



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

**MAGISTRATE DR.
MIRIAM HAYMAN**

Sitting of the 14 th June, 2012

Number. 247/2007

**THE POLICE
(INPSECTOR VICTOR AQUILINA)**

VS

**STEVEN CHARLES BARTRAM, 55 years old, son of
Walter and late Gwynith nee' Rolands, born in Market
Harborough (United Kingdom), on the 21st August,
1956, residing at 29, Long Road, Lowsteoft, United
Kingdom, and holder of UK passport no 034814977
issued on the 22.02.1999;**

The Court;

Having seen charges proffered against the above-mentioned **Steven Charles Bartram** who was accused of having:

a. Imported or offered to import psychotropic and restricted drugs (ecstasy) without a special authorization in writing by the Superintendent of Public Health, in breach of the Provisions of the Medical and Kindred Professions Ordinance, Chapter 31 of the Laws of Malta and the Drug (Control) Regulations, Legal Notice 22 of the 1985 as amended;

b. Also of having had in his possession psychotropic and restricted drugs (ecstasy) without a special authorization in writing by the Superintendent of the Public Health, in breach of the Provisions of the Medical and Kindred Professions Ordinance, Chapter 31 of the Laws of Malta and the Drug (Control) Regulations, Legal Notice 22 of the 1985 as amended, under such circumstances that such possession was not intended for his personal use;

c. Also of having imported or caused to be imported, or took preparatory steps to importing or exporting any dangerous drugs (the whole or any portion of the plant cannabis), into Malta in breach of Section 15A of Chapter 101 of the Laws of Malta;

d. Also of having had in his possession the whole or any portion of the plant cannabis in terms of Section 8(d) of Chapter 101 of the Laws of Malta.

Seen that during the examination Mr Bartram pleaded guilty to all charges with the following qualifications: with regards to charges (a) and (c), the importation of drugs for his personal use, and he further pleaded guilty to charges (b) also with the reservation that he possessed the drug for his personal use (folio 9).

Heard all evidence submitted. Thus a certain Anthony Cruise testified that he worked at the Radisson Golden Sands, Ghajn Tuffieha, as a sales manager. He testified that accused was a sales representative selling timeshare at the mentioned resort, and that accused worked there the year before for approximately six months, and had

leave of absence for over two months and had returned to Malta to resume his employment. He testified that Bartram had returned to Malta to be his assistant manager.

PC 213 Nicolai Borg testified that together with other member of the Drug Squad he stopped a car as soon as it alighted from the Ship Majestic at the Malta Sea Port. Thus the silver Honda driven by Steve Bartram was stopped and a search was conducted on his person, wherefrom in his pocket a plastic bag wrapped in toilet paper was found. Inside were an amount of pills, suspected to be ecstasy. At the CID Depot, a further search was conducted on the accused's vehicle. Therein a plastic bag containing some packages contained in a yellow plastic glove were found, the substance found therein was suspected to be hash. Furthermore, a pair of scales were found and an object used to crush cannabis.

PC 1220 Chris Baldacchino was also involved in these searches, and confirmed what resulted to PC 213 as above-stated. Mr Baldacchino further confirmed that inside the car a television, micro-oven, and computer were found.

On such findings Pharmacist Mario Mifsud concluded in his report (Dok MM), at folio 149 – 150, the following:

- a. No traces of illegal drugs or substances were found on the electronic balance that was in document 478/07/01 and in the pouch that was in document 478/07/02;*
- b. The transparent liquid, that was in document 478/07/06, was found to be Phosphoric acid. This acid, which causes burns, is not controlled by Maltese Law;*
- c. All cannabis seeds, that were taken at random from the two packets, and were in document 478/07/03, germinated;*
- d. Traces of cannabis leaves were found in the cannabis leaves crusher that was in document 478/07/04;*

e. The dried leaves that were found in a plastic box in document 478/07/05 and the dried leaves that were in document 478/07/07 were found to be that of the cannabis plant. The dried leaves, the total net weight of which was 17.628 grams, were found to contain on average 14.3% of Tetrahydrocannabinol (THC). The high percentage of THC found was due to the “skunk” like cannabis leave that were in document 478/07/07. The cannabis plant is scheduled under the Dangerous Drugs Ordinance, Chapter 101, Part III, Section 8;

f. The 126 and 4 pieces of tablets, off-white coloured and bearing the butterfly logo, the 03 tablets, off-white coloured and bearing the leaf logo and the off-white powder that were in two sachets, the total net of which was 0.0273 grams, that were all in document 478/07/07, were found to contain the substance 3,4-methylenedioxymethamphetamine (MDMA). This psychoactive substance, which is found in ecstasy tablets, is scheduled under the Medical and Kindred Professions Ordinance, Chapter 31, Section A.

Pharmacist Mifsud evidenced, on being questioned by Defense Counsel, about the potential use of the pill MDMA (ecstasy) in the use of human health. He did agree that it was contemplated in the USA to be scheduled as a Drug 3 due to its use in relation to post-traumatic stress disorders and depression. He confirmed that there were various studies to this effect, he contradicted however that other studies indicate that ecstasy itself causes depression if taken extensively. He also agreed with Counsel that MDMA was given to US soldiers whilst fighting in Vietnam, Afghanistan and Iraq. He also agreed that some psychiatrists also promoted the use of MDMA to treat Parkinson’s disease.

After this set of questioning, articles as in extracts from journals were presented in favour and against the use of the drug MDMA folio 232 – 266, Dok MM.

To be noted that in his previous testimony Pharmacist Mifsud, on being quizzed by Prosecution Officer if ecstasy

could be used as an alternative to anti-depressant pills, answered that these pills were controlled all over Europe and in the world, and could not be used for any treatment.

PS 1336 Jemond Micallef exhibited his report in relation to the task he had received from the Inquiring Magistrate in the “Ingenere”, in which he presented a set of photos of the accused’s vehicle and the contents thereof, thirty-six in all.

Accused himself chose to tender evidence under oath. Accused confirmed that he worked at the Hotel Fortina and that he had been in Malta since 2006. He returned to Malta after being offered a managerial role with Radisson. This he testified was a new contract. He said that on his return to Malta he arrived on our Island by driving his car through Europe. He deposed that this was his chosen means of transportation, since he had many things to bring over to Malta, as in furniture, kitchen equipment, utilities, stereo, hi-fi, TV. He confirmed that on this arrival to Malta, on leaving the boat he was stopped by a police officer, and after the latter conducted a search on his person, he found on him ecstasy tablets and marijuana. He explained that the purpose of these pills arose from the fact that for many years he had been taking anti-depressants, since 2002. In 2006 the UK doctor refused to renew the anti-depressant prescription due to the fact that they were addictive. He confirmed that he had taken ecstasy in the past and knew that these would calm him down, so short of a doctor’s prescription, he acquired his own ecstasy.

He explained that his depression arose from his mother’s demise in 2002. That was followed by a very bad divorce. He explained that his depression was such that he used to go the bed at night and pray to God he would not wake up, to the extent that he also stood on a railway line at 4.00am waiting for the train, and was stopped in his actions by a lady going to work.

He testified that he had resorted to drugs since he had used ecstasy as a recreational drug before, and knew of

its effects. He had inquired about anti-depressants in Malta and was told that their issue was quite strict. He said that today and for a long time he was being prescribed valium, the prescription ran into 120 pills monthly. He confirmed that he bought the ecstasy pills in the UK saying that at this age (50) it would not be desirable to search for the pills in local bars. Therefore he premised it was easier for him to bring them from the U.K. Though he admitted to being a drug taker, he negated being a drug dealer. He premised he did not need the money, that he was financially stable, that he had no intention of selling his medication.

He exhibited various medical documents and prescriptions received from the UK of his mental state and treatments received, Dok SCB and Dok SCB1.

As to the marijuana, he testified he found smoking it relaxing.

With regards to ecstasy he explained that the drug gave him a good feeling inside, working in the same way as valium and Ciprolax. He consumed 2½ to 3 tablets a-week, stating that he broke each tablet in half.

Asked about the way his car was packed (vide photos re PS 1336 *ibid*), he said that because the car was small, suitcases was were not advisable to pack in.

Considered:

Parties went to lengthy submissions with regards to the qualified plea entered by accused as above-premised. Prosecution chose to present a written note of submissions whilst Defense Counsel chose to submit his views orally.

Be it premised that accused is in no way contesting any of the findings that resulted from the search on his person and in his vehicle. Reference is thus being made to the conclusions reached by Pharmacist Mario Mifsud.

Prosecution has premised strongly that this Court had to agree with the Court of Appeal judgment *Police vs Geoffrey Turner* (Criminal Appeal 110/2007), wherein the criteria of amount of pills found in a rave party and the fact that defendant used such drugs, did not mean that the drugs found were for his personal use.

Another judgment cited by the Prosecution was the one resulting from the case *The Republic of Malta vs John Vella* (16.04.1997) Criminal Court, wherein it was stated that certain amount of drugs pose a threat to society, for who has a certain amount of drugs for his personal use could share or make available those drugs to others.

Prosecution also made reference to Article 120A(13) of Chapter 31 that reads as follows:

“For the purposes of this article 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:

Provided that in the case of importation in such circumstances that the Court is satisfied that such importation was for the exclusive use of the offender, the provisions of the [Probation Act](#) and of Article 21 of the [Criminal Code](#) shall not apply.”

And Article 22(1B) of Chapter 101 that reads as follows:

“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:

Provided that in the case of importation in such circumstances that the Court is satisfied that such importation was for the exclusive use of the offender, the provisions of the [Probation Act](#) and of article 21 if the [Criminal Code](#) shall not apply.”

Defence in its submissions relied strongly on the fact that yes, Bartram had imported the ecstasy and marijuana in Malta, but only for personal use, relying strongly on the defence given by the accused himself. Therefore, arguing that yes the facts of the case were as resulting, but the importation had only the motive of medical use of the drugs to treat a long-term depression which afflicted the accused.

Be it premised before any further considerations are made, that the Court has no difficulty in believing that the accused suffers from an acute depression.

Furthermore in line with the defence raised, the Court is making the further considerations.

As premised, accused chose to take the stand and testify that the drugs imported were only for his personal use, intended to alleviate his ongoing depression. He gave a lengthy explanation of the reasons for his depression even verging on suicide.

This is a line of defence equated with what in common Law is the defence of “duress of circumstances” or “necessity”.

At this stage the Court is going to quote extracts from a judgment delivered by the Court of Appeal in R vs Quayle, quoting here from “Misuse of Drugs and Drug Trafficking Offences” by Rudi Fortson QC:

“The defence of necessity suggested by the appellants and Mr Ditchfield would, if it exists in law, enable individuals to undertake otherwise unlawful activities, without medical intervention or prescription, with a view of the use for medicinal purposes of cannabis either by themselves or by others for whom they say that they assumed responsibility as unqualified medical practitioners. The legislative scheme makes the most careful provision regarding the categorisation of drugs and the production, importation, possession, supply, prescription and use of such drugs for the medical or other purposes.”

The Court also stated that a defence of duress of circumstances, or necessity would run contrary to the legislative scheme:

“The necessitous medical use on an individual basis which is at the root of the defences suggested by all the appellants and Mr Ditchfield is to conflict with the purpose and effect of the legislative scheme. First, no such use is permitted under the present legislation, even on doctor’s prescription, except in the context of the ongoing trials for medical research purposes. Secondly, the defences involve the proposition that it is lawful for unqualified individuals to prescribe cannabis to themselves as patients or to assume the role of unqualified doctors by obtaining it and prescribing and supplying it to other individual ‘patients’. This is contrary not only to the legislative scheme, but also to any recommendation for its change made by the Select Committee and Runciman Reports. Further, it would involve obvious risks for the integrity and the prospects of any coherent enforcement of the legislative scheme. A parallel but lawful market in the importation, cultivation, prescription, supply, possession and use of cannabis would have to come into existence, which would not only be subject to no medical safeguards or constraints, but the scope and legitimacy of which would in all likelihood be extremely difficult to ascertain or control.”

(Sweet and Maxwell: Sixth Edition, pages 179 – 180)

This citation for the mentioned UK case goes to illustrate the dangers of accepting such a line of defence, opening a “carta blanche” for the importation of illegal drugs in our Islands, of whatever nature, as scheduled and restricted by Chapter 31 and 101 of the Laws of Malta, without any control but with impunity of an unlicensed and uncensored medical purpose. More so and more acute the danger, when the amount in question is a considerable one as the case in question. Here this Court is reflecting and elaborating the opinion laid down in the above-mentioned judgment of John Vella.

Furthermore, the Court, in exercising its discretion to establish whether the importation of drugs by accused was for personal use, cannot but not stress the amount of the substance imported – 126 tablets at least, all ecstasy containing the scheduled substance MDMA.

The reason brought forward by the accused, or rather his continued line of defence, is that such drug (ecstasy) is not easily available in Malta, being easier to obtain in the U.K. Also that due to his age, 50 years, he feels uncomfortable to look for the same in bars.

It resulted from accused’s evidence and that of Mr Cruise, that Mr Bartram, prior to his arrest, had lived in Malta, therefore he should know, once he necessitates such a substance, of the easy availability thereof in our Islands, unfortunately!! He should also know that it is illegal to import the same!

Both Articles 120A, Chapter 31; and 22(B), Chapter 101, leave the reason for the importation of the drugs to the scrutiny, discretion of the Court, to establish whether this was intended for personal use or not. Defence therefore, up to the level of probability has to establish this to the satisfaction of the Court.

Various are the local judgments that have outlined what would be the considerations to be examined and considered in this case: the most obvious one is the

circumstances of the case in question; the actual amount of the drugs imported, the reason offered for such importation.

The Court here refers to a judgment delivered by the Court of Criminal Appeal by Judge Vincent De Gaeatano in the names Police (Inspector P Debattista) vs Mohammed Ben Hassan Trabelsi, dated 17.02.1997 (also aptly cited by Prosecution). This judgment was delivered in Maltese so a synopsis in English of the salient points has to be made. The Criminal Appeal Court was of the opinion that whether the quantum of 98 grams of cocaine were intended or not for personal use, was to be determined in the following method: firstly one has to examine whether the amount of drugs found was an amount normally associated with personal use, obviously proof of the substance, amount and possession burdening the Prosecution. However, if the amount was not normally thus associated, then it would rest on the defence to prove, at least to the level of probability, such intention.

The above-mentioned exposition leads this Court to various comments. The availability of the drugs contrasts sharply with the amount imported, if intended for personal use. Note must be taken if the amount of cases dealt with our Courts to realise such availability. Such an amount poses a high risk to society and invites and suggests that the intention is a totally different one. This is also considered in relation to that stated *ex admissis* by the accused that he uses 2½ to 3 tablets a-week. That amount of pills in fact consumed – three-a-week would sustain the accused for forty-two weeks!! Nearly a year! The Court is of the opinion that such defence is very highly improbable. If accused needs medication for his ongoing depression, Malta is furnished with good qualified psychiatrists and/or psychologists that can surely help him to treat his condition with the prescription of legal drugs against a valid and controlled prescription. The Court cannot but here query if Mr Bartram's depression (ongoing sadly) would therefore necessitate further importation of ecstasy or other illegal substances for that

matter, in our Islands, when in a year's time circa, he runs out of this lot?

Another secondary point that has always quizzed this Court is evidenced in the photos exhibited by PS 1336, that show the most haphazard way in which accused packed all his belongings in his car. He testified that such amount of belongings did not fit well in suitcases occupying thus more space. A lame excuse, and one that does not do much to make him credible in the eyes of this Court. Furthermore a comment must be made in relation to that testified by Pharmacist Mario Mifsud in cross examination, about the frequent authorised use of the drug ecstasy by the U.S. forces. Mr Mifsud agreed with the Defence Counsel that ecstasy was administered to forces stationed in Vietnam, Iraq, and Afghanistan. However, a depression triggered by the demise of a loved one and an acrimonious divorce (few are ever otherwise!!) can hardly be compared or equated with the killing fields in a war zone.

Thus premised, Court finds accused guilty as charged after having seen Articles 40A, 120A(1)(1B)(2)(b), Chapter 31 of the Laws of Malta; LN 22.1985; L.S. 31.18, Regulation 2; Articles 8(d), 15A, 22(1B), 22(2)(b), Chapter 101 of the Laws of Malta.

With regards to the penalty to be afflicted, the Court saw also the conviction sheet exhibited and also considered the ailments of the accused.

Sentences Steven Bartram to a term of imprisonment of two and a half years; and to a fine(multa) of €5,000.00

Furthermore, orders the destruction of the drugs exhibited bearing exhibit number KB 7.2008 by the Registrar of Court.

Seen also Section 533 of Chapter 9 of the Laws of Malta, and condemns the accused to the payment of all expert expenses amount to €1056.15

Informal Copy of Judgement

< Final Judgement >

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