



CRIMINAL COURT

**THE HON. MR. JUSTICE
MICHAEL MALLIA**

Sitting of the 12 th June, 2011

Number 35/2009

**The Republic of Malta
Vs
Augustine Elechukwu Onuchukwu**

The Court,

Having seen the bill of indictment no. 35/2009 against the accused Augustine Elechukwu Onuchukwu wherein he was charged with:

1) After the Attorney General premised in the First Count of the Bill of Indictment that on the night between the twentieth (20th) and twenty first (21st) day of April of the year two thousand and eight (2008) and during the previous days, weeks and months, AUGUSTINE ELECHUKWU ONUCHUKWU, known as “Fat Boy” (henceforth referred to as the “accused”) decided to start dealing, offering, supplying and exporting

drugs illegally into the Maltese Islands in agreement with others.

During the period of time abovementioned, the accused conspired and agreed with other persons, namely a certain Ali, Sam, Efosa Efionayi and others, to illegally deal in and export from The Netherlands and from Belgium to the Maltese Islands, a quantity of the drug heroin.

The accused agreed and planned with the said Ali, Sam, Efosa Efionayi and others about the nature and weight of the drug to be dealt with (approximately 946.79 grams of heroin), the route to take (Amsterdam – Brussels – Malta) and/or packing and/or means of concealment (body-packing of capsules filled with heroin) and/or the means of transport (from Amsterdam to Brussels by train, from Brussels to Malta by airplane) which was to be used in order for this said drug heroin to be illegally brought and imported into Malta and this in order for the said drug to be eventually dealt with illegally within the Maltese Islands. The accused also agreed and planned with the abovementioned persons, so that Efosa Efionayi was to carry the said drugs into Malta and to eventually make contact with and meet in Malta the person who was to receive the said drug in Malta (the brother of the said Ali) and to provide all the necessary assistance for this illegal activity which causes untold harm to Maltese society and an illegal financial gain to the accused, which financial gain was also at the basis of this conspiracy. Efosa Efionayi was offered the sum of three thousand Euros (€3000) each time he carried drugs to Malta.

In fact in execution of these pre-concerted plans, the accused, Ali, Sam and Efosa Efionayi agreed that before carrying the actual consignment of heroin to Malta, the accused and Efosa Efionayi were to make a voyage by air to Malta. This would also serve them to obtain first hand evidence and valuable information about this point of entry in the Maltese Islands (through the Malta International Airport), including the nature and type of security checks and structures available. The accused

and Efosa Efionayi flew to Malta on the 13th April 2008 on board of flight KM421 and they passed regularly through security check and out of the Malta International Airport. On the 14th April 2008, while in Malta, the accused, Efosa Efionayi and Ali met in a house and spoke about the deal of smuggling drugs in Malta.

Following this successful trip, the accused, Efosa Efionayi and Ali agreed with each other to travel back to Malta, this time however Efosa Efionayi was to carry the consignment of the drug heroin. Ali, the accused and Efosa Efionayi agreed that the accused and Efosa Efionayi were to travel on the same flight from Brussels to Malta on board flight KM421 on the night between the 20th and 21st April 2008.

On the morning of Sunday 20th April 2008 the accused, Efosa Efionayi and Sam met in a hotel room in Amsterdam wherein Efosa Efionayi swallowed over seventy six (76) capsules containing the drug heroin (in powder form inside) with some soup that was brought over to him.

That same afternoon, the accused and Efosa Efionayi arrived separately in Brussels, Belgium. They met at Brussels airport. The accused and Ali's brother spoke to Efosa Efionayi and confirmed to him that all of them were carrying drugs on their person on behalf of Ali and assured him that everything was going to be fine. Then the accused, Ali's brother and Efosa Efionayi checked in for the flight to Malta, boarded Air Malta flight KM421 and eventually reached Malta. The accused travelled together with a certain Sharon Vanetta Grady and sat on a different part of the airplane.

Upon their arrival in Malta, the accused and Sharon Vanetta Grady were stopped by Customs Officials (who had previously received an alert in relation to the accused as potentially being a drug courier). However from a search carried out on their person, no drugs or other illegal substances were found, (and this despite the fact that in Brussels airport the accused had insisted with Efosa

Efionayi that he was carrying drugs too). So the accused was allowed to proceed out of the Malta International Airport.

However before Efosa Efionayi managed to leave the Malta International Airport towards his destination, he was intercepted by the Malta Police Force, who managed to intervene in due time before this amount of drug heroin managed to reach its intended final destination in the Maltese Islands to the respective consignee as abovementioned. The Police effected a search on the person of Efosa Efionayi and invited him to submit himself to an x-ray of his abdomen at the Mater Dei Hospital. Following this examination, it transpired that Efosa Efionayi was carrying inside his body seventy six capsules filled with a total net weight of the drug heroin in powder form of approximately 946.79 grams, with a purity of approximately 30% (as determined later by the Court appointed expert). This consignment of the drug heroin was the subject matter of the abovementioned conspiracy. The street value of this drug as determined by the Court appointed expert amounted to between a minimum of forty five thousand four hundred and forty five Euro ninety two cents (€45,445.92) and a maximum of seventy thousand and sixty two Euro and forty six cents (€70,062.46). The accused and Efosa Efionayi were not authorized to be in possession of or import such dangerous drugs in terms of Law.

Following the arrest of Efosa Efionayi, said Efosa Efionayi revealed to the Police that together with him there was the accused who was also travelling on the same flight and that he was part of the conspiracy for dealing in drugs. After the police showed Efosa Efionayi the passport photograph of the accused, Efosa Efionayi identified the accused as being the "Fat Boy", who travelled with him to Malta on the 13th April 2008 and on the 20th April 2008 and the same person who he met in Malta on the 14th April 2008 in a house with Ali, and in the Amsterdam hotel room on the 20th April 2008 when he swallowed the drugs he imported into Malta and the same person who he met at Brussels airport on the 20th April 2008 before boarding

the Air Malta plane to Malta bearing number KM421. Subsequently, the accused was arrested by the Police at the "Karina Hotel", the same hotel which Efosa Efionayi declared as the place where he was going to lodge while in Malta.

The drug heroin is scheduled as per Part 1 of the First Schedule of the Dangerous Drugs Ordinance;

By committing the abovementioned acts with criminal intent, AUGUSTINE ELECHUKWU ONUCHUKWU rendered himself guilty of conspiracy to trafficking in dangerous drugs (heroin) in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accused AUGUSTINE ELECHUKWU ONUCHUKWU of being guilty of having, on the night between the twentieth (20th) and twenty first (21st) day of April of the year two thousand and eight (2008) and during the previous days, weeks and months, with criminal intent, with another one or more persons in Malta, or outside Malta, conspired for the purpose of selling or dealing in a drug (heroin) in the Maltese Islands against the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) or by promoting, constituting, organizing or financing such conspiracy, and demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to a fine of not less than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) but not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (€116,468.67) and 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 articles 2, 9, 10(1), 12, 22(1)(a)(f)(1A)(1B)(2)(a)(i)(3A)(a)(b)(c)(d)(7), 22(A), 24A,

and 26 of the Dangerous Drugs Ordinance and of articles 17, 23, 23A, 23B, 23C 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 during the period of time mentioned in the first count of this bill of indictment, and within the same circumstantial context AUGUSTINE ELECHUKWU ONUCHUKWU, together with others, decided to start illegal dealing in drugs in the Maltese Islands, including by participating in the act of illegal importation of dangerous drugs.

The process leading to this illegal importation of the drug heroin into the Maltese Islands, saw the accused, a certain Ali, a certain Sam and Efosa Efionayi agreeing and planning about the nature and weight of the drug to be dealt with (approximately 946.79 grams of heroin), the route to take (Amsterdam – Brussels – Malta) and/or packing and/or means of concealment (body-packing of capsules filled with heroin) and/or the means of transport (from Amsterdam to Brussels by train, from Brussels to Malta by airplane) which was to be used in order for this said drug heroin to be illegally brought and imported into Malta and this in order for the said drug to be eventually dealt with illegally within the Maltese Islands.

The accused, Ali, Sam and Efosa Efionayi agreed that before carrying the actual consignment of heroin to Malta, the accused and Efosa Efionayi were to make a preliminary trip by air to Malta and so obtain first hand evidence and valuable information about this point of entry in the Maltese Islands (via the Malta International Airport), including the nature and type of security checks and structures available, thereby strengthening their confidence and determination in effecting the eventual drug deal. The accused knew that the person chosen to carry drugs was going to be the younger and inexperienced Efosa Efionayi. The accused and his partners in crime deemed that this man required to gain more confidence in this forthcoming illegal venture. So

on the 13th April 2008 the accused and Efosa Efionayi flew to Malta on board of flight KM421 and they passed regularly through security check and out of the Malta International Airport. This helped Efosa Efionayi gain more confidence and develop a better insight on the prospected drug deal. On the 14th April 2008, while in Malta, the accused, Efosa Efionayi and Ali met in a house and spoke about the deal of smuggling drugs in Malta.

Following this successful trip, the accused, Efosa Efionayi and Ali agreed with each other to travel back to Malta, this time however Efosa Efionayi was to carry a consignment of the drug heroin. Ali, the accused and Efosa Efionayi agreed that the accused and Efosa Efionayi were to travel on the same flight from Brussels to Malta on board KM421 on the night between the twentieth (20th) and twenty first (21st) day of April 2008. The accused and Ali incited and strengthened the determination of Efosa Efionayi to engage in this drug deal and promised Efosa Efionayi both assistance and reward after the fact of importation of drugs into Malta. Efosa Efionayi was offered the sum of three thousand Euros (€3000) each time he imported drugs to Malta.

On the morning of Sunday 20th April 2008 the accused, Efosa Efionayi and Sam met in a hotel room in Amsterdam wherein Efosa Efionayi swallowed over seventy six (76) capsules containing the drug heroin (in powder form inside) to Efosa Efionayi with some soup that was brought over to him, as he was designated to transport them inside his body to Malta via Brussels, Belgium.

That same afternoon, the accused and Efosa Efionayi arrived separately in Brussels, Belgium. They met at Brussels airport. The accused and Ali's brother spoke to Efosa Efionayi. In order to further strengthen the determination of Efosa Efionayi to carry the drugs into Malta, the accused confirmed to said Efosa Efionayi that all of them were carrying drugs on their person on behalf of Ali and that everything was going to be fine. Then the accused, Ali's brother and Efosa Efionayi checked in for

the flight to Malta and boarded the Air Malta flight KM421 and eventually reached Malta. However in order not to be easily identifiable with or linked to Efosa Efionayi, the accused travelled together with a certain Sharon Vanetta Grady and sat on a different part of the airplane.

Upon their arrival in Malta, the accused and Sharon Vanetta Grady were stopped by Customs Officials (who had previously received an alert in relation to the accused as potentially being a drug courier). However from a search carried out on their person, no drugs or other illegal substances were found, despite the fact that in Brussels airport the accused had insisted with Efosa Efionayi that he was carrying drugs as well. So the accused was allowed to proceed out of the Malta International Airport.

However before Efosa Efionayi managed to leave the Malta International Airport towards his destination, he was intercepted by the Malta Police Force, who managed to intervene in due time before this amount of drug heroin managed to reach its intended final destination in the Maltese Islands to the respective consignee as abovementioned. The Police effected a search on the person of Efosa Efionayi and invited him to submit himself to an x-ray of his abdomen at the Mater Dei Hospital. Following this examination, it transpired that Efosa Efionayi was carrying inside his body seventy six capsules filled with a total net weight of the drug heroin in powder form of approximately 946.79 grams, with a purity of approximately 30% (as determined later by the Court appointed expert). The street value of this drug as determined by the Court appointed expert amounted to between a minimum of forty five thousand four hundred and forty five Euro ninety two cents (€45,445.92) and a maximum of seventy thousand and sixty two Euro and forty six cents (€70,062.46). The accused and Efosa Efionayi were not authorized to be in possession of or import such dangerous drugs in terms of Law.

Hence on the 20th April 2008, on the basis of the assistance offered by the accused as well as by the incitement of the accused and the strengthening of his

determination by the words and deeds of the accused, Efosa Efionayi managed to knowingly import to the Maltese Islands these seventy six capsules containing the drug heroin and this also following the offer of assistance and reward offered to him by the accused and others.

Following the arrest of Efosa Efionayi, said Efosa Efionayi stated to the Police that together with him there was the accused who was also travelling on the same flight and who was also carrying drugs behalf of Ali. After the police showed Efosa Efionayi the passport photograph of the accused, Efosa Efionayi identified the accused as being the “Fat Boy”, who travelled with him to Malta on the 13th April 2008 and on the 20th April 2008 and the same person who he met in Malta with Ali on the 14th April 2008 and in the Amsterdam hotel room on the 20th April 2008 when he swallowed the drugs he imported into Malta and the same person who he met at Brussels airport on the 20th April 2008 before boarding the Air Malta plane to Malta bearing number KM421. Subsequently, the accused was arrested by the Police at the “Karina Hotel”, the same hotel which Efosa Efionayi declared as the place where he was going to lodge while in Malta.

The drug heroin is scheduled as per Part 1 of the First Schedule of the Dangerous Drugs Ordinance;

By committing the abovementioned acts with criminal intent, AUGUSTINE ELECHUKWU ONUCHUKWU rendered himself guilty of being an accomplice in the act of importing or exporting, or cause to be imported or exported, or take any steps preparatory to importing or exporting, any dangerous drug (heroin) into or from Malta in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accused AUGUSTINE ELECHUKWU ONUCHUKWU of being guilty of having, on the night between the twentieth (20th) and twenty-first (21st) day of April of the year two thousand and eight

(2008), (and for the reasons stated above in the preceding days and weeks), with criminal intent, rendered himself an accomplice with Efosa Efionayi in the act of importation or exportation, or in the causing of importation or exportation, or in the act of taking any steps preparatory to importing or exporting, any dangerous drug (heroin) into or from Malta in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta by in any way whatsoever knowingly aiding or abetting the perpetrator of the crime (Efosa Efionayi) in the acts by means of which the crime is prepared or completed and by inciting or strengthening the determination of another (Efosa Efionayi) to commit a crime (illegal importation of the dangerous drug heroin into Malta) or by promising to give assistance, aid or reward after the fact, or in the taking of any steps preparatory to the importation of a dangerous drug (heroin) into Malta and demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for life and to a fine of not less than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) but not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (€116,468.67) and 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 articles 2, 9, 10(1), 12, 14, 15A, 22(1)(a)(1B)(2)(a)(i)(3A)(a)(b)(c)(d)(7), 22(A), 24A, and 26 of the Dangerous Drugs Ordinance and of articles 17, 23, 23A, 23B, 23C, 42(c)(d)(e), 43, 46 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 the jury's verdict of today's date whereby by seven (7) votes in favour and by two (2) votes against,

they found the accused guilty of all the two Counts of the bill of indictment.

Now therefore declares Augustine Elechukwu Onuchukwu guilty of all two counts in the Bill of Indictment, namely of having:-

1. on the night between the 20th and 21st April, 2008, and during the previous days, weeks and months, with criminal intent, with another one or more persons in Malta, or outside Malta, conspired for the purpose of selling or dealing in a drug (heroin) in the Maltese Islands against the provisions of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta) or by promoting, constituting, organizing or financing such conspiracy and this according to the First Count of the Bill of Indictment;

2. on the night between the 20th and 21st April, 2008, with criminal intent, rendered himself an accomplice with Efosa Efionayi in the act of importation or exportation, or in the causing of importation or exportation, or in the act of taking any steps preparatory to importing or exporting, any dangerous drug (heroin) into or from Malta in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta by in any way whatsoever knowingly aiding or abetting the perpetrator of the crime (Efosa Efionayi) in the acts by means of which the crime is prepared or completed and by inciting or strengthening the determination of another (Efosa Efionayi) to commit a crime (illegal importation of the dangerous drug heroin into Malta) or by promising to give assistance, aid or reward after the fact, or in the taking of any steps preparatory to the importation of a dangerous drug (heroin) into Malta and this according to the Second Count of the Bill of Indictment;

Having considered ALL submissions made by defence counsel and the prosecution which are duly recorded.

Having seen that accused has a clean criminal record.

Having considered the gravity of the case.

Having considered that for purposes of punishment, the First Count of the Bill of Indictment regarding the crimes of conspiracy, should be absorbed in the offence of complicity in the importation of drugs contemplated in the Second Count of the Bill of Indictment. Accordingly it is being made expressly clear that no punishment is being awarded for the offence included in the First Count of the Bill of Indictment.

Having seen articles 2, 9, 10(1), 12, 14, 15A, 22(1)(a)(f)(1A)(1B)(2)(a)(i)(3A)(a)(b)(c)(d)(7), 22(A), 24A and 26 of the Dangerous Drugs Ordinance and of articles 17, 23, 23A, 23B, 23C, 42(c)(d)(e), 43, 46 and 533 of the Criminal Code;

Now therefore condemns the said Augustine Elechukwu Onuchukwu to a term of imprisonment of fifteen (15) years, and to the payment of a fine (multa) of seventy thousand Euros (€70,000), which fine (multa) shall be converted into a further term of imprisonment of eighteen months according to Law, in default of payment ;

Furthermore condemns him to pay the sum of one thousand, six hundred and ninety seven Euros and fifty four Euro cents (€1697.54) 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, within fifteen (15) days from today ;

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 Augustine Elechukwu Onuchukwu.

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 Godwin Sammut, 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

Informal Copy of Judgement

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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