



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

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

Case Number: 115/2017

Today, 28th February 2018

**The Police
(Inspector Trevor Micallef)**

vs

**Mahamed Abib Hashi
(ID 129200(A))**

The Court,

After having seen the charges brought against the accused Mahamed Abib Hashi, son of Abib and Hinda nee` Omar, born in Somalia on the 1st June 1996, residing at Valley Court, Flat 8, Triq il-Wied tal-Imnsida, Msida and holder of Identity Card number 0129200(A);

Charged with having on 19th August 2017 at around 01.30 hrs in these Islands, in Paceville, St. Julians:

1. 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 personal use;

2. Accused further of having on same date, time, place and circumstances 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. Accused further of having on the same date, time, place and circumstances 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.

Having heard the evidence and having seen the records of the case, including the order of the Attorney General in virtue of subsection 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 accused pleaded not guilty to the charges brought against him;

Having heard final oral submissions by the parties.

Considered that:

The facts in brief which led to this case were as follows: On 19th August 2017, between 1.00 a.m. and 1.30 a.m., PC 828 Steve Camilleri and PC 1089 Brady Sammut were conducting a patrol on foot in St. Julians, Paceville, and whilst they were in or in the vicinity of the parking area of the Axis establishment, they noticed the accused throwing and kicking ‘something’ underneath a vehicle. As PC 1089 searched underneath the said vehicle, he found six plastic sachets, with a green stripe, containing a substance suspected to be cannabis grass (exhibited in the records of the case as Document TM1). A search conducted on the person of accused yielded two sticks or black/brown substances suspected to be cannabis resin found loose in the back pocket of his trousers and empty self-sealable plastic sachets, also with green stripes, from his front pocket (exhibited in the records as Document TM). Later a search conducted in accused’s residence yielded a number

of empty self-sealable plastic bags, also with a green stripe, found underneath the mattress of accused's bed (exhibited in the records as Document TM2).¹

On 19th August 2017, the accused released a statement to the police after he had been cautioned in terms of law and also after having been given the right to obtain legal advice prior to his interrogation, which he obtained. Accused was also given the right to be assisted by a lawyer during his interrogation.²

In terms of the report drawn up by expert Scientist Godwin Sammut, he was given the following document for his analysis: Brown envelope with the label *Sp Trevor Micallef vs Abib Hashi Mohamed* containing: (1) Evidence bag labelled TM and having an ID number S00165269 containing: (i) brown envelope with brown substances (ii) a small sealable plastic bag that contained the brown substances and (iii) 2 empty small sealable plastic bags; (2) Evidence bag labelled as TM1 and having an ID number S00165270 containing (i) brown envelope containing green grass; (ii) 6 small sealable plastic bags that contained the green grass; (3) Evidence bag labelled TM2 and having an ID number M00114354 that contained a brown envelope and empty small sealable plastic bags.

In his report, the said expert concluded as follows: (a) Tetrahydrocannabinol was found in the extract taken from the green grass in evidence bag labelled as TM1. The total weight of the green grass is 3.2 grams. The purity of THC was approximately 5%; (b) Tetrahydrocannabinol was found in the extract taken from the brown substance in the evidence bag labelled as TM. The total weight of the green grass is 0.98 grams. The purity of THC was approximately 4%.

Furthermore, in terms of the said report, the weight of the green grass in the six sachets was as follows: 0.33 grams, 0.58 grams, 0.59 grams, 0.46 grams, 0.72 grams and 0.52 grams.³

In terms of the report drawn up by fingerprint expert PS 659 Jeffrey Hughes, no fingerprints were developed on Documents TM and TM1, whilst a number of fingerprints were developed on five of the plastic sachets forming part of

¹ *Vide* testimony given by PC 828 Steve Camilleri, a fol. 19 to 22 of the records and a fol. 29 to 32 of the records; testimony given by PC 1089 Brady Sammut, a fol. 33 to 41 of the records; testimony given by PC 1468 Dirk Pace, a fol. 42 to 46 of the records; testimony given by PC 759 Alan Mercieca, a fol. 47 to 51 of the records and report drawn up by PS 659 Jeffrey Hughes which also describes the content of the exhibits, a fol. 78 to 84 of the records.

² *Vide* declaration, a fol. 7 of the records and accused's statement, a fol. 8 to 10 of the records.

³ This report is exhibited a fol. 56 to 63 of the records.

Document TM2. These finger marks were marked as 17 CQH-C-SG1 to 17 CQH-C-SG5 by said expert.⁴

According to the report drawn up by expert Joseph Mallia⁵, comparative studies carried out between the images of the developed papillary marks marked as Documents 17 CQH-C-SG1, 17 CQH-C-SG4 and 17 CQH-C-SG5 and the fingerprints and palm prints of accused, resulted in the negative. Photographs of the developed papillary marks, marked as Documents 17 CQH-C-SG2 and 17 CQH-C-SG3 resulted as lacking in identification points leading to comparison and identification and thus, a comparison could not be carried out between said marks and the fingerprints and palm prints of accused.

Considered further that:

By means of the first and second charges, the accused is being charged with possession of cannabis grass and cannabis resin found in circumstances denoting that these were not intended for his exclusive use.

As regards the six sachets containing cannabis grass found underneath the vehicle, the defence states that it has not been proved to the degree required by law that these belonged to accused. The defence refers to the testimony of PC 1089 Brady Sammut who stated, according to the defence, that he was about forty metres away from accused when he noticed his movements. The defence submits that in the light of such circumstance, and furthermore considering that such movements were observed when it was dark, that accused's fingerprints were not found on said sachets, that the sachets found at his residence were empty, and that accused was only found in possession of traces of cannabis, the Prosecution has not proved its case beyond any reasonable doubt.

From the evidence adduced, there is no doubt that accused was found in possession of cannabis resin sticks, which in total weighed 0.98 grams. Indeed it results that these were found loose in the back pocket of accused's trousers. In his statement accused also confirms that these were found in his back pocket and further states that these were for his personal use. As regards, the empty plastic sachets found in his front pocket, accused states that "*Somebody gave it to me, I do not know why, I was drunk*".⁶

⁴ This report is exhibited a fol. 78 to 84 of the records.

⁵ This report is exhibited a fol. 88 to 97 of the records of the case.

⁶ A fol. 9 of the records.

As regards the six sachets containing cannabis grass found underneath the vehicle, the evidence adduced is as follows:

1. PC 828 Steve Camilleri states that he noticed that accused was holding ‘something’ in his hand and that as he noticed the presence of the police, he threw said object under a vehicle. In his words *“Yes I saw him throw something and then kicking it under mentioned vehicle”*.⁷ At the time, he could not tell what accused had thrown under the vehicle. PC 828 also states that accused was right behind the vehicle at the time and that it was dark.
2. PC 1089 Brady Sammut states that as soon as accused saw them, he was startled, he put his hand in his pocket, took it out, placed something underneath the vehicle and then kicked it. Witness explains that before accused went behind the car, he had already seen accused putting his hand in his pocket and taking it out in a fist. He states that *“I could see him bending down, hid the object, he held to the car and he kicked the object”*.⁸ He also states that although from his position, he had not actually seen the accused’s leg kicking the object, yet his body movements indicated that he had done so. PC 1089 also states that he had found the sachets *“as from the middle part of the car towards the back tyre”*.⁹ When the police noticed accused’s movements they were a few metres away from him – in PC 1089’s words, *“the width of the courtroom”*¹⁰, namely Hall 23.
3. The said plastic sachets had a green stripe, as the plastic sachets that were found in accused’s front pocket.
4. According to PC 1089, nothing else was found under the vehicle, except for the plastic sachets containing the grass and according to PC 828, accused was alone at the time and there was no one else next to the vehicle.
5. In his statement, accused denies that these sachets belonged to him and he further denies that he sells drugs. When questioned as to what he had thrown underneath the parked vehicle, he states that he was drinking and swaying and that he had not thrown anything.

⁷ A fol. 31 of the records.

⁸ A fol. 37 of the records.

⁹ A fol. 37 of the records.

¹⁰ A fol. 40 of the records.

The Court notes that contrary to defence's submissions on this point, the distance from which PC 1089 and PC 828 observed the accused was a short one and that indeed, they were only a few metres away from him. Before accused walked behind the vehicle, PC 1089 had already observed accused putting his hand in his pocket and taking it out in a fist, which clearly indicates that he was holding an object in his hand. Accused was behind the car when PC 1089 and PC 828 observed the rest of his movements, and indeed PC 1089 states that he had not actually seen accused kicking the object underneath the car. Yet, it is perfectly plausible that both police officers concluded that he had kicked an object under the vehicle in view of the body movements which they had observed. PC 1089 even states that prior to the kicking motion, he had also observed accused holding on to the car. In view of the police officers' observations, considering also that nothing else was found underneath the vehicle, that accused was the only person there at the time, given the position of the sachets which were situated under the middle part of the vehicle and towards its back tyre and finally, in view of the fact that the empty plastic sachets found in accused's front pocket had the same green stripe as the six sachets retrieved, the Court has no doubt that accused had indeed kicked the said sachets under the vehicle and that these had been in his possession.

No finger marks were developed on the six plastic sachets containing cannabis grass and on the empty plastic sachets found in accused's trousers' front pocket. Yet the latter were clearly found in his possession. The lack of finger marks on the six sachets therefore does not benefit the defence's argument that these had not been in accused's possession, more so, in the light of the circumstances above indicated.

Furthermore, it also results that a number of empty self-sealable plastic sachets, thirty in number according to the report drawn up by PS 659 Jeffrey Hughes, likewise featuring a green stripe, were found under the mattress of accused's bed. In his statement, the accused denies that these belonged to him and states that he shared the room with another two persons. This latter detail was confirmed by PC 759 Alan Mercieca, who was one of the police officers conducting the search in accused's room. None of the finger marks developed on five of the said sachets matched those of accused. The Court notes that although accused shared his room with third parties and although none of the finger marks on the said sachets were those of accused, yet these were found underneath the mattress of his bed and also featured the green stripe as the sachets found on his person and underneath the vehicle. There is no doubt therefore that accused made use of such plastic sachets.

It is clear to the Court that accused's reply when questioned about the empty plastic self-sealable sachets that he was carrying is not credible. It is common knowledge that self-sealable sachets are normally used in the sale of drugs. In view of the number of sachets containing cannabis grass in possession of the accused, in addition to the cannabis resin sticks in his possession, the manner in which the cannabis grass was divided in said sachets, the fact that accused also had empty self-sealable plastic sachets on his person, that there was no reason for accused to be out and about in Paceville carrying 4.18 grams of cannabis had this been solely intended for his personal use, and furthermore, in view of the number of empty self-sealable sachets found in his room of which he clearly made use, having been found in possession of the same self-sealable sachets, the Court cannot but conclude to the degree required by law that accused was in possession of said substances in circumstances denoting that these were not intended for his exclusive use.

Accordingly the Court finds that the first two charges proffered against the accused have been proved to the degree required by law.

As regards the third charge, which refers to the aggravating circumstance of having committed these offences in or within 100 metres of a place where young people habitually meet, it clearly results that these offences were committed in Paceville, which is certainly a place where young people normally meet. Thus, such aggravating circumstance also results to the degree required by law.

Considers further that:

For the purpose of the punishment to be inflicted, the Court took into consideration the serious nature of the offences of which accused is being found guilty, the amount of cannabis found in his possession and that in terms of the second proviso to Section 22(2)(b) of Chapter 101 of the Laws of Malta, the punishment is to be increased by one degree.

On the other hand, the Court is also taking into consideration the clean criminal record of accused.

Conclusion

For these reasons, the Court after having seen Sections 8(a) and 8(d), 22(1)(a), 22(2)(b)(i) and the second proviso to Section 22(2)(b) of Chapter 101 of the Laws of Malta, Regulation 9 of Subsidiary Legislation 101.02 and Sections 17(b) and (f)

of Chapter 9 of the Laws of Malta, finds the accused guilty of the first, second and third charges brought against him and condemns him to **ten (10) months effective imprisonment** – from which term one must deduct the period of time during which the person sentenced has been detained under preventive custody in connection with the offences of which he is being found guilty by this judgement – 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 the expenses relating to the appointment of expert Scientist Godwin Sammut, amounting to the sum of one hundred, eighty eight Euro and sixty one cents (€188.61), the expenses relating to the appointment of fingerprint expert PS 659 Jeffrey Hughes, amounting to the sum of one hundred fifty eight Euro and seventeen cents (€158.17) and the expenses relating to the appointment of expert Joseph Mallia, amounting to the sum of five hundred and twelve Euro and ninety seven cents (€512.97), totalling such expenses to the sum of eight hundred and fifty nine Euro and seventy five cents (€859.75).

The Court orders the destruction of Documents TM, TM1 and TM2, once this judgement becomes final and definitive, under the supervision of the Registrar, who shall draw up a *proces-verbal* documenting the destruction procedure. The said *proces-verbal* shall be inserted in the records of these proceedings not later than fifteen days from the said destruction.

Natasha Galea Sciberras
Magistrate