



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE DR.
MIRIAM HAYMAN**

Sitting of the 4 th August, 2011

Number. 875/2010

**THE POLICE
INSPECTOR DENNIS THEUMA**

VS

HERNAN ADALMES ORTIZ aged 46 years, son of David and Anna Hilda nee' Adalmes, born in Puerto Rico on the 23.09.1964, residing at 1097, Walter Avenue, 26, Bronx, New York 10452, and holder of American passport bearing number 711286534;

The Court;

Having seen charges proffered against the above-mentioned **Hernan Adalmes Ortiz**, who was accused of having on these Islands, on the 20.08.2010, and in the preceding weeks:

a. Together with one or more persons in Malta or outside Malta, conspired, promoted, constituted, organized or financed the conspiracy with other person/s to import, sell or deal in the drug (cocaine), in these Islands, against the provisions of The Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, or promoted, constituted, organized or financed the conspiracy;

b. Also of having, together with one or more persons in Malta, or outside Malta conspired, promoted, constituted, organized, or financed the conspiracy with other person/s, to import, sell or deal in the drug (cannabis), in these Islands against the provisions of The Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, or promoted, constituted, organized, or financed the conspiracy;

c. Also of having, together with one or more persons in Malta, or outside Malta, conspired, promoted, constituted, organized, or financed the conspiracy with other person/s to import, sell, or deal in the drug (MCPD), in these Islands, against the provisions of The Medical and Kindred Profession Ordinance, Chapter 31 of the Laws of Malta, or promoted, constituted, organized, or financed the conspiracy;

d. Also of having imported, or caused to be imported, or took any steps preparatory to import any dangerous drugs (cocaine) into Malta in breach of Section 15A of Chapter 101 of the Laws of Malta;

e. Also of having imported, or caused to be imported, or took any steps preparatory to import any dangerous drugs (cannabis) into Malta in breach of Section 15A of Chapter 101 of the Laws of Malta;

f. Also of having imported or caused to be imported, or took steps preparatory to import the psychotropic and restricted drugs (MCPD) without a special authorization in writing by the Superintendent of Public Health, in breach

of the Medical and Kindred Profession Ordinance, Chapter 31 of the Laws of Malta;

g. Also of having supplied or distributed or offered to supply or distribute the drug (cocaine), specified in the First Schedule of The Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, to person/s or for the use of other person/s, without being licensed by the President of Malta, without being fully authorized by the Internal Control of The Dangerous Drugs Regulations (GN 292.1939), or by the authority given by the President of Malta, to supply this drug, and without being in possession of an import and export authorization issued by the Chief Government Medical Officer in pursuance of the provision of Paragraph 6 of The Ordinance and when he was not duly licensed or otherwise authorized to manufacture or supply the mentioned drug, when he was not duly licensed to distribute the mentioned drug, in pursuance of the provisions of the Internal Control of the Dangerous Drugs Regulations (GN 292.1939), as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;

h. Also of having sold or otherwise dealt in the whole or any portion of the plant cannabis in breach of Section 8(e) of the Chapter 101 of the Laws of Malta;

i. Also of having dealt, sold, distributed, or offered to deal, sell or distribute the psychotropic and restricted drug (MCPD), without a special authorization in writing by the Superintendent of Public Health, in breach of the Medical and Kindred Profession Ordinance, Chapter 31 of the Laws of Malta, and the regulations for the Control of Medicines, LN 22/1985 as amended;

j. Also of having had in his possession the drugs (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 Paragraphs 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 Dangerous Drugs Regulations (GN 292.1939), to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were supplied to him for his personal use, according to a medical prescription as provided in the said regulations, and this in breach of the 1939 Regulations, 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 under circumstances denoting that it was not intended for his personal use;

k. Also of having had in his possession the whole of 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;

l. Also of having had in his possession the psychotropic and restricted drug (MCPD), without a special authorization in writing by the Superintendent of Public Health, in breach of the Medical and Kindred Profession Ordinance, Chapter 31 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use;

m. Also of having assaulted or resisted by violence, or active force not amounting to public violence, PC 1348 J Campbell and PC 279 K Gauci, persons lawfully charged with a public duty when in the execution of the Law or of a lawful order issued by a competent authority;

n. Also of having reviled, or threatened, or caused a bodily harm, to persons PC 1348 J Campbell, and PC 279 K Gauci, lawfully charged with a public duty, while in the act of discharging their duty or because of having discharged such duty, or with intent to intimidate or unduly influence them in the discharge of such duty;

o. Also of having caused slight injuries on the person of PC 1348 J Campbell, a public officer who was lawfully charged with a public duty or is/was an officer or employee of a body corporate established by Law and the offence was committed because of that person having exercised his functions;

p. Also of having disobeyed the lawful orders of any authority or of persons entrusted with a public service, or hindered or obstructed with persons in the exercise of their duties, or otherwise unduly interfered with the exercise of such duties, either by preventing other persons from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons;

q. Also of having knowingly attempted to suppress or in any other manner destroy or alter the traces of any circumstantial evidence relating to the offence.

Seen Attorney General's order under Chapter 101 and 31 of the Laws of Malta, folio 18 and folio 92 of the records of the case. Seen also the in the first examination before charges were added, accused had registered a qualified guilt to some of the charges proffered, whereas in the second examination accused answered that he was not guilty of any of the charges brought against him, as del resto was his right to do (folio 98).

Seen also the counter order issued by Attorney Generals at folio 194.

Seen all records of the case.

Considers:

That Customs officials had originally stopped accused at the Malta International Airport after considering his antics as suspicious. Examination of Mr Oritz and his luggage gave a negative result. Still officials thought him to be suspicious (vide evidence tendered by Mario Cutajar, folio 74 – 75). Police official PC 364 David Borg re-iterated that

he assisted to such and also that accused gave his consent to have x-rays of his abdomen taken. This PC also testified that in his presence and that of PC 760 Christopher Saliba, accused excreted nine capsules. Thus PC 760 evidenced that accused also attempted to destroy evidence by attempting to throw the first capsule he excreted in the toilet. Ortiz was told to wash the first capsule he excreted because it was dirtied by his stool, and put it in a plastic bag. Instead he grabbed it with his hands and tried to throw it away in the toilet (folio 127.) PC 760 also said that PC 364 pushed toilet seat down. Same incident was also evidenced by PC 1097 Noel Psaila, who also explained that in the tiff with Ortiz and in trying to contain accused, one of his colleagues ended up with a limp. He explained that the accused was aggressive and he helped contain him so as to get him handcuffed.

This incident was also evidenced by PS 1348 J Campbell who witnessed the incident between accused and PC 279. He said that Ortiz had already passed nine capsules and then another four. At this time he, having moved slightly away from the accused, saw PC 279 hanging over Mr Ortiz and Ortiz himself rushing to the toilet. When witness realized that he was trying to get rid of the drugs, he closed the toilet seat. He received in this altercation an injury to his leg. He also testified that to contain the accused four policemen and one hospital security officer were needed.

Dr Andre' Mercieca testified that he had examined Ortiz and found some foreign bodies in his rectum. He also examined PC 1348 Joseph Campbell after the incident he had with Mr Ortiz. He recalled that they were in Area 2 Casualty, and he saw Ortiz quarrelling and hitting PC 1348. He said he saw Ortiz pushing and the policeman trying to stop him because he was trying to go away (folio 179.) With regards to the injury suffered by PC 1348, the doctor said it was a trauma, just a muscular injury, no fractures. He confirmed both certificates at folios 105 and 106 in respect of PC 1348 and accused – both of slight nature.

It thus transpired that Ortiz had drugs in his recital area – the conclusion of Godwin Sammut illustrates the drugs carried by accused. He concluded this:

a. *Cocaine was found in the extracts taken at random (7 in total) from the white powder which are in the exhibit labeled as 307-10-01. The total number of capsules was 12 while the total weight of the white powder is 108.25 grams, and the purity of cocaine in the powder is approximately 39%. Cocaine is controlled by Chapter 101 of the Laws of Malta under the First Schedule of Part I.*

b. *The price in Euros per gram of cocaine is €76 (see Appendix II). The total weight of cocaine in this case was 108.25 grams which gives a total value of €8,227.*

c. *M-Chlorophenypiperazine (MCP) was found in the extract taken from the pink tablet which is in the exhibit labeled as 307-10-01. The total number of tablets is 4. MCP is controlled by Chapter 31 of the Laws of Malta, under Part A of the Third Schedule.*

d. *The price in Euros per tablet of ecstasy is €9.6. The total number of tablets is 4 therefore the total value is €38.40.*

e. *Tetrahydrocannabinol was found in the extract taken from the green grass which is in the exhibit labeled as 307-10-01. The weight of the green grass was 2.06 grams, while the purity was approximately 13%. Tetrahydrocannabinol is controlled by Chapter 31 of the Laws of Malta, under Part A of the Third Schedule.*

f. *The price in Euros per gram of cannabis herb is €13 (see Appendix II). The total weight of cannabis herb in this case is 2.06 grams which gives a total value of €26.78.*

Accused released, after having been duly cautioned, two statements, in English. Inspector Dennis Theuma testified about the fact that there was no problem to communicate with accused in the English language, and that it was only

in the course of the proceedings that accused required a Spanish translator. Inspector Dennis Theuma also testified that accused was also cautioned as to his right to legal counsel, which he refused.

Thus, in his first statement, accused admitted he lived in the USA and there he worked as a fruit vendor. He also admitted to using cocaine and marijuana. He stated he smoked cannabis on a daily basis. He admitted to having expelled twelve capsules containing cocaine and one capsule containing 2 grams, of marijuana. He also confirmed that the cocaine had a 65% purity and that each capsule contained ten grams of cocaine. He stated that he was going to use these drugs cocaine and marijuana, to share with a friend and two ladies he was to bring over to Malta from Italy. The friend went by the name of Jose Melo from Puerto Rico and was also a US citizen, living in Massachusetts. He stated that his friend was to come to Malta overland by car. Asked how he got the drugs, he explained that he went to Venezuela from the States, then to Madrid, than to Amsterdam by bus. He bought two grams of marijuana from a coffee shop which he wrapped in foil in the form of a capsule and inserted in his rectal area. Than he bought twelve cocaine-filled capsules from a guy called Moreno, for which he paid €1,800. It was his friend Jose Melo who paid for these drugs by actually giving him €2,000, €200 of which Ortiz kept and used.

He explained that he paid for the travelling above-mentioned. Also that he had not been working for nine months but sustained himself on his savings.

Regarding his friend Melo, he was to contact him when he reached Malta. He also said that he did not have a contact number of his friend Melo, since once in Italy he contacted him only once on his cell phone from a telephone boot. He also stated that he had no contact number of Moreno, that he just bought drugs from him. He explained his intention was to stay in Malta till Monday, and then go to Italy with his friend Melo and the lady friends.

He stated “The marijuana I bought for me primarily, but I was also going to give to my friend Melo who also smokes marijuana, but he prefers cocaine. In fact I bought the cocaine for myself and also for my friend Melo since the idea was that after spending two days sightseeing in Malta, we would then all leave, that is myself, Jose Melo and the two Italian ladies to Italy, and we would take what remained of the marijuana and cocaine with us to use whilst we were in Italy.” (folio 37).

Melo gave him the money telling him to go to Amsterdam to buy cocaine, he did not tell him to buy marijuana. He also admitted to other occasions where he smuggled marijuana rectally in the USA. He re-iterated it was the first time he inserted cocaine rectally. He denied he was going to consign the drugs in Malta, since he did not know anyone here. He also admitted that whenever he referred to the word marijuana, he meant cannabis grass.

In this second statement, Dok DT2 folio 39 tergo, he admitted also, after being duly cautioned, that whilst in hospital, Mater Dei, he had attempted to get rid of some capsules that he had just excreted in the presence of PC 1348 Campbell, and PC 279 Gauci, saying he did so because he was afraid and very nervous. He also admitted to injuring the police officers in the process, for which behavior he apologized.

Considers:

The it has amply resulted that Ortiz had come to Malta, laden rectally with the drugs as resulting from Mr Godwin Sammut’s report, MCPP (ecstasy) and tetrahydrocannabinol, cannabis grass. Ortiz insisted in his statement that all drugs were intended for his consumption together with three other friends, two Italian ladies and a certain Jose Melo, who were to join him in Malta for “some fun.” He stated also that it was this Melo that had given him the money and guided him to go to Amsterdam to acquire the mentioned illegal substances.

It is true what Prosecution premised that a non-employed person, as was the accused, found sufficient financial means to live in the States, where he resides, travels to Venezuela, than cross over to Spain, definitely not a chap affair, considering the distance, take a bus to Holland, than a flight to Malta, all this out of pocket, sounded highly improbable. In fact accused was asked whether he has involved in some sort of drug trafficking, thus being financed in his travels for that purpose – a fact denied by accused.

Strangely enough the Jose Melo and two Italian ladies who were to join accused the next day he was apprehended, never materialized.

However, a review of Mr Martin Bajada's report shows no information in this regard. In fact Mr Bajada concluded that no information was found on the SIM card. Strangely enough for being such a good friend and trusted with money (€2,000) to buy drugs, Jose Melo's number does not figure in Mr Ortiz's phone book (vide Dok MB folio 153.).

That being argued, no other evidence was brought forward that accused was actually trafficking drugs or conspired to do so. He did however import the above-mentioned drugs, rectally in our Islands, ex-admissis had possession of them definitely not for his exclusive personal use.

Therefore the Court, finds Hernan Adalmes Ortiz guilty of importation of cocaine, cannabis and MCPP, and having the same in his possession in such circumstances that denoted that the drugs were not intended for his personal use only;

Guilty also of having assaulted and resisted by violence PC 1348 and PC 279, as also of having caused bodily harm on PC 1348, all be it injuries of a slight nature, moreover guilty of having disobeyed the police orders – this after having seen Article 15A, 40a, 120A of Chapter 31 of the Laws of Malta, Provisions of Paragraph 4 and 5

Informal Copy of Judgement

Chapter 101, LN 22/1985, GN 292/1939, seen also Articles 95, 96, 222, 338, and 111(2). With regards to punishment, seen also Section 17, seen his conviction sheet, sentences him to three (3) years imprisonment (effective) and €4,000;

Seen also Section 533 of Chapter 9 of the Laws of Malta, and condemns him to pay the experts' fees amounting to €623.14.

Orders also the destruction of the drugs exhibited, bearing Exhibit Number KB406.2010.

Acquits the accused from the other charges brought against him.

< Final Judgement >

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