



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

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

Case Number: 193/2016

Today, 26th December 2016

**The Police
(Superintendent Dennis Theuma)**

vs

**Abdirashid Ahmed Sirad
(Maltese Residence Permit 9000622(A))**

The Court,

After having seen the charges brought against the accused Abdirashid Ahmed Sirad, 20 years of age, son of Ahmed and Layla, born in Somalia on 9th May 1996, without a fixed address in Malta and holder of Maltese Residence Permit number 9000622(A);

Charged with having on 21st August 2016 and the weeks before this date on the Maltese Islands:

1. Had in his possession the drugs (*cocaine*) specified in the First Schedule of the Dangerous Drug 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 in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance and when he was not licensed or otherwise authorised to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous 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;

2. 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;
3. 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, which drug was found under circumstances denoting that it was not intended for his personal use;
4. 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;
5. 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 Section 22(2) of the Dangerous Drugs Ordinance, 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 expenses incurred by court appointed experts.

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 the Prosecution declare that it is resting on the evidence adduced and final oral submissions by the defence.

Considered that:

Considerations on Guilt

In his deposition¹, PC 1214 Malcolm Brandon Sammut, stated that on the night of 20th August 2016 at about 11.30 p.m., whilst in Dragonara Road with PS 1354, they noticed a vehicle stopping next to the accused, who at the time, was sitting on a brick wall. This aroused their suspicion and as soon as they approached the accused, he noticed that the latter had a sachet in his hand, which sachet the accused then dropped to the ground. He also explained that as soon as the accused stood up, they also noticed another five packets that contained a substance suspected to be cannabis and another packet that contained white powder. These sachets were found in a space between the bricks, on which the accused had been sitting down. In the words of PC 1214, “...*there was a space between the bricks and in the space where he was sitting down exactly, as he stood up, we could see another 5 packets which was [sic] looked like suspected cannabis and one packet with white powder inside.*”² The witness also identified Document MB2³ as containing the sachet which was in the accused’s hand and which contained a substance suspected to be cannabis, and the six sachets, one of which contained a white substance, which he found between the bricks on the wall, where the accused had been sitting down.

PC 131 Nathan Bugeja stated on oath that on 20th August 2016 at around 11.40 p.m., whilst going down St. George’s Road, further down from the establishment formerly known as Axis, whilst he was with PC 1214 and PS 1354, he noticed a person, who held a green substance in his hand. He stated that he grabbed this person’s hand and said person dropped the substance, which fell down next to him. He further stated that when the said person stood up, “*in his whereabouts*”, another six sachets with green substance and a sachet containing white powder were found. In his pocket, they found a Nokia mobile phone and the sum of €50, consisting of three €10 notes and one €20 note. Drug squad personnel were informed of this finding and PS 839 went on site.⁴

¹ A fol. 28 to 31 of the records of the case.

² A fol. 29 of the records.

³ This was exhibited by Inspector Malcolm Bondin, during his deposition (a fol. 15 to 20 of the records), as the substance found on the person of the accused, whilst at the lock up, and the substance found on site.

⁴ A fol. 41 to 42 of the records.

The Court notes that although the latter witness did not indicate that he was referring to the accused as the person he mentions in his deposition, yet it is evident to the Court from his deposition, namely, from the circumstances which he refers to, including the other police officers who were in his company, and also from the items which he states to have found on site and on the person on whom the search was effected, that the witness was indeed referring to the accused and to the incident which led to the present case.

In his deposition, PS 1354 Claudio Coppolo states that whilst he was patrolling the area of Paceville with PC 1214 and PC 131, as they entered Dragonara Road, they noticed the accused sitting down on a wall. Next to him, they also noticed a car with Italian number plates. He states that whilst coming down, they saw the accused passing something to the driver of said car and noted that the driver had a note, although he did not know what this note was. The witness states that he went in front of the car in order to stop it, whilst PC 1214 and PC 131 approached the accused. He stayed in front of the car, about two metres away from the accused. He also states that in his hand, the accused had a small sachet containing cannabis and that whilst he was being searched, he dropped something from his hand, namely a small sachet with leaves. Although he was still in front of the car that had been stopped, he could still see what was happening. He stated that next to him, between the stones where the accused had been sitting down, six more sachets were found, one of which contained white powder. He could not see these items at the time, but saw them after they were found. The witness also states that the vehicle was searched and a search was also conducted on the persons inside the said vehicle, but nothing illegal was found. Upon being shown Document MB2, the witness identified a packet containing green substance and the other six packets, one of which contained a white substance. He also stated that the accused had one €20 note and three €10 notes in his possession and a mobile phone.⁵

PC 1311 Gregory Pizzuto stated that on 20th August 2016, at about 11.40 p.m., after PS 839 received a call indicating that a person had been arrested at Dragonara Road, Paceville, he reported on site, where he saw the accused and he was handed over a bag containing six packets with a substance suspected to be cannabis grass and a packet containing a white substance suspected to be cocaine. Once the accused was escorted to the lock up, he was strip searched by the witness and PC 237 and as soon as the accused removed his underwear, a rolled up piece of paper containing five sticks of a brown substance suspected to be cannabis resin, fell from his underwear. The witness identified Document MB 2 as the packets with

⁵ A fol. 24 to 27 of the records.

suspected cannabis grass and the packet containing a white substance that had been handed to him by RIU personnel and the sticks which had been found on the person of the accused.⁶

In his deposition, PC 237 Mark Frendo stated that on 21st August 2016 at about 00.35 a.m., the accused was escorted to the lock up in Floriana by PC 1311, where he conducted a search on the accused. He also stated that as soon as he requested the accused to take down his underpants, a paper fell down. This contained five pieces of what was suspected to be cannabis resin. This was handed over to PC 1311 Gregory Pizzuto.⁷

From the report drawn up by expert Godwin Sammut, it results that he was handed over an envelope labelled as S/B/339/2016, which contained an evidence bag with ID M00104828 with: i) brown substances; ii) two plastic packets containing green grass and iii) four plastic sachets each containing green grass. The expert concluded as follows regarding the said document:

- a) Tetrahydrocannabinol was found in the extracts taken from the green grass. The total weight of the green grass is 3.46 grams. Some of the cannabis was mixed together with a synthetic cannabinoid which is not controlled. The purity of THC in the green grass was approximately 4.0%.
- b) Tetrahydrocannabinol was found in the extracts taken from the brown substances. The total weight of the brown substances is 4.53 grams. The purity of THC in the brown substances is approximately 5.0%.

The accused released a statement on 21st August 2016, after he was duly cautioned in terms of law and after having been given the right to obtain legal advice, which right in fact he exercised.⁸ He also chose to give his deposition during these proceedings.⁹

Considered further that:

⁶ A fol. 32 to 34 of the records of the case. PS 839 Stephen Micallef stated on oath that on 20th August 2016, he was informed by PS 1354 that he had stopped a certain Sirad, namely the accused, since he had drugs in his possession. Upon this report, he went on site, in St. George's Road, St. Julians and he was handed over a small bag with a white substance suspected to be cocaine and some small bags suspected to contain cannabis grass by PS 1354. The accused was then escorted to the lock up (a fol. 36 to 38 of the records).

⁷ A fol. 43 to 44 of the records.

⁸ Exhibited a fol. 21 to 23 of the records.

⁹ A fol. 81 *et seq.*

First of all, the Court notes that from the evidence adduced, it results that the accused was apprehended on 20th August 2016 at about 11.30 p.m. The present charges refer to 21st August 2016 and the weeks before this date and thus, 20th August 2016 clearly falls within the parameters of the period of time to which the said charges refer.

By means of the first charge, the accused is being charged with having had in his possession the drug cocaine, which drug was found under circumstances denoting that this was not intended for his personal use. Furthermore, by means of the second charge, he is also being charged with having had in his possession the whole or any portion of the plant cannabis, also in circumstances denoting that this was not intended for his personal use.

In his statement, the accused denied that the six sachets containing green grass and the sachet containing a white substance that were found in the circumstances described by PC 131, PC 1214 and PS 1354 in their deposition, were his, although he admitted to having been found in possession of five sticks of cannabis resin, stating that these were for his personal use. He stated that he doesn't use any drugs apart from the resin and that he had been using it for the last four months. As regards the sachets containing cannabis grass and white powder, he states that these were not his and that *"There were people selling drugs, white and black people and when the police came they throw something I saw"*.¹⁰ He stated that he had never touched the said sachets.

The Court notes that although from the report drawn up by PS 659 Jeffrey Hughes, it results that no finger prints were found on the plastic sachets and on a piece of paper in evidence bag M00104828, that he was handed over for his analysis, yet from the deposition given by PC 1214, PC 131 and PS 1394 respectively, it is clear that the accused was noticed holding a sachet containing cannabis grass in his hand, which he dropped to the ground as soon as the police approached him. PC 131 even states that he grabbed the accused's hand and that the accused was holding a green substance, which he then dropped to the ground. All three police officers testified to this circumstance and there is absolutely no reason for the Court to doubt what the police officers had actually seen. As regards the other six sachets, five of which also contained cannabis grass, the Court notes that these were found in such close proximity to the accused that according to PC 1214 – and the Court is here referring to this witness's deposition since he was the witness

¹⁰ A fol. 22 of the records.

who described most accurately the position of these sachets – they were found in a space between the bricks, in exactly the same spot where the accused had been sitting down. In fact, both PC 1214 and PC 131 also stated that they could see these sachets as soon as the accused stood up. Considering that these sachets were found in the same spot where the accused had been sitting down and more importantly, considering that the accused had also been holding a sachet of cannabis grass in his hand, the Court cannot but conclude that the said sachets belonged to him. In view of the fact that the accused had been holding a sachet of cannabis grass in his hand before dropping it to the ground, it is clear that the accused is not credible when he states that these sachets did not belong to him and that they had been thrown there by third parties upon the police's arrival.

The Court deems that there is no evidence to suggest that on the night of 20th August 2016, the accused had actually supplied drugs to the persons inside the vehicle that stopped by the accused, since in actual fact no illegal substance was found in the said vehicle or on the persons inside the vehicle. However, the Court considers that the circumstances in which these sachets were found, clearly denote that these were not for the accused's personal use. The accused was sitting alone on a wall in Dragonara Road, Paceville, at about 11.30 p.m., on a Saturday night, holding a sachet of cannabis grass in his hand and concealing other sachets in the said wall, whilst having also cannabis resin hidden in his underpants. Furthermore, the said cannabis grass was divided in separate sachets of similar weight – in terms of expert Godwin Sammut's report of 0.52g, 0.59g, 0.53g, 0.77g, 0.51g and 0.54g. The Court deems that such circumstances already constitute sufficient evidence, to the degree required by law, that the sachets of cannabis grass were not for the accused's personal use.

Furthermore, the accused also had the sum of €150 in his possession. In his statement, he states that he had come to Malta from Norway with €450 and that the sum found in his possession was what he had left from the said €450. According to his deposition during these proceedings, he had come to Malta on 3rd August 2016, namely seventeen days prior to his arrest. Furthermore, according to his statement, he paid a monthly rent of €80, he had just bought the cannabis resin for €100, he smoked a packet of cigarettes in about two days, he drank alcohol in weekends, he had bought a vodka bottle for €12.75 on the previous night and he spent about €75 weekly for food and transport by bus. According to him he smoked 5 pieces of resin (like the ones found on his person) in a weekend. If one were to count the accused's expenses without including alcohol and drugs consumed in weekends, such expenses would already amount approximately to €380, which does not tally with the accused's explanation as to the manner in

which he came to be in possession of €150. Furthermore, taking into consideration that the accused neither worked, nor received any Government benefits, it is very unlikely that the accused could cover the expenses he mentioned in his statement, without any other source of income.

On the basis of the above considerations, the Court deems that the second charge has been proved to the degree required by law.

As regards the first charge, however, the Court notes that the white substance contained in one of the sachets which were found concealed in the wall, as indicated above, was not analysed by expert Godwin Sammut and indeed in his report, this sachet is not mentioned anywhere. Whilst the Court has no doubt, on the basis of the evidence adduced, in particular that PC 1331, PC 1214 and PS 1394 identified Document MB2, subsequently analysed by expert Sammut, as the document that contained the substances found on the person of the accused and on site on the night in question¹¹, that the drugs analysed by said expert were actually the drugs found in possession of the accused, the Court cannot conclude beyond any reasonable doubt that the said white substance contained cocaine. As a result, therefore, the first charge has not been proved in terms of law.

In terms of the third charge, the accused is also being charged with having had in his possession cannabis resin, which drug was found in circumstances denoting that it was not intended for his personal use. Now in this regard, the accused states in his statement, that the cannabis resin was intended for himself and for his friend, who had left to get food. In his deposition, during these proceedings, he also states that he had bought the cannabis resin from Paceville for himself and for his friend. He also states that he bought the cannabis for €80 and that his friend was going to pay him €40 for his share. The Court notes first of all that when asked about the amount of cannabis resin that he smoked, the accused answered that he smoked five pieces, like the ones found in his possession, in a weekend. The expense involved, considering that in his statement and therefore *a tempo vergine* the accused also stated that he had bought this amount for €100, is already in itself hefty for the accused to sustain, given that he had no source of income. Furthermore, the Court does not find the version of the accused as to the reason for having the cannabis resin in his possession, as credible, in the light of the circumstances in which the said drugs were found and considering in particular, that the resin was not the only drug that was found in his possession. Although he

¹¹ Furthermore, during the accused's interrogation, in one of his questions Inspector Malcolm Bondin refers to evidence bag number M00104828. This is also the number of the evidence bag to which expert Godwin Sammut refers in his report, when describing the document handed over to him for his analysis.

states that his friend had gone to buy food, yet he was alone when arrested, and he states that he had also been alone, getting drunk near the beach for 25 to 30 minutes, prior to his arrest. Nothing was found in his possession relating to drug use, except for the drugs, although he states that his friend was in possession of the items that were necessary to smoke cannabis, which in the circumstances, the Court finds as a convenient excuse and lacking credibility. The fact that the accused was found sitting down alone on a wall with a sachet containing cannabis grass in his hand, does not tally with the version he provided. In any case, even if, for the sake of argument alone, the Court were to rest on the version provided by the accused as to the cannabis resin found in his possession, such facts would still lead the Court to conclude that the drugs were not intended for the accused's personal use. Indeed, according to his version, the resin found in his possession was also intended for his friend, who was also going to pay him for his share, and thus it was certainly not merely intended for his personal use. The accused was not going to 'share' the resin which he had acquired for his personal use with his friend, but he was also in possession of cannabis resin intended for a third party and for which that third party was to pay his share thereof to the accused.

Thus, the Court deems that even the third charge has been proved beyond any reasonable doubt.

As regards the fourth charge, namely that of simple possession of cannabis resin, the accused states, in his statement, that he had been using cannabis resin for the past four months and that he smokes it during weekends. This charge does not merely refer to 21st August 2016, but also to the weeks before this date. Clearly, therefore, it has been sufficiently proved.

Finally, the accused has been charged with having 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. It results from the evidence adduced that the accused was apprehended in Dragonara Road, Paceville and there is no doubt therefore that the offences in the second and third charges occurred in a place where young people habitually meet. Therefore this aggravating circumstance has also been sufficiently 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.

Furthermore, it took into consideration the serious nature of the offences of which the accused is being found guilty and the amount of cannabis found in his possession – 3.46 grams of cannabis grass divided into six sachets and 4.53 grams of cannabis resin – in the circumstances above described.

For the purpose of the punishment to be inflicted, the Court is applying the provisions of Section 17(b) and (f) of Chapter 9 with respect to the second and third charges and the provisions of said Section 17(f) also with respect to the fine (*multa*) that it is applying with respect to the fourth charge. The Court is not considering the fourth charge as being comprised in the third charge, since whilst the offence in the third charge was committed on 20th August 2016, from the accused's statement it results that he had been using cannabis resin for the previous four months and thus, the offence of simple possession extends to the weeks before 20th August 2016. 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 second and third charges, since the accused is also being found guilty of the aggravating circumstances in the fifth charge.

Despite its considerations above regarding the monies found in the possession of the accused, since no evidence results, beyond any reasonable doubt, as to the amount of money deriving from drug related activities, the Court is ordering the release of such monies in favour of the accused.

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(b), 17(f) and 31 of Chapter 9 of the Laws of Malta, finds the accused not guilty of the first charge brought against him and acquits him thereof, but finds him guilty of the second, third, fourth and fifth charges and condemns him to twelve (12) months effective imprisonment – from which term one must deduct the period of time during which the person sentenced has been detained in preventive custody – and a fine (*multa*) of one thousand and two hundred Euro (€1,200).

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 the expenses relating to the appointment of expert Scientist Godwin Sammut, amounting to the sum of one hundred, fifty three Euro and forty cents (€153.40), the expenses relating to the

appointment of expert Dr. Steven Farrugia Sacco, amounting to the sum of three hundred, eighty seven Euro and fifty one cents (€387.51) and the expenses relating to the appointment of PS 659 Jeffrey Hughes, amounting to the sum of seventy two Euro and sixty cents (€72.60). The said expenses amount in total to the sum of six hundred and thirteen Euro and fifty one cents (€613.51).

The Court orders the release of the sum of one hundred and fifty Euro (€150) exhibited as Document MB and of the mobile phone and two sim cards exhibited as Document MB1 in favour of the person sentenced.

Furthermore, it orders the destruction of Document MB2 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