



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

MAGISTRATE NATASHA GALEA SCIBERRAS B.A., LL.D.

Case Number: 199/2016

Today, 26th December 2016

**The Police
(Inspector Jonathan Cassar)**

vs

**Abdikarim Isman Omar
(Maltese Identity Card number 119662(A))**

The Court,

After having seen the charges brought against the accused Abdikarim Isman Omar, 20 years of age, son of Isman Omar and Halima Dahir, born in Somalia on 1st January 1996, and residing at 12, Flat 2, Triq il-Katidral, San Pawl il-Bahar, holder of Maltese Identity card number 119662(A);

Charged with having:

On 4th September 2016 and the days before this date on the Maltese Islands:

1. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the whole or any portion of the plant cannabis in terms of Section 8(d) of Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use;

2. Committed these offences in, or within 100 metres of the perimeter of a school, youth club or centre or such other place where young people habitually meet in breach of Article 22(2) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

And also for having on the Maltese Islands on 4th September 2016:

3. Committed an offence against decency or morals, by an act committed in a public place or in a place exposed to the public (Chapter 9, Section 209);
4. In the harbours, on the seashore or in any other public place, exposed himself naked or was indecently dressed (Chapter 9, Section 338(q));
5. Spit any substance or expelled mucus from the nose, or left or deposited human material excretion, including vomit, or left or deposited any animal material excretion upon or unto any street or any public place (L.N. 344 of 2005, Schedule 1 Regulation 4(e)).

And also for having on the Maltese Islands between the month of November 2013 and the month of June 2014:

6. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the resin obtained from the plant cannabis, or any other preparation of which such resin formed the base, in terms of Section 8(a) of Chapter 101 of the Laws of Malta.

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

Having heard the evidence and having seen 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 of the Laws of Malta), for this case to heard by this Court as a Court of Criminal Judicature;

Having heard final oral submissions by the parties.

Considered that:

Considerations on Guilt

In her deposition¹, WPC 298 Stephanie Spiteri states that on 4th September 2016 at about 1.00 a.m., whilst in Dragonara Road, Paceville, the accused was observed making contact with third parties, crossing the road and entering into a field, where in her words “*he was like picking up something from the ground*”.² As he came out of the field and crossed the road, he was stopped by herself and her colleagues and as soon as he was told that they were police officers, she observed him throwing away some sachets from his hand. Accused was arrested and upon searching for said sachets, they found six sachets in the field. Subsequently, they conducted a search in the area where the accused had been previously observed in the said field, and they found some empty sachets. They then contacted the Police Dog Section, the area was searched again and the dog indicated the suspected area, wherefrom PS 518 and PC 1527 found another five sachets containing a substance suspected to be cannabis grass. The witness identified Document JC 5 as the sachets that were in accused’s hand and Document JC 6 as the second batch of sachets found.

In his deposition³, PS 518 Anthony Degiovanni states that on 4th September 2016, whilst carrying out an observation exercise near Dragonara Hotel, Paceville, and after his colleagues had been observing the accused, they approached him. He states that accused “*threw away something*”⁴, which later resulted to be six sachets containing a substance suspected to be cannabis grass. He states that at this stage, he was three or four metres behind the accused. Subsequently, upon conducting a search in the area where the accused had been previously noticed by his colleagues, with the assistance of members of the Police Dog Section, they found five similar sachets, well hidden under a bush and also several empty bags. He also identified Document JC 5 as the sachets that had been found in the location where the accused had thrown them and Document JC 6 as the sachets found under the bush. In his cross-examination, the witness stated that nothing illicit was found on the person of the accused.

PC 1527 Gregg Marley stated that on 4th December 2016, at around 1.00 a.m., the accused was noticed speaking to a group of six persons, whilst he was some 100 metres away from the accused. Whilst this group waited, the accused was noticed going near some bushes nearby and was observed by PC 482 and WPC 298 for about thirty seconds. As he came out, he approached him together with his colleagues and the accused threw something away, although he did not know what this was. Upon searching for this item in the bushes, they found six sachets

¹ A fol. 29 to 31 of the records of the case.

² A fol. 29 of the records.

³ A fol. 24 to 28 of the records of the case.

⁴ A fol. 25 of the records.

containing a substance suspected to be cannabis grass. Subsequently, they searched the area where the accused had been previously noticed by his colleagues, where PS 518 and himself found a large amount of empty sachets, at which point, the Police Dog Section was called to continue the search. Through such assistance, in the bushes PS 518 and himself found another five sachets containing a substance suspected to be cannabis grass.⁵

PC 482 Keith Muscat states that whilst on night watch duty with PC 1527, PS 518 and WPC 298, in Dragonara Road, Paceville, they noticed a group of persons, sitting on the railings and stopping passers-by. At one point, a man was stopped by this group and they spoke. The accused walked further up the road between Paranga and Westin Dragonara, he walked into the side of the road, where he kneeled down “*to get something from the floor*”⁶, although they could not see what he had obtained, since it was dark. The accused was apprehended as soon as he approached them and he threw away six small plastic bags of a substance suspected to be cannabis, which were picked up. They then searched the area where the accused had previously been observed kneeling down but nothing was found, except some empty bags identical to the bags that the accused had held in his hand. Subsequently they requested the assistance of the Police Dog Section and the police dog then indicated a spot, around ten metres away from the area where the accused had been seen kneeling down, where six bags with a substance suspected to be cannabis grass, were found.⁷

In his deposition⁸, PC 23 Matthew Cauchi, stationed at the Dog Section, states that his colleague and himself arrived on the scene at about 1.30 a.m., after members from the Drug Section had requested their assistance. They effected a search in a construction area, consisting of rubble and bushes, near the Dragonara Resort, in St. Julians. He explained that the police dog indicated one of the bushes, in the said area, where PS 518 found six sachets containing a substance. Although he continued to search the area, nothing further was found. PC 597 Mariano Bonello confirmed that his colleague searched the area with the dog, which indicated a bush, where six plastic bags were found. He continued the search with another dog, which however, yielded no further results.

⁵ A fol. 32 to 34 of the records.

⁶ A fol. 43 of the records.

⁷ A fol. 42 to 44 of the records.

⁸ A fol. 45 to 46 of the records.

According to the report drawn up by expert Scientist Godwin Sammut⁹, he was handed over, for his analysis, a brown envelope containing (i) evidence bag with ID S00166830 containing money (ii) evidence bag with ID S00828948 containing 6 plastic sachets each containing green grass (iii) evidence bag with ID S00828947 containing 5 plastic packets each containing green grass.

Furthermore, from the results obtained, court expert Godwin Sammut concluded as follows:

- a) Tetrahydrocannabinol was found in the extracts taken from the green grass. The total weight of the green grass is 7.13 grams. The purity of THC was approximately 6%.

It also results that in all, he analysed eleven plastic packets containing green grass, which weighed respectively as follows: 0.69g, 0.67g, 0.67g, 0.71g, 0.60g, 0.61g, 0.47g, 0.65g, 0.65g, 0.72g and 0.69g.

In terms of the report exhibited by fingerprint expert PS 659 Jeffrey Hughes, no fingerprints were noted on Documents JC5 and JC6.¹⁰

The accused released a statement on 4th September 2016 at 10.10 a.m., after he was duly cautioned in terms of law and after he was given the right to seek legal advice, which right, however, he refused to exercise.¹¹ Furthermore, he also gave his deposition during these proceedings.¹²

Considered further that:

It results clearly from the deposition of WPC 298 Stephanie Spiteri, PC 1527 Gregg Marley and PC 428 Keith Muscat that on 4th September 2016, at around 1.00 a.m., the accused was noticed making contact with third parties – according to PC 1527, a group of six persons. It also results from the deposition of PC 428 that at that point, the accused left this group and walked into a nearby field or construction site, where he kneeled down “*to get something from the floor*”. This was also the movement that was noted by WPC 298, who states that the accused was “*like picking up something from the ground*”. As soon as he came out from this site, he was approached by the police, who all noticed him throwing something

⁹ Exhibited a fol. 56 of the records.

¹⁰ This report is exhibited a fol. 81 *et seq* of the records.

¹¹ This statement is exhibited a fol. 10 and 11 of the records.

¹² A fol. 90 to 92 of the records.

away. In this regard, in his statement, which he then confirms during his deposition in these proceedings, the accused denies having thrown anything away. Yet, the Court notes that not one police officer, but all four police officers who approached the accused, actually noticed him throwing something away. Indeed, PS 518 states that he was merely three or four metres behind the accused when he noticed him doing so. Furthermore, the Court also notes that the six sachets containing suspected cannabis grass were retrieved with ease by the said police officers from the nearby field or site and indeed considering that the mentioned police officers observed the accused at around 1.00 a.m. and that members from the Dog Section arrived on site, according to PC 23, at about 1.30 a.m., after the said six sachets had already been retrieved by the police officers who apprehended the accused, this means that the said sachets were found in an extremely short period of time, if not immediately. It is evident to the Court that unless the four police officers had actually seen the accused throwing something away, they would not have been able to retrieve 'the objects' so thrown with such ease. In view of the observations made by the four police officers once they approached the accused, the Court does not find the accused credible when he states that he had not thrown anything away. The Court further notes that the accused's version was not credible either when he stated that he had gone in the nearby field or site, by the bushes, in order to urinate. Indeed, as held above, both PC 428 and WPC 298 noticed the accused's movements, in the said field, as being that of kneeling down (according to PC 428) and of picking up something from the ground, although they could not identify what was actually picked up. These are evidently not the movements which one would have expected the said police officers to observe, had the accused been really urinating. Indeed, in view of the observations made by the said police officers, including the previous contact with a group of persons prior to him entering the said field, his movements in the said field, and in particular, the four police officers having noticed the accused throwing something away upon approaching him, as soon as he came out of the said field, and then immediately retrieving six cannabis sachets as soon as he was observed doing so, the Court is morally convinced that the accused had indeed thrown away the said six sachets containing cannabis grass.

As regards the rest of the cannabis sachets found through the assistance of members from the Dog Section, however, according to PC 428, who had observed the accused's movements as he entered the field or site, these sachets were found around ten metres away from the area where the accused had been seen kneeling down. The Court cannot thus conclude beyond any reasonable doubt that these were in the possession of the accused.

Through the first charge, the accused is being charged with having had in his possession the whole or any portion of the plant cannabis in circumstances denoting that this was not intended for his personal use. The fact that the accused was found in possession of six sachets of cannabis grass, all of similar weight, in the circumstances above described lead the Court to conclude, to the degree required by law, that these were not intended for his personal use. Indeed, in his statement, the accused does not state that he uses cannabis grass, but that he had previously used cannabis resin (which he describes as ‘the block’).

On the basis of the above considerations, the Court deems that the first charge has been proved to the degree required by law. However, although this charge refers to 4th September 2016 and the days before such date, since the evidence adduced merely refers to the events that unfolded on 4th September 2016, the accused is being found guilty only with reference to the said date and not the days before.

As regards the second charge, namely that the offence in the first charge has been committed in or within 100 metres of the perimeter of a school, youth club or centre or such other place where young people habitually meet, it results from the evidence adduced that the accused was apprehended in Dragonara Road, Paceville, and there is no doubt therefore that the said offence occurred in a place where young people habitually meet. Therefore this aggravating circumstance has also been sufficiently proved to the degree required by law.

As regards the third, fourth and fifth charges, despite the accused’s version that he had entered the said field or site in order to urinate, on the basis of the considerations made above by the Court with respect to the first charge, whereby it did not deem the accused’s version as credible, the Court is not finding the accused guilty of these charges.

Finally, with respect to the sixth charge, whereby the accused is charged with the offence of simple possession of cannabis resin, in his statement, the accused states that he used cannabis resin (to which he refers as ‘the block’) about two years before and specifically when he was staying at Hal Far Open Centre between November 2013 and June 2014. Since this charge refers to the mentioned period of time, the Court deems that it has been proved to the degree required by law.

Considerations on Punishment

As regards the punishment to be inflicted, the Court took into consideration the clean criminal record of the accused.

It also took into consideration the serious nature of the offences of which the accused is being found guilty and the amount of cannabis grass in his possession, namely six sachets weighing 3.95 grams (Document JC5).

For the purpose of the punishment to be inflicted, the Court is applying the provisions of Section 17(f) of Chapter 9 with respect to the mandatory fine (*multa*) applicable to the first charge and the fine (*multa*) that it is applying with respect to the sixth charge. The Court is also applying the increase in punishment by one degree, as contemplated in the proviso of Section 22(2) of Chapter 101, to the first charge, since the accused is also being found guilty of the aggravating circumstances in the second charge.

Conclusion

For these reasons, the Court after having seen Sections 8(a), 8(d), 22(1)(a), 22(2)(b)(i) and (ii) and the second proviso of Section 22(2) of Chapter 101 of the Laws of Malta, Regulation 9 of Subsidiary Legislation 101.02 and Sections 17(f) and 31 of Chapter 9 of the Laws of Malta, finds the accused not guilty of the third, fourth and fifth charges brought against him and acquits him thereof, but finds him guilty of the first, second and sixth charges (though with respect to the first charge, limitedly to 4th September 2016 and not the previous days) and condemns him to **nine (9) months effective imprisonment** – from which term one must deduct the period of time during which the person sentenced has been detained in preventive custody in connection of which he is found guilty by means of this judgment – and **a fine (*multa*) of nine hundred and fifty Euro (€950).**

Furthermore, in terms of Section 533 of Chapter 9 of the Laws of Malta, the Court condemns the person sentenced to the payment of the costs incurred in connection with the employment of experts in these proceedings, namely half¹³ the expenses relating to the appointment of expert Scientist Godwin Sammut, amounting to the sum of one hundred and twelve Euro and ten cents (€112.10), half the expenses relating to the appointment of expert PS 659 Jeffrey Hughes, amounting to the sum of thirty six Euro and thirty cents (€36.30) and the expenses relating to the appointment of Dr. Steven Farrugia Sacco, amounting to the sum of four hundred and fifty Euro and fifty two cents (€450.52). The said expenses amount in total to the sum of five hundred, ninety eight Euro and ninety two cents (€598.92).

¹³ The Court is ordering the payment of half the expenses relating to the appointment of experts Godwin Sammut and PS 659 Jeffrey Hughes, since not all sachets analysed have been attributed to the person sentenced.

The Court orders the release of the mobile phone exhibited as Document JC 7 and of the sum of one hundred and forty five Euro (€145) exhibited as Document JC8 in favour of the person sentenced.

Furthermore, it orders the destruction of Documents JC5 and JC6 once this judgement becomes final and definitive, under the supervision of the Registrar, who shall draw up a process verbal documenting the destruction procedure. The said process verbal shall be inserted in the records of these proceedings not later than fifteen days from the said destruction.

Natasha Galea Sciberras
Magistrate