

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

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

Case Number: 5/2017

Today, 27th November 2017

**The Police
(Inspector Malcolm Bondin)**

vs

**Hassan Jebrel
(ID number 83282(A))**

The Court,

After having seen the charges brought against the accused, Hassan Jebrel, son of Jebrel and Fatima, born in Niger on 1st January 1984, residing at Marsa Open Centre, Marsa, holder of Maltese Identity card number 83282(A) and police card number IID-161;

Charged with having on 5th February 2017 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. 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 it was not intended for his personal use.

On 5th February 2017 and the years before this date on the Maltese Islands:

3. 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;
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.

The Court is requested to apply Section 533(1) of Chapter 9 of the Laws of Malta, as regards the 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 seen that the accused pleaded not guilty to the charges brought against him;

Having heard final oral submissions by the parties.

Considered that:

On 5th February 2017, at around 3.00 p.m., PS 918 Clayton Azzopardi and PC 1189 Jurgen Falzon went inside the Tiger Bar, in Marsa, in order to look for a wanted person. Whilst there, they noticed the accused sitting down with two other persons on the front porch of the said bar. With reference to accused, PS 918 Azzopardi states as follows: *“I was with my colleague in the porch and I saw him dropping something rounded like a cylinder wrapped in paper, and he dropped it in front of him exactly.”*¹ He states that his colleague picked it up and noticed that it contained a substance suspected to be cannabis resin. In his words *“there was a lot”*.² According to PS 918, at that point, accused tried to get up to run away, but his colleague immediately pushed him to the floor to arrest him. He states that he was right behind him and he saw the accused dropping another package from his abdomen area: *“I saw him dropping it from his tummy area exactly when he tried to run”*.³ This package,

¹ A fol. 51 of the records.

² A fol. 51 of the records.

³ A fol. 52 of the records.

made of transparent plastic, contained a substance suspected to be cannabis grass. According to the witness, it was hidden under accused's clothes.

According to PS 918, they took the accused inside the bar, which at the time, was quite empty, as there were merely the accused, the other two persons (who had been sitting outside with the accused) and the barman. A search carried out on the said two persons yielded nothing illegal. He further states that they did not conduct a proper search on the accused inside the said bar. PS 918 explains that the accused was handcuffed "*on the front part*"⁴. Once inside the police vehicle, the accused sat at the back, whilst the witness sat next to him. He states that on the way to Police Headquarters, he saw the accused dropping small scales from the left pocket of his trousers, which he picked up from the vehicle later on, upon their arrival at the Headquarters. PS 918 also states that in the right hand pocket of accused's trousers, they found jewellery, money, a spoon and mobile phones. According to witness, the said trousers had big pockets. Witness could not remember whether accused was wearing any jewellery and states that the money was found loose in his pockets. He further states that the search on the person of the accused was conducted at the lock up, in his presence and in the presence of PC 1189.

In cross-examination, PS 918 confirms that a proper search – a strip search - on the accused was not conducted at the Tiger Bar, although he was subjected to a search on site. The fact that his clothes contained many pockets was not conducive to a proper search, apart from the fact that inside the bar, it is always dark, irrespective of the time of day. He states that upon this search, only small weighing scales, which were in accused's left pocket, were seized. Then he states that these were not seized from accused's possession during said search, that they did not realise these were scales since they were very small and upon being asked whether he had seen it during this first search, he states that he had not conducted this search himself, although he later also states that he was present whilst this was being carried out. Witness then states that during this search he had seen all that was found, except the scales. Further on in his cross-examination, he states that he had not recognised the item as scales and thus, he left it. Some other things were also left in the possession of accused, as the wallet for instance, since they were then going to the lock up. Yet, he could not remember which items were seized on site and which other items were left in accused's possession. Witness then also states that during this search he had not seen the scales and that accused had a number of pockets.

PS 918 states that he was sitting on the backseat of the vehicle next to accused. He explains that he sat in a manner which provided him with better control of the accused, namely with one leg placed underneath his body and confirms that he saw accused dropping the small scales from the left pocket of his trousers – "*I could see properly what he did*".⁵ He further states that when he got accused out of the vehicle,

⁴ A fol. 52 of the records.

⁵ A fol. 157 of the records.

he picked up these scales in front of accused, who was then taken to the lock up. He explains that he could not pick this up immediately upon noticing accused's movements as accused dropped it on the other side and not where witness was seated. Upon being asked to explain, how, therefore, had he seen accused dropping said scales, he stated "*I saw him, I was above him. I saw him dropping it on the seat of the vehicle*".⁶ He confirms that accused was handcuffed, but states that he saw him putting his hand in his pocket. He found the scales as accused was taken out of the vehicle – "*But I saw him dropping it. I saw him, when I was in the vehicle ... that's why I picked it up*".⁷ He then further explains that although he saw the accused dropping an object on the seat, he only realised these were scales later, when exiting the vehicle and upon picking up the said item. Accused denied these were his. Witness further states that no more arrests were carried out on that day and although others had been detained, they were not arrested. He explains that the two other persons who were noticed sitting next to the accused prior to his arrest had also been detained, but they were immediately released once it was established that they had no involvement with the accused. He confirms that Inspector Bondin went on site, following accused's arrest and that all accused's pockets were searched. He states that accused was wearing some of the jewellery seized, whilst some of the jewellery was in his pocket, but he could not remember which items were worn and which were in accused's pockets.

PC 1189 Jurgen Falzon confirms that on 5th February 2017, at 3.00 p.m., he went to Tiger Bar with his colleague, in search of a third party who was wanted on the police system. He states that as they entered the said bar, by the side, he noticed three males sitting down, at which point, he also noticed that the accused "*had a white cylindrical shape object between his legs and he threw it on the floor*"⁸. He approached the accused and picked up said object consisting of wrapped cardboard that contained a substance – brown sticks - suspected to be cannabis resin. At that point, accused stood up and "*he was going to run away, I went from behind him and took him down to the floor. While taking him down to the floor, from somewhere between his tummy, he threw a plastic bag filled with something on the floor*".⁹ Witness states that he proceeded with the arrest while his colleague picked up this bag from the ground. It contained a brown substance suspected to be cannabis grass. They then took accused to the lock up. On the way there, whilst in the car and whilst witness was driving, PS 918 told him that accused had thrown something in the car. He confirms that PS 918 was sitting by the accused. As they took him out of the car, there were small digital scales, which he saw for the first time in said car. During a strip search conducted at the lock up, they found a considerable amount of gold (rings and two gold chains) and money in accused's pockets, as well as a small pen knife. He states that accused was wearing some jewellery, while some jewellery was in his pockets.

⁶ A fol. 158 of the records.

⁷ A fol. 159 of the records.

⁸ A fol. 57 of the records.

⁹ A fol. 57 of the records.

During his cross-examination, PC 1189 states that a search was conducted on the accused whilst still on site. Apart from the substances found, accused had gold items, mobile phones and money in his possession. He could not remember the rest of the items found, but states that these were seized. Witness confirms that this search was conducted in his presence as well as in the presence of PS 918 and of Inspector Bondin, but he could not remember who was actually conducting the search, though it could have been him. He also states that he was always in the presence of PS 918 and that all items were placed on a table, then in a bag and seized. Witness further states that although accused was wearing some jewellery, he also had some jewellery in his pockets, including chains and rings.

He also confirms that he drove the police vehicle to GHQ, whilst PS 918 sat at the back. He further states that PS 918 picked up an object, later identified as digital scales, from the vehicle and that whilst he was driving, PS 918 informed him that accused had thrown away an object – “*Rema xi haga*”.¹⁰ Later on he states that he could not remember seeing PS 918 picking up said object, but he remembered seeing it on the backseat, as the accused was being taken out of the vehicle and also inside the office. He also confirms that accused was handcuffed.

Inspector Malcolm Bondin states that PS 918 informed him about the drug find at the Tiger Bar and he immediately proceeded on site. When he arrived there, there were several people outside the premises, whilst there were only three police cars. He states that it was very hectic outside, so he instructed police officers to conduct a search in the premises and on the person of the accused. He further states that on the way to the General Police Headquarters, he drove behind the police vehicle and once they stopped, he was informed by one of the officers that as they took out accused from the vehicle, they found digital scales on the backseat, where the accused had been seated. Accused immediately denied that these were his. He confirms that several jewellery items were seized from accused’s possession, and on site, police seized other items such as a spoon, a metal knife and one grinder as well as two mobile phones and the sum of €362. He further states that when he opened accused’s wallet, which contained the money, all such money was neatly folded, and there was a torn €5 inside a small pocket in the wallet. Accused released a statement, after being duly cautioned in terms of law and after refusing to consult with a lawyer before his interrogation. Accused also refused the right to have a lawyer present during his interrogation.

Upon being cross-examined, Inspector Bondin states that RIU officers on site searched another three persons, who were sitting in the area where accused was arrested, but nothing illegal was found in their possession.

¹⁰ A fol. 175 of the records.

PC 1494 Andre Grech states that on 5th February 2017, he assisted during a search held at the GHQ lock up. He states that on his person, accused had 6 yellow rings, 2 yellow necklaces with pendants and a bracelet, as well as a folding knife, one cannabis grinder, a spoon, two mobile phones and the sum of €362.¹¹

Ivan Cilia, on behalf of the Director of Social Security, states that accused never received any social benefits or assistance.¹²

Joseph Saliba, on behalf of Jobsplus, exhibited the employment history of accused and stated that at the time of his testimony, accused was not registered as employed. From his employment record, it results that accused was employed with a certain Mario Mallia, as handyman, between 10th June 2016 and 31st August 2016.¹³

Court appointed expert Dr. Martin Bajada exhibited his report, containing the content of the two mobile phones found in accused's possession and the relative call profiles obtained from service providers.¹⁴

From the report drawn up and exhibited by court appointed expert Mark Vassallo¹⁵, it results that the total market value of the items in Document MB8¹⁶, inclusive of taxes, amounts to eight thousand, four hundred and ten euro (€8,410).

In terms of the report drawn up and exhibited by court appointed expert, Scientist Godwin Sammut¹⁷, it results that the document handed over to him by Deputy Registrar Oriana Deguara and marked as Document MB7, contained the following: an envelope marked as MB7 containing an evidence bag with number M00388990 which held: i) a transparent plastic bag containing green grass; ii) small, black weighing scales; iii) a brown substance; iv) two lighters, a spoon, smoking papers, grinder card with some traces, green in colour, a pen knife and a crusher containing traces. According to the same report, on extracts taken from the green grass in said document, the substance *Tetrahydrocannabinol* was found. The grass weighed 29.55 grams with a purity of circa 6%. On extracts taken from the brown substances in the said document, *Tetrahydrocannabinol* was found. Said substance weighed 21.71 grams, with a purity of circa 7%. On swabs taken from the grinder card and crusher in said document, the substance *Tetrahydrocannabinol* was found. In his testimony then, said expert indicates the value of said drugs as €19 per gram for cannabis grass, which gives a total value of €561.45 and €20 per gram for cannabis resin, which gives a total value of €434.20.¹⁸

¹¹ A fol. 76 to 78 of the records.

¹² A fol. 48 and 49 of the records.

¹³ A fol. 82 of the records.

¹⁴ *Vide* this report marked as Doc. MB, a fol. 89 of the records.

¹⁵ Exhibited a fol. 73 *et seq* of the records.

¹⁶ Exhibited by Inspector Malcolm Bondin, during the sitting held on 1st March 2017, as the jewellery items found in accused's possession.

¹⁷ *Vide* a fol. 93 *et seq* of the records.

¹⁸ *Vide* a fol. 91 of the records.

Fingerprint expert PS 659 Jeffrey Hughes examined the scales, an empty plastic bag and a piece of white paper, all forming part of Document MB7, for fingerprint marks both visually and chemically, but no fingerprints were developed.¹⁹

Accused released a statement on 5th February at 5.30 p.m.²⁰ In his statement, accused states that he has been in Malta since April 2011 and was detained for eighteen months. Although his official address is at Marsa Open Centre, yet he also sleeps elsewhere. At the time, he was sleeping in Gozo since he was carrying out construction work over there. On the day, he had arrived in Malta from Gozo at about 2.30 p.m. He states that the drugs found by the police officers at the Tiger Bar were not his. According to accused, he was outside, smoking a joint of resin with two friends. As soon as they saw the police, they went to Tiger Bar and sat down on some crates. Two police officers went inside the bar, looking for a third party, but as they went out they smelt the smoke and turned back. *“They ask me if I had something and I showed them the joint infact two of us had joints. Then he searched me and found nothing. Then I wanted to stand up and they taught [thought] I was going to run and they put me on the floor with my friends as well.”*²¹ He states that the police showed him the paper containing the resin and the bag with cannabis grass and that these were opened in front of him. He also states that he never touched these items and that he was willing to give the police his fingerprints. He confirms that the spoon, the lighters, the grinder and small knife were his, but that the crusher was not. He also states that he never touched the digital scales found in the police car. The sum of €362 belonged to him and he obtained them from construction work. He states that in this line of work, with overtime, he sometimes earns around €950 to €970 per month. He had been working as self-employed in Gozo for the past two weeks, carrying out plastering works in two apartments with other friends. This was his first time working in Gozo. In Malta, he previously worked with a company, constructing pavements, but the company then shut down. Accused confirms that the jewellery items belonged to him, that he bought them from Valletta and that he had the relative receipts. He again states that each month he earns about €970, but sometimes he has no employment for two or three months. He also confirms that the two mobile phones and headphones found in his possession were his and states that he has two phones because sometimes he hears music, when he is not working. As regards his use of cannabis, he states that he has been smoking it since he was about 11 or 12 years old and that he smokes it wherever he goes. He smokes both resin and grass and he buys whichever one he finds. He further states that he only uses cannabis and that he smokes a lot, even at work. He explains that the smokes about 15 joints a day and that he can make about 30 joints with €60. In a week, he spends about €80 on cannabis. When asked about the quantity of cannabis he is given for this sum, he states that normally for €10, he is given one stick of resin, but sometimes

¹⁹ Vide PS 659 Jeffrey Hughes’ testimony, a fol. 112 and 113 of the records and his report, a fol. 114 *et seq.*

²⁰ Vide a fol. 24 to 27 of the records of the case.

²¹ A fol. 25 of the records.

he is also given cannabis for free (“*like present*”²²). He denies selling cannabis and when asked about the manner in which he sustains his cannabis habit, he states that he works. He had no social benefits, no bank accounts and he only had the sum of money found in his possession.

Accused also chose to testify during these proceedings.²³ He states that he carries out construction work in Malta, that he is self-employed and that sometimes he worked for a company for a period of one month. He used to earn about €970 per month, working for eight hours and that he worked for eight months. He was working until his arrest. On the day of his arrest, he had come from Gozo, where he had been doing construction work for the previous two weeks, during which he earned €800. He had gone to the Mosque to pray with two friends and when they left, they made a joint. As they were smoking, they saw two police cars approaching and he suggested that they should go to Tiger Bar. Once there, they sat and smoked on the porch. A police officer entered the bar, holding a mobile phone on which he could see a photo of a male. The officer walked out of the bar and since they did not want him to smell the smoke, they tried to hide the joint in their fist. He states that however, on his way out, the police officer smelt the joint and walked back to them. As he saw the police officer walking back, he put out the joint on the ground. He states that a second police officer walked past him and saw some paper, which the said police officer picked up. According to accused, the police officer found this paper behind them, about half a metre away from him, though he then states that he does not know from where the police man got such paper. He saw him opening said paper which contained pieces of *haxix*. He stood up and upon doing so, the said police officer pushed him down. He states that he told the police officer that said items were not his and that at that point, he tried to walk away, though he did not run. He was then pushed to the ground, handcuffed and searched. His two friends were also handcuffed. Another man joined them too but he was not detained. At the time, on the porch there were himself and his two friends and other persons, whom he did not know. The latter were not handcuffed. He states that prior to his arrest, whilst he was sitting down with his two friends, there were also some other persons on the porch. He states that at the time, he had seen a male standing up near the window, about half a metre or a metre away from him to his right. His friends were on his left side. He further states that the paper was found on his left side. Regarding the bag of cannabis which the police officers state to have seen him throwing away upon his arrest, he states that he was on the ground for at least five to ten minutes and that before he had seen this marijuana near him, but it was not his. He states that the police officers only showed him the paper with the cannabis, but not this bag. Accused states that he denied that this was his and he showed the officers the joint that he had been smoking, on the ground. He states that one of his friends had made this joint. The three of them were taken inside the bar and he was searched. His pockets were searched and everything inside them – his wallet and the money inside

²² A fol. 26 of the records.

²³ A fol. 180 to 215 of the records.

it, three rings and bracelets - was removed by the police officers, whilst he was still handcuffed. He explains that the jewellery was inside his pockets as he had been praying and that he carried all his gold with him, as he was afraid of being stolen. He states that he had bought these from jewellery shops in Valletta and that he had paid for them by instalments through the monies he earned from his employment. Accused exhibited a number of copies of receipts regarding these purchases. He states that following his arrest he was driven to Floriana in the company of two police officers, one of whom was sitting by his side, facing him. His hands were handcuffed behind his back. As he was walking upstairs at the Police Headquarters he was shown a black item and asked about it, to which he replied that he did not know about it and that it was not his. Once this was opened, there were scales inside it and this was placed with his belongings, together with a grinder which did not belong to him, as his grinder was inside his wallet. He denies having done anything, as alleged, in the police car.

Accused states that he smokes a lot of cannabis and that he can smoke €45 worth of cannabis from morning to afternoon. He states that he does not buy it in grams, but he buys €10 worth of cannabis and sometimes he is given some for free. He buys resin or grass. He further states that his friends give him money and he buys cannabis for them – *“If I am going to buy, this one give 20 euro and this one give me 10 euro. Then I join all the money. If I buy and then I go and give them”*.²⁴ Upon being questioned as to the reason he buys €10 worth of cannabis, when he smokes €45 worth a day, he states that *“they are cut by 10 so one is 10 euro”*.²⁵ Then he explains that he buys cannabis for five days or for a week at €120 or €150 each time. He states that this cannabis is bought by himself and his friends and then they share it.

In cross-examination, accused states that during the previous year (in 2016) he worked for 4 or 5 months and that he worked with a friend, Ismail Haruna.

Ismail Aruna gave evidence on oath. He states that he has known the accused for a long time, since they went to school together, back in Niger. He states that on the day of accused’s arrest, they were together at the Mosque at around 1.00 p.m. He left and accused remained with another two friends. Later, he saw the accused being arrested. He states that accused smokes cannabis, that he buys cannabis for one, two or three weeks at a time, depending on how much he can afford at the time and that he has never seen accused selling drugs. He further states that accused invested in gold items and that according to him, he saved money by buying gold. Accused carried his gold with him for fear of being stolen. He also states that accused and himself worked a lot together and he exhibited a number of photographs showing accused and himself on two different jobs, about eighteen months before. In 2017, prior to accused’s arrest, they were still working together.

²⁴ A fol. 202 of the records.

²⁵ A fol. 202 of the records.

Considered further that:

By means of the first and second charges, the accused is being charged with possession of cannabis plant and resin, in circumstances denoting that this was not intended for his personal use. Whilst police officers PS 918 and PC 1189 state to have seen the accused throwing away that which later resulted to be cannabis resin and cannabis grass, the accused denies that he had thrown away such items or that these belonged to him.

Accordingly, the Court must first determine whether it results, to the degree required by law, that the accused was indeed in possession of the cannabis resin sticks and cannabis plant, as alleged by PS 918 and PC 1189. It results clearly from the evidence adduced that accused had been sitting with another two persons on the porch of Tiger Bar, when he was noticed both by PS 918 and PC 1189 throwing a cylindrical shaped object to the ground, which object later resulted to contain a number of sticks of cannabis resin. On his part, accused states that upon realising that one of the police officers was approaching him as he had smelt cannabis, he had merely thrown away the joint of cannabis, which he had been smoking with his friends. He even states to have shown the police officers the said joint on the ground after his arrest. In this respect, the Court makes the following observations: both PS 918 and PC 1189 are concordant in this part of their testimony to the effect that they both saw the accused dropping a cylindrical shaped object wrapped in paper, with PS 918 adding that accused dropped this object exactly in front of him. Furthermore, both PS 918 and PC 1189 state that the latter approached accused and picked up said object, which resulted to contain a substance, namely suspected cannabis resin. According to PC 1189, such substance consisted of brown sticks, with PS 918 asserting that the amount was considerable. The Court notes therefore that contrary to accused's assertion that PC 1189 had picked up the paper containing such substance from an area behind him (behind accused), some half a metre away from him, PS 918 states that accused had dropped the object, picked up by PC 1189, exactly in front of him. Furthermore, if the police officer's attention was alerted by seeing accused throwing away a joint of cannabis and putting it out on the ground whilst still seated, as he alleges, and therefore right in front of him, the accused's assertion that PC 1189 eventually picked up the paper containing cannabis resin sticks, some half a metre away behind him, does not hold ground. The Court further notes, after having seen the exhibit marked as Document MB7, that in line with PS 918's testimony, there was a considerable amount of cannabis resin sticks and that therefore it is highly unlikely that the said police officers were misguided by accused's alleged action of throwing away a joint, rather than the said cannabis resin sticks. Given such circumstances, it is certainly not plausible to conclude that the police officers erroneously confused one item, namely the alleged joint thrown away by accused, with another, namely a paper holding a significant amount of cannabis resin sticks. Furthermore, although accused states that he had seen another male standing by a window on the porch, thereby implying that this substance could very

well have been placed on the spot by others, yet he also alleges that it was found on his left hand side, whereas said male had been standing on his right.

Then, as regards the plastic bag containing cannabis grass, although accused also denies that same had been in his possession or that this belonged to him, PS 918 and PC 1189 likewise corroborate each other stating that they had seen accused dropping the said bag from his abdomen area, as he was about to be arrested by PC 1189. In his testimony, accused states to have previously seen this bag with cannabis, but denies that it was his own. Yet even in this regard, accused's version does not hold ground. Both police officers state to have seen the accused dropping the said bag from his abdomen area, rather than stating merely to have seen the said bag lying on the ground in the vicinity of accused. The Court further notes that during their cross-examination, both police officers were not asked any questions regarding their observations of accused's movements in this regard or in regard to the finding of the cannabis resin sticks, as their cross-examination focused wholly on the search of the accused on site and the finding of the digital scales inside the police vehicle. Furthermore, after having seen the said plastic bag exhibited as part of Document MB7, the Court also notes that this was not a small one or negligible in size and it would therefore have been very unlikely for the two police officers not to have seen it prior to accused's arrest, had it been lying down on the ground unattended, as per accused's version. In addition, the Court also considers that according to accused's version, he was not in possession of any cannabis of any kind on the day of his arrest, except for a cannabis joint which, according to him, had been provided by one of his friends. It results from the evidence adduced, however, that neither were his friends found to be in possession of any illegal substances and indeed, although they were initially detained, they were not arrested with accused and were released. Considering that according to accused, his friends and himself were smoking a joint of cannabis at the time, considering also accused's assertion that another of his friends also held a cannabis joint and furthermore, that according to accused he smoked cannabis everywhere he went, including at his workplace, and that he could smoke €45 worth of cannabis in an afternoon, it is inexplicable that neither his friends, nor accused in particular, were not in possession of any cannabis. The Court also considers that whereas the police officers' version of events as to their finding of both cannabis resin and grass is credible and supported by their testimony regarding the movements which they specifically noticed on the part of accused, on the other hand, accused's version would have the Court believe a number of implausible coincidences as to the finding of a considerable amount of cannabis resin situated behind the area where he was seated and of an equally considerable amount of cannabis grass, lying unattended on the ground somewhere in the vicinity of accused.

In view of these considerations, the Court cannot but conclude, beyond any reasonable doubt, that accused was indeed in possession of the cannabis resin and grass seized by PS 918 and PC 1189, as per their testimony.

Consequently, the Court must now determine whether it has been proved, beyond any reasonable doubt, that accused's possession of said cannabis was not intended for his exclusive use. The court notes that the defence is, in particular, contesting the prosecution's allegation that accused was in possession of digital scales found in the police vehicle, on the way to the Police Headquarters. In this regard, the Court notes that the testimony provided by PS 918 as to the search carried out on the accused on site, is anything but clear. PS 918, PC 1189 and Inspector Malcolm Bondin all state that a search was carried out on accused at Tiger Bar, though PS 918 specifies more than once that a proper search, on the person of accused, could not be carried out on site, both because accused's trousers contained several pockets and also because it is quite dark inside said premises. It also results that eventually a strip search was conducted on accused at the Police Headquarters' lock up. On his part, accused states that all items in his possession were seized by said police officers on site and accordingly, he denies that the scales found in the police vehicle were his or that he had sought to rid himself of such scales inside said vehicle. PS 918 states that although he was present for the search carried out on site, yet he had not conducted it himself, whilst PC 1189 states that he could not remember whether he had conducted this search himself, whilst stating that he was present for this search and was at all times accompanied by PS 918. From PS 918's testimony, the Court cannot understand whether the latter had actually seen the scales on the person of the accused, but did not recognise them to be such and that consequently, these were not seized at the time or whether, upon such search, he had not seen them at all. Although he was present for the search, PC 1189 states that he had seen the scales for the first time on the backseat of the police vehicle, as accused was exiting same. Having also seen the said scales, exhibited as part of Document MB7, the Court notes that these were indeed very small in size, approximately 7.5 centimetres in length and considering also the amount of items found in accused's possession, including various items of jewellery and that accused's trousers contained a number of pockets, it is very plausible that such item could have been missed by the officers carrying out the search on site or that the nature of such item was not identified at that stage. Such considerations are being made in particular due to PS 918's testimony regarding the movements of the accused once inside the police vehicle. PS 918's close proximity to accused once inside the said vehicle and his posture allowed him to notice accused's movements clearly, so much so that at the time, he immediately told PC 1189, whilst the latter was still driving, that he had seen accused throwing away an object on the backseat. It is clear therefore that this was not some kind of an after-thought or assumption on behalf of PS 918 upon finding the said object on the backseat of the vehicle, once he exited the same with accused. Indeed, PS 918 states to have immediately looked for said object upon exiting the vehicle, as he had previously noticed accused's movements. Whilst accused states to have been handcuffed with his hands behind his back, PS 918 testifies that accused hands' were handcuffed on the front, which made this movement on his part possible. Given PS 918's observations, which he stands by during his testimony and in particular during his cross-examination, given also PC 1189's declaration that PS 918 had immediately

informed him of accused's movements whilst still on their way to Police Headquarters and given that said object was found exactly where accused had been seated on the backseat of the vehicle, the Court cannot but conclude that these were indeed in accused's possession.

Indeed digital or electronic scales may, though not necessarily, constitute evidence of drug trafficking. The finding of such item is, therefore, one circumstance which the Court will consider when determining whether possession is intended for the possessor's personal use or not. The probative value of such evidence in determining one's guilt or otherwise will then clearly depend on the other circumstances of the case and all evidence adduced. In this case, however, irrespective of the finding of such scales, there are other elements which lead the Court to conclude that accused's possession of said cannabis was not solely intended for his personal use.

As held above, accused does not even claim that such cannabis was for his personal use, as he outrightly denies that it was his own. Yet, he also claims to use a considerable amount of cannabis daily. Apart from his statement and his testimony on this point, accused was found in possession of items, in particular a grinder with traces of cannabis, which clearly denote cannabis use. From the report exhibited by expert Godwin Sammut, it results that the cannabis grass weighed 29.55 grams, whilst the cannabis resin sticks weighed 21.71 grams. In total therefore accused had 51.26 grams of cannabis, which is certainly not a negligible or an insignificant amount or rather an amount which is normally associated with personal use. Indeed, this amount could potentially produce circa 256 cannabis joints.

In his statement, accused states that he smokes about 15 joints per day (and therefore circa 3 grams a day, when one considers that a typical dose of cannabis in a joint consists of 0.2 grams²⁶). On the basis of this assertion, this means that accused had more than two weeks supply of cannabis in his possession. He further states, in his statement, that he can produce about 30 joints for the price of €60, which again on the basis of his previous declaration, means that two days' supply of cannabis would cost him €60. Then he goes on to state, however, that he spends €80 worth of cannabis a week, which certainly does not tally with the amount of cannabis he allegedly smokes daily and the cost he indicates for 30 joints.

The Court notes that if accused smoked about 15 joints a day, as he states, and €60 worth of cannabis produce about 30 joints, as he alleges, this means that he would require circa €210 weekly (€30 x 7 days) or €900 a month (€30 x 30 days) merely to sustain his cannabis use. He then goes on to state more than once during his statement and also in his testimony, during these proceedings, that he earned circa €970 a month. In this regard, the Court notes that although on the one hand, in his testimony, accused also states that he had earned €800 during the two weeks prior to

²⁶ *World Drug Report 2006 Volume I. Analysis*, pg 96 *et seq.*

his arrest, on the other hand, he confirms again that he normally earned around €970 a month from construction jobs and furthermore, that during the previous year he had worked for about four to five months (though at one stage he states that he worked for eight months). Likewise, in his statement, he states that he is sometimes out of employment. That accused did not have much finances to go by, then, is also evident from the fact that he states that the sum of €362, found in his possession, was all the monies he had. This apart from the fact that according to Ivan Pirotta, accused paid him a monthly rent of €250 and furthermore, apart from the necessary daily expenses relating to food and other basic necessities, accused liked investing in gold items to the extent that he had more than €8,000 worth of such items in his possession. His financial means certainly do not tally with such expenditure, if the Court were to consider his initial assertion of smoking 15 cannabis joints a day at a cost of €30.

In his testimony, then, accused states that he was capable of smoking €45 worth of cannabis in one afternoon, which would certainly require a heftier income on his part. Yet then he goes on to state that he spends between €120 to €150 worth of cannabis, with his friends, for roughly a week's supply of cannabis. Considering that this amount of money is spent together with his friends, this does not tally with his claim of smoking about 15 joints per day at a cost of €30, though it tallies more with his claim of spending €80 a week on cannabis. Furthermore, if accused purchased cannabis weekly as he states more than once in his testimony, then he certainly had more than a week's supply of cannabis for his personal use, in his possession, as above indicated. This apart from accused's admission that he bought cannabis for his friends too and this by collecting his friends' share of the costs and then supplying each with his share of cannabis, which in itself already constitutes drug trafficking. Thus, from whichever aspect the Court considers the amount of cannabis found in accused's possession, even if it had to rely on his assertion, albeit inconsistent in certain aspects, that he spent €80 a week on cannabis, on the basis of the amount of cannabis found in his possession, when compared to the amounts he states to consume daily, the Court cannot but conclude, beyond any reasonable doubt, that the cannabis in his possession was certainly not exclusively for his personal use.

The above considerations do not even take into account the market value of the cannabis found in accused's possession as indicated in expert Scientist Godwin Sammut's testimony and are based merely on the version provided by accused in his statement and in his testimony. As held above, in terms of the expert's testimony, the cannabis found in possession of accused had a total market value of €995.65, with the price of cannabis grass at €19 per gram and the price of cannabis resin at €20 per gram. On the basis of these figures, if the Court were to rest on accused's assertion that he spent €80 of cannabis weekly, this would provide him with circa 4 grams of cannabis, meaning that he was certainly found to be in possession of much more cannabis than he required for his weekly personal use. On the other hand, if the Court were to rely on accused's assertion that he smokes about 15 joints a day, in terms of the experts' figures, accused would require about €60 a day, which is clearly

well beyond his financial means. And in any case, that accused was found to be in possession of cannabis with a market value of €995.65, considering his earnings, is likewise not in line with his financial means and well beyond his weekly requirements.

For these reasons, the Court deems that the first and second charges have been proved to the degree required by law.

There is no doubt either, that on the basis of accused's admission in his statement and also in his testimony, even the third and fourth charges have been satisfactorily proved.

Considers also that:

For the purpose of the punishment to be inflicted, the Court is taking into account the clean criminal record of accused.

It is also taking into consideration the serious nature of the offences of which he is being found guilty and furthermore, the considerable amount of cannabis found in accused's possession.

The Court is furthermore applying the provisions of Section 17(b) of Chapter 9 of the Laws of Malta with respect to the first two charges, the provisions of Section 17(f) of said Chapter in respect of all charges and the provisions of Section 17(h) of Chapter 9 in respect of the third and fourth charges, only in so far as these refer to the dates to which the first two charges refer.

As regards the gold and silver items seized from accused's possession, the Court notes that accused has produced a number of receipts for items bought from two jewellery shops in Valletta. Clearly, this does not constitute any evidence of the source of the funds with which he bought such items. Yet, the Court also notes that although accused's income does not tally with the market value of the cannabis found in his possession, there is no evidence to the degree required by law, which allows it to conclude that these items were funded through drug-trafficking activity on the part of accused. Furthermore, whereas the first two charges refer to 5th February 2017 and the previous days before this date, the receipts produced by accused indicate that his payments in relation to such items were made in 2015 with the most recent dated August 2016 and therefore before the date of said charges. The Court is therefore not ordering the forfeiture of said items. As regards the sum of money found in accused's possession, likewise the Court cannot conclude from the evidence adduced, to the degree required by law that this was derived from drug-related activity.

Conclusion

For these reasons the Court, after having seen Sections 8(a), 8(d), 22(1)(a) and 22(2)(b)(i) and (ii) of Chapter 101 of the Laws of Malta, Regulation 9 of Subsidiary Legislation 101.02 and Section 17(b), 17(f) and 17(h) of Chapter 9 of the Laws of Malta, finds the accused Hassan Jebrel guilty of the charges brought against him and condemns him to eighteen months effective imprisonment – from which period one must deduct the period of time, prior to this judgement, during which the person sentenced has been held in preventive custody in connection with the offences of which he is being found guilty by means of this judgement – and a fine (*multa*) of two thousand euro (€2,000).

Furthermore, in terms of Section 533 of Chapter 9 of the Laws of Malta, the Court condemns the person sentenced to the payment of expenses incurred in the appointment of court experts, namely expenses related to the appointment of Scientist Godwin Sammut, amounting to the sum of two hundred, eighty eight euro and ninety one cents (€288.91), the expenses related to the appointment of Mark Vassallo, amounting to the sum of three hundred, ninety eight euro and sixty cents (€398.60), the expenses related to the appointment of PS 659 Jeffrey Hughes amounting to the sum of ninety seven euro and fifty five cents (€97.55) and the expenses related to the appointment of Dr. Martin Bajada amounting to the sum of five hundred and one euro and fifty cents (€501.50), totalling said expenses to the sum of one thousand, two hundred, eighty six euro and fifty six cents (€1286.56).

The Court orders the release of the contents of Documents MB8 (gold and silver items), MB9 (two mobile phones and headphones), MB10 (the sum of €362 and wallet) and MB11 (keys) in favour of Jebrel Hassan.

Furthermore, it orders the destruction of the contents of Document MB7, once this judgement becomes final and definitive, under the supervision of the Court Registrar, who shall draw up a process-verbal documenting the destruction procedure. The said proces-verbal shall be inserted in the records of these proceedings not later than fifteen days from said destruction.

Natasha Galea Sciberras
Magistrate