



CRIMINAL COURT

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

Sitting of the 16th January, 2013

Number 5/2012

BILL OF INDICTMENT No. 5/2012

THE REPUBLIC OF MALTA

Versus

**Ferdinand Onovo
[holder of Nigerian passport no. A1424410]**

Today the 16th January 2013

The Court,

Having seen the bill of indictment made by the Attorney General on behalf of the Republic of Malta whereby he declared that:

1) After the Attorney General premised in the First Count of the Bill of Indictment that on the night between the second (2nd) and third (3rd) day of February of the year

two thousand and eight (2008) and during the previous days, weeks and months, FERDINAND ONOVO, (henceforth referred to as the “accused”) decided to start dealing in 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 Chukwudu Samuel Onyeabor (also known as “Nokia” and who lived in the Netherlands), Aulis Zopp (who lives in Estonia), and others, to illegally deal in and export from African countries (Benin and Libya) to the Maltese Islands a quantity of drugs.

The accused met Chukwudu Samuel Onyeabor (hereinafter referred to as “Nokia”) in Malta in December of 2007 at the Luxol Grounds in St. Andrews and there they discussed about dealing in drugs. The accused and Nokia agreed to deal in drugs such that drugs were to be imported into Malta from a country in Africa (which later resulted to be Benin to Libya and then through to Malta). They also agreed that apart from dealing in drugs in Malta, they were also to export the drugs from Malta to Norway. The accused and Nokia agreed that said Nokia was to contact the accused via his mobile phone on the day that this drug deal had to take place.

In execution of these pre-concerted plans, on the second (2nd) of February of the year two thousand and eight (2008) Nokia called on the accused and instructed him to meet a foreign white male (who was going to be lodging in room 712 of the Fortina Hotel) in Sliema. Nokia informed the accused that he was to receive a bag containing drugs from this white male person. The accused agreed with Nokia that he was to keep the said bag with the drugs in it for Nokia. Nokia would then call for it when he would travel back to Malta from the Netherlands. The accused and Nokia agreed that in consideration for the services rendered by him, the accused was to receive two thousand euro (€2000) as compensation from Nokia following the successful delivery of the said bag

containing drugs to Nokia. This drug would then be dealt with in Malta and in Norway.

In fact, the accused, after being contacted telephonically by Nokia, set out to the Fortina Hotel in Sliema. The accused rode as a passenger in a car Kia Avella bearing registration number BBQ635 and was driven to the Fortina Hotel in Sliema by a certain Chima Dosie. The accused received from Nokia the details of the white male person from whom he was to receive the bag containing the drugs. While driving close to this hotel, the accused and Chima Dosie drove several times past the white male person. Subsequently, the accused made contact with this white male. The accused asked this white male to open the back door of the car, put the drugs on the back seat then get into the car. The white male opened the back door of the car, put the bag on the back seat of the car and sought to get into the car. At this stage, the accused, Chima Dosie and this white male were arrested by the Police who were investigating and monitoring the progress of this operation well before it took place.

This white male resulted to be Aulis Zopp. Aulis Zopp is an Estonian national who, on the 1st February 2010, together with Janno Aon, was travelling to Malta on board KM 697 from Tripoli, Libya, and both were carrying bags containing the drug cocaine. These two bags, one Polo and one Armani brands, contained, (what later was determined by Court appointed experts to be) a total of circa five thousand seven hundred sixty one grams (5761 grams) of the drug cocaine the purity of which was calculated by the said experts at 53%, which drug could fetch between €403,305 and €593,434 on the open market at the time (hereinafter referred to as the “drug consignment”).

Following their apprehension by the Maltese Customs and Police authorities, both Aulis Zopp and Janno Aon decided to collaborate with the Police in order for the Police to be able to manage to apprehend the person/s who were to receive the said drugs from Zopp and Aon. After that the Police obtained the necessary orders and

instructions from a Magistrate in terms of law, Aulis Zopp agreed to proceed with a “controlled delivery” of the alleged case containing the drugs. Zopp continued to remain in touch with a person in Estonia (a certain Jannick) and another person (he referred to as Chris) from whom he received the instructions as to where to meet the person who was to collect the bag full of the drug cocaine from him. Indeed Aulis Zopp was given telephonic instructions from Jannick and Chris to make contact and meet the accused and to deliver to him the said bag with the drugs contained in it. This contact took place on the night between the second (2nd) and third (3rd) February 2008 and the controlled delivery of the decoy bag prepared by the police as part of the controlled delivery operation was carried out as explained above. The accused was not aware at that stage that Aulis Zopp was taking part in a controlled delivery operation.

Following his apprehension by the Police, the accused decided to collaborate with the Police authorities and also agreed to take part in a further controlled delivery operation in order to help the Police to arrive at the final consignee of the said drug consignment, who was Chukwudu Samuel Onyeabor (known as Nokia for the accused). Indeed after that the Police obtained the necessary orders and instructions from a Magistrate in terms of law, the accused agreed to proceed with a “controlled delivery” of the alleged case containing the drugs to Nokia.

On the fourth (4th) February 2008 the accused contacted Nokia and urged him to come to Malta to collect the bag containing drugs from him. Nokia informed the accused that he was going to travel to Malta from Brussels, Belgium on that same date in the evening. After his arrival in Malta, Nokia made contact with the accused and informed him that he was lodging at the Fortina Spa Resort in Sliema and that his room number was 234. As part of the controlled delivery operation, the accused proceeded to deliver to Nokia a decoy packet that was prepared beforehand by the Police. Nokia was not aware of this controlled delivery operation in which the accused

was taking part. After that the accused delivered the decoy parcel to Nokia in the said room, the accused informed the Police by means of an “sms” that he had effected the delivery. The Police entered the room where they found the accused sitting on an armchair and next to him Chukwudu Samuel Onyeabor sitting on another armchair holding the said decoy parcel close to his legs.

The accused was not authorized to be in possession of dangerous drugs in terms of Law. Furthermore, the drug cocaine is scheduled as per Part 1 of the First Schedule of the Dangerous Drugs Ordinance;

By committing the abovementioned acts with criminal intent, FERDINAND ONOVO rendered himself guilty of conspiracy to trafficking in dangerous drugs 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 FERDINAND ONOVO of being guilty of having, on the night between the second (2nd) and third (3rd) day of February 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 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, 8, 9, 10(1), 12, 13, 14, 15, 15A, 16, 17, 18, 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 Regulations 2 and 9 of the Government Notice 292 of 1939 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 FERDINAND ONOVO, together with others, decided to start illegal dealing in drugs in the Maltese Islands, including by participating in the act of illegal exportation of dangerous drugs from Malta by aiding, abetting, counselling or procuring the commission in any place outside Malta of any offence punishable under the provisions of any corresponding law in force in that place, or who with another one or more persons conspires in Malta for the purpose of committing such an offence, or does any act preparatory to, or in furtherance of, any act which if committed in Malta would constitute an offence against this Ordinance;

On the night between the second (2nd) and third (3rd) day of February of the year two thousand and eight (2008) and during the previous days, weeks and months, FERDINAND ONOVO, (henceforth referred to as the “accused”) conspired and agreed with a certain Chukwudu Samuel Onyeabor (also known as “Nokia” and who lived in the Netherlands) to illegally deal in and export from African countries (Benin through to Libya and through to Malta) to the Maltese Islands a quantity of drugs. The accused met Chukwudu Samuel Onyeabor (hereinafter referred to as “Nokia”) in Malta in December of 2007 at the Luxol Grounds in St. Andrews and there they discussed about dealing in drugs. The accused and Nokia agreed about dealing in drugs by importing drugs into Malta from a country in Africa (which later resulted to

be Benin to Libya and then through to Malta). They also agreed that apart from dealing in drugs in Malta, they were also to export drugs from Malta to Norway. The accused and Nokia agreed that said Nokia was to contact the accused via his mobile phone on the day that this drug deal had to take place.

In execution of these pre-concerted plans, on the second (2nd) of February of the year two thousand and eight (2008) Nokia called on the accused to meet a foreign white male (who was going to be lodging in room 712 of the Fortina Hotel) in Sliema. Nokia informed the accused that he was to receive a bag containing drugs from this white male person. The accused agreed with Nokia that he was to keep the said bag with the drugs in it for Nokia. Nokia would then call for it when he would travel back to Malta from the Netherlands. The accused and Nokia agreed that in consideration for the services rendered by him, the accused was to receive two thousand euro (€2000) as compensation from Nokia following the successful delivery of the said bag containing drugs to Nokia. This drug would then be dealt with in Malta and in Norway.

In fact in execution of these pre-concerted plans, the accused, after being contacted telephonically by Nokia, set out to the Fortina Hotel in Sliema. The accused was driven as a passenger in a Kia Avella bearing registration number BBQ635 to this place by a certain Chima Dosie. The accused received from Nokia the details of the white male person from whom he was to receive the bag containing the drugs. While driving close to this hotel, the accused and Chima Dosie drove several times past the white male person. Subsequently, the accused made contact with this white male. The accused asked this white male to open the back door of the car, put the drugs on the back seat then get into the car. The white male opened the back door of the car, put the bag on the back seat of the car and sought to get into the car. At this stage, the accused, Chima Dosie and this white male were arrested by the Police who were investigating this case beforehand.

This white male resulted to be Aulis Zopp. Aulis Zopp is an Estonian national who, on the 1st February 2010, together with Janno Aon, was travelling to Malta on board KM 697 from Tripoli, Libya, and both were carrying bags containing drugs cocaine. These two bags, one Polo and one Armani brands, contained, (what later was determined by Court appointed experts to be) a total of circa five thousand seven hundred sixty one grams (5761 grams) of the drug cocaine the purity of which was calculated by the said experts at 53%, which drug could fetch between €403,305 and €593,434 on the open market at the time (hereinafter referred to as the “drug consignment”).

The drug cocaine is scheduled as per Part 1 of the First Schedule of the Dangerous Drugs Ordinance and furthermore, the drug cocaine is scheduled as per Part 1 of the First Schedule of the Dangerous Drugs Ordinance;

By committing the abovementioned acts with criminal intent, FERDINAND ONOVO rendered himself guilty of participating in the act of aiding, abetting, counselling or procuring the commission in any place outside Malta of any offence punishable under the provisions of any corresponding law in force in that place, or who with another one or more persons conspires in Malta for the purpose of committing such an offence, or does any act preparatory to, or in furtherance of, any act which if committed in Malta (illegal dealing in and exportation of dangerous drugs to a foreign country) would constitute an offence 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 FERDINAND ONOVO of being guilty of having, on the night between the second (2nd) and third (3rd) day of February of the year two thousand and eight (2008) and during the previous days, weeks and months, with criminal intent, rendered

himself guilty of participating in the act of aiding, abetting, counselling or procuring the commission in any place outside Malta of any offence punishable under the provisions of any corresponding law in force in that place, or who with another one or more persons conspires in Malta for the purpose of committing such an offence, or does any act preparatory to, or in furtherance of, any act which if committed in Malta (illegal dealing in and exportation of dangerous drugs to a foreign country) would constitute an offence in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and demanded that the accused be proceeded against according to law, and that he be sentenced to the punishment of imprisonment for a term of not less than twelve months but not exceeding ten years and to a fine (*multa*) of not less than four hundred and sixty-five euro and eighty-seven cents (465.87) but not exceeding twenty-three thousand and two hundred and ninety-three euro and seventy-three cents (23,293.73) 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, 8, 9, 10(1), 12, 13, 14, 15, 15A, 16, 17, 18, 22(1)(a)(d)(1A)(1B)(2)(a)(ii)(3A)(a)(b)(c)(d)(7), 24A, and 26 of the Dangerous Drugs Ordinance, of Regulations 2 and 9 of the Government Notice 292 of 1939 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.

Having seen the note of pleas submitted by the accused on the twenty-seventh (27th) of February two thousand and twelve (2012) whereby he submitted that :

1. The nullity of the bill of indictment in view of the total absence of the order committing the accused for trial (vide minute at fol. 872);
2. The inadmissibility of the accused's statement, his sworn declaration (fol. 107 et seq.) and parts of evidence mentioning his declarations including that tendered by

Superintendent Norbert Ciappara, PC 10 Trevor Cassar and PC 1086 Johann Micallef as well as the parts of the proces-verbal where such declarations are mentioned (fol. 92 et seq.) in view of the fact that they were made without prior consultation with a lawyer and without a lawyer being present during such declarations;

3. The inadmissibility of the sworn statement of Aulis Zopp in view of the fact that it was made without prior consultation with a lawyer and without a lawyer being present during such statement;

4. The inadmissibility of the sworn statement of Jannu Aun in view of the fact that it was made without prior consultation with a lawyer and without a lawyer being present during such statement and, moreover, Janno Aun never tendered his evidence and is not mentioned in the Attorney General's list of witnesses thus eliminating any possibility for the accused to control such evidence;

5. The inadmissibility of the statement of Chima Dozie in that it is merely a statement made by a witness as well as for the reasons mentioned in the previous plea;

6. The inadmissibility of the report filed by Mario Mifsud (fol. 590) and the relative evidence (fols. 588 and 589) in view of the fact that his relative additional appointment was in breach of case-law of the Court of Criminal Appeal;

7. The inadmissibility of the evidence tendered by Dr. Anthony Farrugia in that it is manifestly irrelevant and its purpose in the criminal inquiry was extraneous to the merits of the case.

Regarding the first plea accused is stating that the bill of indictment is null in view of total absence of the order committing the accused for trial. The accused is claiming that after a five-day referral from the Attorney General the judicial process had to start all over again. This was not deemed necessary as the Defence declared that all acts done before the act of referral by the Attorney General were to be certified. However, at this stage the Defence is claiming that in spite of it certifying all acts, the decree committing the accused for trial still had to be given. This was not and therefore the bill of indictment is null.

Considers :

The Court does not agree with this argument. To start with, the order committing the accused for trial was given before the five-day referral sent by the Attorney General. When the Defence certified all the acts (vide page 872), it also certified the decree committing the accused for trial. So there was no need for this decree to be given afresh. All the Court had to do was to send the acts back to the Attorney General. The referral at page 870 was just a precautionary referral just in case there was a mistake. The five-day referral is specifically provided for in article 432(3) of the Criminal Code. It just says that the Court should conclude the fresh inquiry or rectify the record and shall send the same to the Attorney General. Nowhere does it say that the first Court is obliged to re-issue a decree committing the accused for trial. The first Court observed the first article to the letter. The records were sent to the Attorney General who in time issued the bill of indictment. This Court does not see any nullity in this procedure and therefore rejects the first plea raised by the accused.

Considers :

Regarding the second plea, accused is claiming that his statement and sworn declaration and parts of evidence mentioning his declarations are not admissible in Court in view of the fact that they were made without prior consultation with a lawyer and without a lawyer being present during such declarations.

This plea has got to be considered on the basis of the recent judgement delivered by the Constitutional Court on the eighth (8th) of October two thousand and twelve (2012), "Stephen Muscat versus Attorney General" wherein it was stated that :

"The Judge will warn jurors on the danger of considering only the statement when deciding on guilt, without also considering other evidence, and moreover the Judge may advise the jurors to discard the statement if evidence is

shown That the statement was obtained by violence, fraud or threats". (page 19)

This Court will observe such guidelines when addressing the jury.

For these reasons, dismisses the second plea of the accused, declares the accused statement and sworn declaration and parts of evidence mentioning his declarations mentioned by Superintendent Norbert Ciappara, PC 10 Trevor Cassar and PC 1086 Johann Micallef as well as the parts of the procès verbal where such declarations are mentioned, as admissible evidence to be tendered during the trial.

As regards the third plea regarding the inadmissibility of the sworn statement of Alius Zopp, the Court observes that this person is being called as a witness to the Prosecution who will be giving his evidence *viva voce* in front of the jury where he would be subject to all the controls mentioned by the Law in which case his sworn statement will only be allowed in so far as it is used to control the evidence tendered by Alius Zopp.

The Court, therefore, dismisses the third plea submitted by the accused.

Regarding the fourth and fifth plea, the Court notes that Janno Au and Chima Dozie are not declared as witnesses in the list provided by the Attorney General annexed to the bill of indictment in which case, they are not to be produced as witnesses and the Court therefore accedes to the fourth and fifth plea raised by the accused.

Regarding the sixth plea, the Court feels that this plea should be upheld because the additional appointment of Mario Mifsud (fol 590) and his evidence was not made according to law, and the Court therefore orders that the report should not be given to the jurors during the trial.

Finally, as regards the seventh plea, regarding the inadmissibility of the evidence tendered by Dr Anthony

Informal Copy of Judgement

Farrugia in that it is manifestly irrelevant, the Court refers to the common practice whereby cases of relevance are left to be decided by the Court during the trial by jury because much depends on the circumstances of the case and how the evidence is being developed and presented before the jury where, it could then indeed, be relevant in the context that it is said.

The Court, therefore, dismisses the seventh plea raised by the accused, subject to the guidelines above mentioned.

The Court having seen that there are no further pleas to consider, puts off the case *sine die* to await its turn to be appointed in a trial by jury subject to an appeal from this judgment.

< Final Judgement >

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