



CRIMINAL COURT

**THE HON. MR. JUSTICE
JOSEPH GALEA DEBONO**

Sitting of the 19 th October, 2009

Number 17/2009

**The Republic of Malta
Vs
Davidson Onuoha Osiri**

The Court,

Having seen the bill of indictment no. 17/2009 against the accused Davidson Onuoha Osiri wherein he was charged with:

1) After the Attorney General premised in the First Count of the Bill of Indictment that at the end of August of the year two thousand and eight (2008) the Drug Squad police were informed that the accused was involved in drug-related offences including conspiracy to deal in drugs.

That it transpired from the investigations that on the thirty first (31st) August of the year two thousand and eight (2008), the accused Davidson Onuoha Osiri, a Nigerian National residing in Spain, decided to start trafficking illegally in cocaine. The accused had conspired with other persons to body-pack the drugs concerned by swallowing capsules thereof before departing from Spain, so as to pass on the illegal substance to another individual upon his arrival in Malta. The accused would received a considerable amount of money for such service rendered, amounting to thousands of Euros. Fortunately after the accused was detected to be lodging at the Topaz Hotel in Bugibba, on the thirty first (31) August of the year two thousand and eight (2008) a search was conducted by the police on the person and the room of the accused who was found to be in possession of various capsules suspected of containing cocaine. The accused himself admitted that he knowingly swallowed nineteen capsules (19) consisting of cocaine with the intention to body-pack the illegal substance from Spain into Malta, which drug would subsequently be trafficked to other individuals. Following the necessary analysis carried out by forensic experts, it was confirmed that the capsules found consisted of cocaine in the aggregate amount of two hundred and eighty five point eight grams (285.8grams) of approximately thirty one point seven percent (31.7%) purity level, which drug is considered as an illegal substance in accordance with our Law, and which substance found on the person and in the room of the accused, carries the total street value of twenty one thousand seven hundred and twenty one Euro (€21,721).

By committing the abovementioned acts with criminal intent, Davidson Onuoha Osiri rendered himself guilty of conspiracy to trafficking in dangerous drugs in breach of the provisions of the Dangerous Drugs Ordinance.

Wherefore, the Attorney General, in his capacity, accused Davidson Onuoha Osiri of having on the thirty first (31) August of the year two thousand and eight (2008), guilty of conspiracy to trafficking in dangerous drugs (cocaine) in breach of the provisions of the Dangerous Drugs

Ordinance (Chapter 101 of the Laws of Malta) or of promoting, constituting, organising or financing the conspiracy; demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to fine of not less than two thousand three hundred and thirty Euro (€2330) and not more than one hundred sixteen thousand and five hundred Euro (€116,500) and to the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in sections 9, 10(1), 12, 14, 15(A), 20, 22(1)(a)(f)(1A) (1B)(2)(a)(i)(3A)(a)(b)(c)(d) and 26 of the Dangerous Drugs Ordinance and regulation 4 and 9 of the 1939 Regulations for the Internal control of Dangerous Drugs (Legal Notice 292/39), and in sections 23 and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

2) After the Attorney General premised in the Second Count of the Bill of Indictment that owing to the nature of the circumstances which took place on the thirty first (31) August of the year two thousand and eight (2008), as indicated in the first Count of this Bill of Indictment, as well as on the basis of an admission of the accused himself, it transpired that the accused wilfully and knowingly travelled from Spain to Malta, whilst body-packing throughout the whole trip, an illegal drug which later on was analysed as cocaine and which substance is illegal in accordance with our law. The accused admitted to all of the above and always knowingly for the said purpose. The accused gave his full consent to take the flight concerned and even paid for the trip himself, whilst being fully aware of the purpose and the contents of the capsules containing the illegal substance which he had body-packed so as to bring same to Malta. Effectively if the Drug Squad Police failed to detect the whereabouts of the accused, the contents of these capsules would have been transferred to third parties in Malta and would have been trafficked for financial gain. This eventuality was likewise confirmed by the accused himself.

The accused was not in possession of any licence or authorisation issued under the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), which authorised or permitted in any way the importation of the dangerous drug concerned by the accused.

Cocaine is a dangerous drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance. Davidson Onuoha Osiri was not in possession of any valid and subsisting import authorisation granted in pursuance of the said law.

By committing the abovementioned acts with criminal intent, the accused Davidson Onuoha Osiri rendered himself guilty of meaning to bring or causing to be brought into Malta in any manner whatsoever a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), when he was not in possession of any valid and subsisting import authorisation granted in pursuance of the said law.

Wherefore, the Attorney General, in his capacity, accused Davidson Onuoha Osiri of having on the thirty first (31) August of the year two thousand and eight (2008), guilty of meaning to bring or causing to be brought into Malta in any manner whatsoever a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), when he was not in possession of any valid and subsisting import authorisation granted in pursuance of the said law; demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to fine of not less than two thousand three hundred and thirty Euro (€2330) and not more than one hundred sixteen thousand and five hundred Euro (€116,500) and to the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as

described in the bill of indictment, as is stipulated and laid down in sections 9, 10(1), 12, 14, 15(A), 20, 22(1)(a)(1B)(2)(a)(i)(3A)(a)(b)(c)(d), and 26 of the Dangerous Drugs Ordinance and regulation 4 and 9 of the 1939 Regulations for the Internal control of Dangerous Drugs (Legal Notice 292/39), and in sections 23 and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

3) After the Attorney General premised in the Third Count of the Bill of Indictment that owing to the nature of the circumstances which took place on the thirty first (31) August of the year two thousand and eight (2008) as indicated in the first two counts of this Bill of Indictment, as well as on the basis of an admission of the accused himself, it transpired that the accused wilfully and knowingly imported the aforementioned drug (cocaine) with the intention to pass on the same illegal substance to another person or persons and being fully aware that the said drug would be trafficked against the law. It further results that he would be paid considerable sums of money for his involvement.

Cocaine is a dangerous drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance. Davidson Onuoha Osiri was not in possession of any valid and subsisting procurement, manufacture, exportation or importation authorisation of such illegal substance, duly granted in pursuance of the said law.

By committing the abovementioned acts with criminal intent, the accused Davidson Onuoha Osiri rendered himself guilty of having on the thirty first (31) August of the year two thousand and eight 2008, supplied or procured or offered to supply or procure an illegal substance (cocaine) to or for any person whether in these Islands or elsewhere, or advertise the drugs for sale, without a license by the Minister responsible for Health or without being authorised by these Rules or by authority granted by the Minister responsible for Health to supply the drug

mentioned (cocaine), or without being in possession of an import or export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of Parts VI and IV of the Ordinance, and without being licensed or otherwise authorised to manufacture the drug or without a license to procure the same.

Wherefore, the Attorney General, in his capacity, accused Davidson Onuoha Osiri of having on the thirty first (31) August of the year two thousand and eight (2008), supplied or procured or offered to supply or procure an illegal substance (cocaine) to or for any person whether in these Islands or elsewhere, or advertise the drugs for sale, without a license by the Minister responsible for Health or without being authorised by these Rules or by authority granted by the Minister responsible for Health to supply the drug mentioned (cocaine), or without being in possession of an import or export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of Parts IV and VI of the Ordinance, and without being licensed or otherwise authorised to manufacture the drug or without a license to procure the same; demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to fine of not less than two thousand three hundred and thirty Euro (€2330) and not more than one hundred sixteen thousand and five hundred Euro (€116,500) and to the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in sections 9, 10(1), 12, 14, 15(A), 20, 22(1)(a)(2)(a)(i)(1B)(3A)(a)(b)(c)(d) and 26 of the Dangerous Drugs Ordinance and regulations 4 and 9 of the 1939 Regulations for the Internal control of Dangerous Drugs (Legal Notice 292/39), and in sections 23 and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

4) After the Attorney General premised in the Fourth Count of the Bill of Indictment having imported on the thirty first (31) August of the year two thousand and eight (2008) into Malta, the dangerous drug cocaine in breach of the provisions of Chapter 101 of the Laws of Malta, as described under the first three counts of this Bill of Indictment, Davidson Onuoha Osiri, consequent to the information received by the Police, was physically searched and was found to be in possession of various capsules containing cocaine. Moreover a search was also affected in room 2221 of the Topaz Hotel in Bugibba, where the accused was lodging, and other such capsules were retrieved. In fact the accused himself informed the police that he had swallowed these capsules in Spain, fully aware that they contained the illegal drug cocaine, in order to bring them to Malta, which contents amounted in the aggregate amount of two hundred and eighty five point eight grams (285.8grams) of approximately thirty one point seven percent (31.7%) purity level. The illegal substance found on the person and in the room of the accused, carries the total street value of twenty one thousand seven hundred and twenty one Euro (€21,721). The accused himself admitted that these drugs were intended for trafficking which amount is in itself indicative that the illegal substance was too great to be intended merely for personal use.

Cocaine is a dangerous drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance. Davidson Onuoha Osiri was not in possession of any valid and subsisting import authorisation granted in pursuance of the said law.

By committing the abovementioned acts with criminal intent, the accused Davidson Onuoha Osiri rendered himself guilty of possession of a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) when not in possession of any valid and subsisting import or possession authorization granted in pursuance of the said law, and with intent to supply **in that such**

possession was not for the exclusive use of the offender.

Wherefore, the Attorney General, in his capacity, accused Davidson Onuoha Osiri of having on the thirty first (31) August of the year two thousand and eight (2008), guilty of possession of a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), when not in possession of any valid and subsisting import or possession authorization granted in pursuance of the said law, and with intent to supply same in **that such possession was not for the exclusive use of the offender**; demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to fine of not less than two thousand three hundred and thirty Euro (€2330) and not more than one hundred sixteen thousand and five hundred Euro (€116,500) and to the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in sections 9, 10(1), 12, 14, 15(A), 20, 22(1)(a)(2)(a)(i)(3A)(a)(b)(c)(d) and 26 of the Dangerous Drugs Ordinance and regulation 4 and 9 of the 1939 Regulations for the Internal control of Dangerous Drugs (Legal Notice 292/39), and in sections 23 and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilty of the accused.

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

Having seen that in the sitting of the 12th. October, 2009, the accused, in reply to the question as to whether he was guilty or not guilty of the charges preferred against him under the four counts of the Bill of Indictment, stated that he was pleading guilty thereto;

Having seen that this Court then warned the accused in the most solemn manner of the legal consequences of such statement and allowed him a short time to retract it, according to Section 453 (Chap. 9);

Having seen that the accused being granted such a time, persisted in his statement of admission of guilt;

Now therefore declares Davidson Onuoha Osiri guilty of all four counts in the Bill of Indictment, namely of having:-

1. On the 31st August, 2008, and in the preceding months, in Malta and outside Malta, been guilty of conspiracy to trafficking in dangerous drugs (cocaine) in breach of the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) or of promoting, constituting, organising or financing the conspiracy, in terms of the First Count of the Bill of Indictment;

2. On the 31st August, 2008, at Malta International Airport, been guilty of meaning to bring or causing to be brought into Malta in any manner whatsoever a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), when she was not in possession of any valid and subsisting import authorisation granted in pursuance of the said law, in terms of the Second Count of the Bill of Indictment;

3. On the 31st August, 2008 supplied or procured or offered to supply or procure an illegal substance (cocaine), to or for any person whether in these Islands or elsewhere or advertise the drugs for sale without a license by the Minister responsible for Health or without being authorised by these Rules or by authority granted by the Minister responsible for Health to supply the drug mentioned (cocaine), or without being in possession of an import or export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of Part VI of the Ordinance, and without being licensed or otherwise authorised to manufacture the drug or without a license to procure the same, in terms of the Third Count of the Bill of Indictment;

4. On the 31st August, 2008, been guilty of possession of a dangerous drug (cocaine), being a drug specified and controlled under the provisions of Part I, First Schedule, of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta), when not in possession of any valid and subsisting import or possession authorization granted in pursuance of the said law, and with intent to supply same in that such possession was not for the exclusive use of the offender, in terms of the Fourth Count of the Bill of Indictment;

Having heard the submissions of Defence Counsel, Dr. Malcolm Mifsud and of Counsel for the Prosecution, Dr. Lara Lanfranco in the course of that sitting, regarding the plea in mitigation for the purposes of punishment;

Having also heard the evidence of Inspector Pierre Grech who testified that in this case accused initially cooperated with the Police by making a statement and confirming it under oath and by later even identifying a person, whom he knew as "Pablo" from photos (photo number three (3)) shown to him, as the man he had met once before in connection with the importation of drugs. However when this person by the real name of Simon Borg was arraigned before the Magistrates Court and charged with drug offences, in the compilation of evidence against Simon Borg, accused said that he did not recognize him in Court and even went as far as to state that he had been coerced to say what he had earlier on said in his statements, by Inspector Aquilina. The Inspector further testified that this had created problems and complications for the Prosecution in that case against Borg.

Having also heard the evidence of accused himself who described the circumstances of the case and that he had met Simon Borg once before but that he did not meet him on the day when he and Borg were arrested by the Police. He confirmed that he had not recognized Borg in Court in the latter's compilation of evidence. He had not said that Inspector Aquilina had coerced him into saying anything but it was a policeman who had taken hold of his mobile

phone and made and sent an SMS to a Malta phone number that appeared on his mobile phone.

Having seen that, on the basis of this evidence, Prosecuting Counsel, Dr. Lara Lanfranco declared that the Prosecution was not agreeing that accused deserved to benefit from a reduction in punishment under article 29 of Chapter 101, as Defence Counsel was submitting.

Having seen accused's clean criminal record (in Malta at least) exhibited by the Prosecution and examined by Defence Counsel;

Having considered in the accused's favour:-

1. the fact that he admitted his involvement and knowledge of the drug importation of 19 capsules of cocaine in the amount of 285.8 grams, possession and conspiracy to traffic in drugs at a very early stage of the Police investigations, albeit that he was caught red-handed and had very little option of doing anything else;
2. his admission of guilt before this Court at the first available opportunity, after being served with the Bill of Indictment ;
3. as well as the fact that his criminal record in Malta is clean; and
4. that initially he cooperated with the Police when they attempted to effect a controlled delivery, and in identifying another person who was subsequently arraigned before the Magistrates Court.

Having on the other hand considered that: -

1. the accused had offered his services for the illegal importation into these Islands of a substantial consignment of cocaine, i.e. 258.8 grams of cocaine of a purity of 31.7% with a street retail value in the region of Euro 21,721, with the dire consequences that this would have caused among the local population had it not been intercepted by the Police.
2. that he did this purely for financial gain,

3. that he subsequently varied his version when he was called to testify against the person he had earlier on identified as “**Pablo**” and whose real name was Simon Borg, by stating that he was not recognizing him in Court and that he had been made to say things by Inspector Aquilina, thereby seriously undermining the police case against Borg and negating much of his earlier co-operation.

4. that, in view of this, the Prosecution was not accepting that he should benefit from the provisions of Article 29 of Chapter 101 of the Laws of Malta.

5. having also considered that the punishment should also serve as a deterrent to like-minded persons who are involved in similar operations of drug importation to and trafficking in these Islands ;

Having considered the relevant case law of our Courts and of foreign courts regarding pleas in mitigation of punishment in cases of an admission of guilt at an early stage of the proceedings in the light of the fact that accused was caught red handed;

Having considered that the Prosecution and Defence agreed that, for purposes of punishment, the First and Second Counts of the Bill of Indictment regarding the crimes of conspiracy and importation respectively, should be absorbed in the offences of trafficking and of unlawful possession of drugs under circumstances which indicate that said drugs were not intended for the exclusive use of the offender, contemplated in the Third and Fourth Counts of the Bill of Indictment as well as that the charge of unlawful possession contained in the Fourth Count of the Bill of Indictment is itself absorbed in the offence of trafficking contained in the Third Count, as they served as a means to an end for the commission of the offences under the said Counts of the Bill of Indictment, in terms of Section 17 (h) of the Criminal Code (Chap.9) ;

Having seen articles 9, 10(1) 12, 14, 15A, 20, 22(1)(a)(f)(1A)(1B)(2)(a)(f)(i)(3A)(a)(b)(c)(d), and 26 of the Dangerous Drugs Ordinance (Chap.101); Regulations 4 and 9 of the 1939 Regulations for the Internal Control of

Informal Copy of Judgement

Dangerous Drugs (L.N. 292/1939) and articles, 23, and 533 of the Criminal Code ;

Now therefore condemns the said Davidson Onuoha Osiri to a term of imprisonment of ten (10) years, and to the payment of a fine (multa) of twenty thousand Euros (€20,000), which fine (multa) shall be converted into a further term of imprisonment of twelve (12) months according to Law, in default of payment ;

Furthermore condemns him to pay the sum of nine hundred and ninety six Euros and sixty eight Euro cents (€996.68) being the sum total of the expenses incurred in the appointment of Court Experts in this case in terms of Section 533 of Chapter 9 of the Laws of Malta;

Furthermore, orders the forfeiture in favour of the Government of Malta of all the property involved in the said crimes of which he has been found guilty and other moveable and immovable property belonging to the said Davidson Onuaha Osiri;

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

< Final Judgement >

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