MALTA

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

MAGISTRATE DR.
MARSEANN FARRUGIA

Sitting of the 18 th January, 2013

Number. 168/2009

The Police
(Inspector Victor Aquilina)

vs.

Ugo Marius Nwankwo

The Court,

Having seen the charge brought against Ugo Marius Nwankwo, 30 years, son of Marius and Susanna nee Nwauba, born in Onitsha Nigeria on the 12th September 1978, residing at 22, Il-Gojjin, Triq Guzi Abela, Zejtun, holder of Nigerian Passport number A3397840A and holder of Maltese Identity Card Number 36642A

Charged with on the 19th March 2009 and during the previous time, in these islands:

a) 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 authorisation issued by the Chief Government Medical Officer as per paragraphs 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorised to manufacture or supply the drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Drugs Regulations (G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs was 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 (G.N. 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.

The Court was also requested to apply Section 533(1) of Chapter 9 of the Laws of Malta, as regards to the expenses incurred by the Court appointed experts.

After having heard the evidence and seen the all the records of the case, including the order of the Attorney General in virtue of subsection two (2) of Section 22 of the Dangerous Drugs Ordinance (Chapter 101), for this case to heard by this Court as a Court of Criminal Judicature.

Having seen the minute of the sitting of the 8th of August 2012, wherein this Court was informed that the Prosecuting Officer could not attend for the sitting and that he was remitting himself and had nothing else to submit.

Having heard the oral submissions made by the defence lawyer on the same date.
Considered that:

Considerations on Guilt

There is no contestation on the main facts of the case:

1. The Police carried out a search in a bar in Marsascala, and they noticed two sachets containing white powder on the floor near the accused.
2. They carried out a search in his car, and in it they found a plastic bag that contained a capsule between the seats near the hand brake with white powder in it. They also found seven hundred and seventy Euro in his wallet (€770).
3. The Police carried also a search in the residence of the accused where they found an electronic scales, a large sum of money (€24,590) and in a white box they found a capsule and a tissue covering another open capsule containing in the words of the accused, cocaine.
4. In his statement and in his evidence in these proceedings, the accused admitted that all the objects found where his, except for the money found in the residence. In fact during the proceedings it resulted that €22,420.00 of the money found in the residence belonged to the accused's wife and to her father Rosario Spiteri, and it was returned to them. Only the sum of €2,170 remained exhibited in court.[1]
5. The Court appointed expert Godwin Sammut concluded that the total weight of the all the bags and capsule found was of 20.29 grams of cocaine and the purity was approximately 30%. In the electronic scales he found traces of cocaine and heroine.[2] From his report exhibited as Dok GS1[3], it results that the weight was divided as follows: the capsule 9.83g, the substance in the tissue 1.22g, the first bag 1.43g, the second bag 1.59g, and another bag containing 6.22 grams.

The accused is not contesting these facts nor that the cocaine was his, but he is submitting that this amount of 20.29g cocaine was intended for his own personal use. In his statement, which he confirmed on oath in these proceedings he admitted that he had started abusing cocaine 3 years before for 1 month, and then stopped. But he started again at the end of February 2009, and the arrest was affected on the 19th March 2009. So from his statement, it results that he had been abusing of cocaine

[1] See decree given in the sitting of the 15th May 2009 at page 60 of the proceedings.
[2] See evidence of Godwin Sammut at page 64 of the proceedings.
[3] At page 66 of the proceedings.

for about a month. He also said that he abused cocaine twice a week – although in his evidence he said 3 or 2 times a week.[4] He also said that he had bought the 2 capsules for €800, two days before the arrest and the person who sold him the capsules also lent him the electronic scales to check the weight of the capsules he bought. He also confessed that in the bar he disposed of the sachets he had inside his pocket by throwing them on the floor, because he was afraid of being caught by the police.

So the exercise which this Court has to carry out in this case is to see whether in the circumstances, the cocaine found in the possession of the accused was truly his own personal use, or he intended to dispose of it to third parties.

In the case **The Police v. Jason Mallia**, decided by the Court of Criminal Appeal[5] on the 2nd September 1999, it was held that: *"Qabel xejn ghandu jigi precisat li mhux korrett li wiehed jghid li biex jikkonfigura r-reat ta' pussess bl-aggravanti kontemplata fl-Artikolu 22(2)(b)(i) tal-Kap.101 irid ikun hemm provi li juru li l-pussessur kellu l-animus li jispacca d-droga. Jekk tigi ppruvata, mic-cirkostanzi, tali intenzjoni allura certament dak il-pussess ma jkunx ghall-uzu esklussiv tal-pussessur. Izda tali intenzjoni mhix mehtiega ghall-finijiet tal-aggravanti in kwistjoni. Dak li l-ligi tirrikjedi hu li jigu pruvati cirkostanzi li jissodisfaw lill-Qorti sal-grad tal-konvinciment morali "li dak il-pussess ma kienx ghall-uzu ekslussiv tal-hati."* (emphasis of that Court). Hence it is not necessary for the charge of aggravated possession to be proved, that the accused had the intention to traffic the drug. The law requires that circumstances are proved to the satisfaction of the court up to the level of moral conviction that the drug was not intended for the exclusive use of the accused.

Moreover, in the case **The Police v. Marius Magri** decided on the 12th May 2005, the Court of Criminal Appeal[6] held that cases concerning charges of aggravated possession: *"… … mhux l-ewwel darba li*

[4] See evidence of the accused at page 186 of the proceedings.
[5] Per Mr. Justice Vincent De Gaetano.
[6] Per Mr. Justice Joseph Galea Debono.

jipprezentaw certa diffikolta biex wiehed jiddetermina jekk id-droga li tkun instabet kienitx intiza ghall-uzu personali jew biex tigi spaccata. Il-principju regolatur f'dawn il-kazijiet hu li l-Qorti trid tkun sodisfatta lil hinn minn kull dubju dettat mir-raguni u a bazi tal-provi li jingabu mill-prosekuzzjoni li l-pussess tad-droga in kwistjoni ma kienx ghall-uzu esklussiv (jigifieri ghall-uzu biss) tal-pussessur. Prova, ossia cirkostanza wahda f'dan ir-rigward tista' skond ic-cirkostanzi tal-kaz, tkun bizzejjed (Ara App. Krim. "Il-Pulizija vs. Carmel Degiorgio" (26.8.1998). Meta l-ammont tad-droga jkun pjuttost sostanzjali, din tista' tkun cirkostanza li wahedha tkun bizzejjed biex tissodisfa lill-Qorti li dak il-pussess ma kienx ghall-uzu esklussiv tal-hati (Ara Appell Kriminali: "Il-Pulizija vs. Carmel Spiteri" (2.9.1999)." In other words, in cases of charges of aggravated possession, the Court must be satisfied beyond reasonable doubt and on the basis of the evidence brought forward by the prosecution, that the possession of the drug in question was not for the exclusive use (that is for the use only) of the possessor. One piece of evidence, or one circumstance in this regard, can, depending on the circumstances of the case, alone be sufficient. When the amount of drugs found is rather substantial, this fact alone can be sufficient to satisfy the Court that the possession was not for the exclusive use of the accused.

The Court after considering all the facts of the case, is convinced beyond reasonable doubt that the cocaine found in the possession of the accused was not for his exclusive use and this for the following reasons:

1. In his evidence the accused admitted that whilst in the bar, prior to the search of the police, he had already consumed a sachet of cocaine,[7] and he had in his possession two other sachets weighing 1.43g and 1.59g respectively. According to the accused he abused 3 or 2 times a week. Once he had already abused of cocaine on that day, there was no reason why the accused should have carried two other sachets with him in the bar. The accused offered no explanation for this.

[7] See page 184 of the proceedings.

2. Moreover another bag containing 6.22 grams was found in his car. In his evidence, he tries to justify this by saying that he left it in the car so that his wife does not see it. But this is not a credible explanation, considering that in his residence where he lived with his wife and his parents in-laws, the Police found a capsule 9.83g of cocaine and another 1.22g of cocaine in a broken capsule covered with a tissue. If he was truly afraid that his wife will discover that he abused drugs, he would have carried all the drugs with him. Moreover, the accused did not in any way try to justify why he left €770 in a wallet in his car, considering the great incidence of thefts from cars.

3. The accused said that he borrowed the digital scales from the person who sold him the capsules to check that they were of the correct weight. In the opinion of this Court, this explanation is not credible. In the first place, it is logical that the accused would have checked the weight of the capsules prior to paying the price of €800 to his seller. Secondly, since the accused bought the cocaine in two capsules, and each capsules contains around 10 grams of cocaine in powder form,[8] he obviously still needed a digital scales to weigh a dose for his own consumption.

4. According to the accused, he had started consuming cocaine just about one month prior to his arrest, and only consumed 3 to 2 times a week. Now it is publicly known in this field, that one typical dose of cocaine is 0.5 g. The assertion of the accused in his evidence that he abused of 2 grams of cocaine each time,[9] is not credible, especially when considering that he had started consuming cocaine only one month before, and hence he cannot claim that his body had become tolerant to it. It is pertinent to note that the two sachets which he had in his pocket in the bar did not weigh 2 grams, but roughly 1.5 grams each.

5. Even if this Court accepts that the accused abused of the drug three (3) times a week, this means that the accused consumed about 1.5 grams (0.5g x 3) per week. Hence, the Court can see no justifiable reason why the

[8] See evidence of accused at page 189 of the proceedings.
[9] See page 189 of the proceedings.

accused should have bought at one go two (2) capsules of cocaine weighing roughly 10 grams each, which yield approximately 40 doses of cocaine. The lack of justification is more accentuated when one considers that the accused was married and had a baby daughter, whom he obviously needed to maintain.
In the light of the above considerations, the Court considers that the charge of aggravated possession has been proven according to law.

Considerations on Punishment
As regards the punishment, the Court took into consideration the fact that the accused, who is a Nigerian, and came to Malta has a clean criminal record in Malta.
However, the amount of cocaine in found in his possession – 20.29 grams - was not a small one, and yields about 40 typical doses.

Conclusion
The Court, after seeing Part IV and Part VI, and Articles 22(1)(a) and 22(2)(b)(i) of Chapter 101 of the Laws of Malta, and regulations 4 and 9 of GN 292/1939, finds the accused guilty as charged, and condemns him to three (3) years effective imprisonment, but one must deduct from this term of imprisonment any time prior to this judgement, during which, the person sentenced was being kept in prison under preventive arrest only in connection with the offences of which he has been found guilty to-day, and to a fine (multa) of two thousand Euro (€2000) which is to be paid immediately forthwith. If the person sentenced fails to pay the amount due as a fine, the fine will be converted into a period of imprisonment at the rate of one day imprisonment for every thirty-five Euro (€35.00) due.
The person sentenced is also condemned to pay all the expenses incurred in the appointment of experts in terms of Section 533(1) of Chapter 9 of the Laws of Malta within six (6) months from to-day, and if he fails to pay this amount, or if he fails to pay any balance of this amount within this time-limit, the amount or any balance of it will become immediately due and payable, and will be converted into a period of imprisonment at the rate of one

day imprisonment for every eleven Euro and sixty-five cents (€11.65) due.
The Court orders that the drugs and any other object related to drugs exhibited is destroyed under the supervision of the Registrar.
The Court also orders the confiscation of all the money exhibited in Court.

< Final Judgement >

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