.

13. The Defendant was reminded that he had testified during the inquiry and he confirmed the statement on oath. He stated that a week before his friend had phoned him to inform the defendant that he had sent the defendant a present. So there was no doubt that the present had not been sent by the defendant's mother. When he saw the white capsules he suspected that the capsules were speed or cocaine. He used to have a lot of drugs such as cocaine, amphetamines, LCD and other synthetic drugs between 1994 and the year 2000. He did not use to take heroin. When he was in the office he was surprised to see such an amount of drugs in the Palmolive soap tube. He calculated that there were about 25 grams of cocaine. He had imagined that his friend would send him just four or five grams. He was going to smoke them or sniff them. He was excited about the prospect of

receiving drugs. In prison only heroin was available and the defendant stated that he does not take heroin. He had been approached by other prisoners to buy heroin but he refused. The defendant maintained that for six consecutive years he had taken drugs but in prison these were unavailable.

14. The defendant also confirmed the statement to which reference has already been made. (See par.8).

15. Then the defendant added the following:

'Lawyer: And these capsules that contained the cocaine, were they for their personal use?

Witness: Yes they were but I did not know how much they were going to send me. So at first I thought 4 or 5 grams, so it was for my personal use. So I do [did] not know how much cocaine there was but it was for my personal use.'

16. He finally added that the amount in the tube would have lasted him about a week. He said that one has to wash the coke. From 30 grams this goes down to 20 grams pure cocaine.

Consideratons of the Court.

Simple possession.

16. There is no doubt that the Prosecution has proved the charge of simple possession of cocaine. The defendant was aware that the present he was going to receive contained drugs - as he clearly stated. He was also aware that this was against prison regulations. The forensic evidence also establishes the material aspect of the crime. Hence the crime of simple possession has been proved beyond reasonable doubt.

Possession with intent.

17. The Court notes that the amount is a considerable one and deserves to be punished accordingly. On the other hand, it has to establish whether the defendant intended to pass on the cocaine to others or whether he intended to keep it for his personal use.

18. In the case 'The Police versus Carmel Degiorgio', the Court of Criminal Appeal held:

***'The legal position with regards possession with intent is clear: the Court must be satisfied beyond reasonable doubt and on basis of the evidence presented by the Prosecution that the drug in question was not intended for the exclusive use of the defendant.' One piece of evidence may, according to the circumstances of the case, suffice.'*¹**

19. In this case the amount was a considerable one and is not normally associated with personal use.

20. However, in the case 'The Police versus Carmel Spiteri', where the weight of the drug found was considerable, the Court of Criminal Appeal held:

The fact that the defendant was in possession of 179.8 grammes of cannabis does not render the version given by the defendant as unacceptable. The version given by the defendant when interrogated by the Police was confirmed on oath by the defendant. He had bought the cannabis about three months before and he used to take some of he resin every day.

Omissis

(It is true that when the amount of the drug is substantial, then this circumstance on its own, may

¹ Appeal Number 298/97 26th August 1998 Court of Criminal Appeal 'The Police versus Carmel Degiorgio'. The Hon. Dr. Vincent Degaetano

be enough to satisfy the Court that the possession was not an exclusive one.²)

21. The Court notes a very strong resemblance between the facts of this case and those of the judgment just cited.

22. The defendant made it quite clear – even during the inquiry stage – that he was aware that he was going to receive the cocaine. However, he vehemently denied that he was going to pass the cocaine to somebody else. The circumstances of the case leave a lurking doubt as to whether the defendant had an intention to pass the cocaine to other persons.

23. So the Court is deciding as follows: as to the first charge it is not finding the defendant guilty of possession with intent but of simple possession only, a crime which is involved in the charge laid against the defendant.

Recidivism

24. As to the second charge – recidivism – the Court notes that no copy of the judgement connected with the charge laid was presented by the Prosecution and the Courts have consistently held, that barring a waiving of the right of the presentation of the particular judgement by the defence, the conviction sheet is not tantamount to evidence of recidivism but simply a record to illuminate the Court when pronouncing judgement. For this reason the Court is discharging the defendant from the second charge.

Conclusion

25. The Court, after noting regulation 9 of GN 292/1939, sections 4 and 6, articles 22(1)(a), 22(2)(b)(i)(ii) of Chapter 101 and articles 49 and 50 of Chapter 9 is deciding as follows:

² Appeal Number 327/98 2nd September 1999 ‘The Police versus Carmel Spiteri’ The Hon..Dr.Vincent Degaetano.

(A) as to the first charge the Court is not finding him guilty as charged but of simple possession which is a crime involved in the charge made against the defendant;

(B) as to the second charge it is discharging him for lack of evidence.

26. As to the punishment, the Court notes that the defendant intended to introduce cocaine in prison. Moreover, the Conviction sheet is not a clean one. Finally, in circumstances where the amount was a serious one the Courts have always taken the line to condemn the defendant to an effective prison sentence and to a fine (multa). The Court is following the line established by "The Police versus Carmel Spiteri" and also considering the serious circumstances of this case, in particular in the way it was going to be introduced in a correctional facility where every effort is being made to control the inflow of drugs.

27. It is hence condemning the defendant to nine months imprisonment and to the payment of a fine (multa) of 600 Euros which fine has to be paid in 50 Euro monthly instalments with the first payment to be effected within four weeks from today. Should an instalment not be honoured, then the balance will have to be paid at once. If any part of this fine (multa) is not paid, then this has to be converted into one day imprisonment for every 11.65 Euros not paid.

28. The Court is not condemning the defendant to the payment of fees of the experts because the experts were appointed during an inquiry which was held prior to the 16th January 2006. Hence it is not applying article 533 of Chapter 9.

29. The Court is ordering the destruction of the drug under the supervision of the Registrar of the Court.

Kopja Informali ta' Sentenza

< Sentenza Finali >

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