



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

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

Case Number: 21/2018

Today, 11th July 2018

**The Police
(Inspector Nikolai Sant)**

VS

**Daniel Hæggløv
Norwegian Passport No 28838159**

The Court,

After having seen the charges brought against the accused Daniel Hæggløv of 31 years, son of Owe and Reidun nee` Skjerven, born in the Lærdel, Norway on 23rd May 1986, residing at Flat 5, Velpa Court, Merkis Zimmerman Barbaro, Sliema, holder of Norwegian Passport bearing No 28838159;

Charged with having on the night between the 15th and 16th of February 2018 on these 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 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 authorization issued by the Chief Government Medical Officer in pursuance of the provisions of paragraph 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 (GN 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, and this in breach of the 1939 Regulations of the Internal Control of Dangerous Drugs (GN 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;
3. Had in his possession the psychotropic and restricted drug (ecstasy) without a special authorisation in writing by the Superintendent of Public Health, in breach of the provisions of the Medical and Kindred Professions Ordinance, Chap 31 of the Laws of Malta and the Drugs (Control) Regulations, Legal Notice 22 of 1985 as amended, which drug was found under circumstances denoting that it was not intended for his personal use;
4. 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;
5. Carried a knife or cutting or pointed instrument of any description without a license or permit from the Commissioner;
6. Disturbed the public good order or the public peace;
7. Uttered insults or threats to the detriment of Kristoff Van Der Stichel.

And also for having on these Islands on 16th February 2018 and the previous years:

8. 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;
9. 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 authorization issued by the Chief Government Medical Officer in pursuance of the provisions of paragraph 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 (GN 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, and this in breach of the 1939 Regulations of the Internal Control of Dangerous Drugs (GN 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta;
10. Had in his possession the psychotropic and restricted drug (ecstasy) without a special authorisation in writing by the Superintendent of Public Health, in breach of the provisions of the Medical and Kindred Professions Ordinance, Chapter 31 of the Laws of Malta and the Drugs (Control) Regulations, Legal Notice 22 of 1985 as amended.

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

Having heard the evidence adduced 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) and in virtue of subsection two (2) of Section 120A of the Medical and Kindred Professions Ordinance (Chapter 31 of the Laws of Malta), for this case to be heard by this Court as a Court of Criminal Judicature;

Having heard final oral submissions by the parties.

Considered that:

The facts which led to this case were as follows: On the night between 15th and 16th February 2018, whilst on duty in Paceville, PC 1391 Matthew Camilleri and PC

681 Noel Muscat were approached by a certain Mr. Stivala, who worked as a security guard at Stiletto and who informed them that a patron at Footloose Club had threatened a Belgian national with a knife over money issues. In terms of this report, the incident happened at Footloose Club. The two officers entered the said club accompanied by the Belgian national and the latter indicated the accused as the person who allegedly had threatened him. They noted that the accused was sitting at the back of the club, with another two men. As soon as he was requested to step outside by the officers, he cooperated immediately. The said officers conducted a frisk search on the accused and found a pocket knife as well as a container with pink pills (eight and a half pills according to PC 681) and a sachet containing a white substance in one of his jacket pockets. Accused also handed the officers a sachet containing what appeared to be cannabis grass.¹ A search was later conducted at accused's residence. According to Inspector Nikolai Sant, a crusher, a red box containing digital scales, two sachets containing a white substance, a pink pill, several plastic bags and a butterfly knife were found at his residence.²

In terms of the report drawn up by expert Scientist Gilbert Mercieca, he was handed the following documents for analysis:

- i) A plastic bag containing eight and a half pink pills (NS9 A), half a pink pill (NS9 B), a plastic bag containing herbal material (NS9 C), two plastic bags containing white powder (NS9 D-E), small electronic scales (NS9 F) and a metal crusher (NS9 G);
- ii) A small knife with a wooden handle (NS10);
- iii) 'Bacofoil' plastic bags without corners, which contained traces of a herbal material (NS11 A), a roll of plastic bags, containing traces of herbal material (NS11 B), the corner of a plastic bag containing traces of white powder (NS11 C) and a small knife with a black, metal handle (NS11 D).

The said expert concluded as follows:

- i) Extracts taken from the pills marked NS9 A-B resulted positive for 3,4-MDMA. Eight whole pills and one pill divided in two were identified;

¹ *Vide* testimony of PC 1391 Matthew Camilleri, a fol. 27 to 32 of the records and of PC 681 Noel Muscat, a fol. 33 to 36 of the records.

² A fol. 48 of the records.

- ii) Extracts taken from exhibit marked as NS9 C resulted positive for cannabis. This substance weighed 1.009 grams, with a purity to *Tetrahydrocannabinol* of 5.05%;
- iii) Extracts taken from exhibits marked as NS9 D-E resulted positive for cocaine. The substance weighed a total of 0.7623 grams, with a purity of 8.18% to cocaine;
- iv) Swabs taken from exhibits marked as NS9 G and NS11 A resulted positive for cannabis;
- v) Swabs taken from exhibits marked as NS9 F and NS11 B resulted positive for cocaine;
- vi) Swabs taken from exhibits marked as NS11 C-D resulted positive for cocaine and cannabis;
- vii) A swab taken from exhibit marked as NS10 resulted negative for controlled substances.

Accused released a statement to the police on 16th February 2018, after he was cautioned in terms of law and given the right to seek legal advice prior to his interrogation and to have his lawyer present during said interrogation, which rights he refused.³ He also chose to take the witness stand during these proceedings.⁴

Considered further that:

By means of the first three charges, accused is being charged with possession of the cannabis plant, cocaine and ecstasy pills in circumstances denoting that these were not intended for his personal use.

The accused is contesting these charges and whilst admitting that such substances were found in his possession, he contends that these were merely intended for his personal use.

³ The statement is exhibited a fol. 14 to 16 of the records.

⁴ A fol. 77 to 88 of the records.

As is clear from the evidence adduced, namely, the testimony of the two police officers who proceeded to arrest the accused and the report drawn up by expert Gilbert Mercieca, on the night in question, whilst in Paceville, accused was found in possession of a sachet containing cocaine, a sachet containing cannabis grass and eight and a half ecstasy pills. Later on during a search conducted in his residence, further substances and drug-related items were found. The Court notes in respect of this latter search, that the Prosecution did not produce any of the police officers who were actually present for this search and who therefore retrieved the items found. Indeed, the items found at accused's residence are indicated by Inspector Nikolai Sant, who does not seem to have been present during said search and in the report drawn up by PS 790 Nathan Zerafa, who states that he was not involved in the relevant investigation, but merely in the drawing up of the said report.

Yet in his statement, with reference to the items in evidence bag S01344368 containing “*9 and a half pink pills suspected ecstasy with 9 of them being allegedly found on your body inside Footloose along a measuring scale, a crusher, some suspected cannabis grass and two sachets suspected cocaine which were eventually found at your Sliema address*”, accused states that the grinder, the scales, the cash, half a gram of cocaine and half an ecstasy pill were found at his apartment, thus confirming that the latter drug-related items and substances were indeed found at his residence. He likewise confirms that nine pills were found in his possession in Paceville and states that he had bought them just an hour before his arrest, not for the night in question, but for his personal use. He states that he bought ten pills for €70 and that he bought this amount as this was a good price. He further states that he has been using drugs ever since he came to Malta – and in another part of his statement he states that he has been in Malta for almost two and a half years – and that he uses “*hash, cocaine and sometimes ecstasy*”.

Accused also confirms that €300 were found in his possession in Paceville⁵, that he liked to spend money when going out, that he goes to strip clubs and normally uses up his money, and he later states that it is normal for him to go out with such an amount of money and that he does not necessarily spend it. As to the scales, he explains “*I have a scale so that I don't get ripped off*”.

At no point was the accused asked about the plastic bags found at his residence.

⁵ These were not exhibited by the Prosecution during these proceedings.

Similarly, in his deposition during these proceedings⁶, accused states that he uses drugs, that sometimes he parties for two to three days and sometimes even for four days, two to three times a month and that he buys drugs in bulk to obtain it at a cheaper price and also to avoid going back and forth to buy it. He states that he had been taking cocaine in small doses every day for the last couple of months before his arrest, between one and three grams of cocaine a day and that he smoked between five and ten grams of cannabis daily. He did not consume ecstasy daily but on special occasions, but he had such an amount of ecstasy pills in his possession because the more he bought, the cheaper he obtained it. At the time, he was also heading to a girlfriend's place and if he remembered well, he had been on a partying spree, when he was arrested. He explains that ecstasy pills cost between €10 and €15 each, but when he bought ecstasy in bulk, he paid €6 for each pill. He further explains that he had scales in his possession as he did not want to be taken advantage of when he acquired drugs, that he wanted to know the exact weight of the substances and that he weighed every joint he smoked. If alone, he would use about half a gram of cannabis in one joint, but if there were three or four people splitting a joint, he would use 0.8 grams to a gram of cannabis, depending on whose company he would be in. If he was not working, he would smoke a joint an hour. He worked at an IGaming company for almost three years and earned about €2000 net a month.

As regards the cocaine and cannabis grass, the Court notes that one sachet of each substance was found in accused's possession in Paceville and therefore there is no evidence to suggest that these were not for accused's personal use. Whereas Inspector Nikolai Sant states that another two sachets containing white powder were found at accused's residence and the report drawn up by PS 790 also indicates two sachets of white powder, and thus three sachets in all, the report drawn up by expert Gilbert Mercieca indicates merely two sachets of cocaine. The police officers who conducted the frisk search confirm that accused was in possession of one sachet containing white powder and accused states that he had half a gram of cocaine at home. In any case, considering also the amount of cocaine which accused confirms to have had at his residence, this is not such that is not normally associated with personal use. Indeed, according to expert Mercieca, the cocaine amounted to a total of 0.7623 grams. As for the ecstasy pills found in accused's possession in Paceville – eight and a half pills according to PC 681 – although such an amount of pills rightly tends to raise suspicion as to the intention of the possessor, yet in the present case, the Court is not satisfied that there is sufficient evidence to the degree required by law to lead it to conclude that these

⁶ A fol. 77 to 88 of the records.

were not intended for accused's personal use. *A tempo vergine* in his statement accused states to have bought these pills about an hour prior to being arrested and considering that only half a pill was found in accused's residence and furthermore, that Paceville is certainly not short of drug suppliers, the Court finds nothing implausible about this part of accused's version, or about his explanation that he had bought ten pills at a cheaper price. Likewise, the accused's version about the scales found at this residence is plausible, considering also his version that he weighed each joint he smoked and his precision at indicating the weight of each joint, which also depended on whether he smoked it alone or with others. As regards the bags found at accused's residence, the Court notes that apart from the fact that the Prosecution did not bring forward any witness to confirm that these were actually found at such residence, and neither was the accused questioned about such bags, however even if, for the sake of argument alone, it had to consider the bags as admissible evidence, there is nothing to indicate that the accused made use of these bags in order to deal in drugs, rather than using them for drugs which he himself consumed, given the consumption habits of accused and that a corner of one of the plastic bags was indeed found to contain traces of cocaine and cannabis. The Court is also taking into consideration that accused's salary would not have been sufficient to sustain his consumption habits, as he describes them in his testimony, in particular his use of cocaine, but on the other hand, it is also taking into account the fact that he states to have started consuming cocaine daily a couple of months prior to his arrest.

After having taken into consideration all these circumstances, the Court finds that the Prosecution has failed to prove the first three charges as proffered against the accused, beyond any reasonable doubt.

By means of the fourth charge, the accused has also been charged with the aggravating circumstance of distance. Clearly once the accused is not being found guilty of possession of drugs in circumstances denoting that these were not intended for his personal use, he cannot be found guilty of this charge.

By means of the fifth charge, accused is being charged with carrying a knife or a cutting or pointed instrument without a license or permit from the Commissioner of Police. Although it results clearly that accused was found in possession of a knife in Paceville, yet the Prosecution failed to prove that accused did not have a license or permit as required by law. Thus, this charge has not been proved to the degree required by law.

In terms of the sixth charge, the accused is being accused of disturbing the public good order or the public peace. In this regard, Kristoff Van Der Stichel states on oath that on a particular night, about one month prior to his testimony on 20th March 2018, whilst he was at Footloose in Paceville, the accused called him and they walked outside. Once outside, accused pointed a knife at him and told him that he had to pay him €450 (he then states he asked him for €400 and later that the amount was €350 or €400) in connection with a renting deposit. He states that he told accused that he would pay him and he then went to call his friends. According to the witness, a number of security guards came over from Stiletto and that once his friends arrived, he went to the police. On his part, in his statement, accused admits that he threatened the witness and that he had told him to pay what he owed, as a favour to a friend. He states that he did not threaten him with a knife but he told him that he had a knife.

As held in the judgement decided by the Court of Criminal Appeal in the names **II-Pulizija vs Rocco D’Alessandro**, dated 20th May 2013:

“ ... din il-Qorti tara li, bhala regola, ikun hemm il-kontravvenzjoni kontemplata fil-paragrafu (dd) tal-Art. 338 tal-Kap. 9 meta jkun hemm ghemil volontarju li minnu nnifsu jew minhabba c-cirkostanzi li fihom dak l-ghemil isehh inissel imqar minimu ta' inkwiet jew thassib f'mohh persuna (li ma tkunx l-akkuzat jew imputat) dwar l-inkolumita' fizika ta' persuna jew dwar l-inkolumita' ta' propjeta', kemm b'risultat dirett ta' dak l-ghemil jew minhabba l-possibilita' ta' reazzjoni ghal dak l-ghemil. Naturalment dawn ic-cirkostanzi iridu jkun tali li oggettivament inisslu l-imsemmi inkwiet jew thassib.”

This contravention as contemplated in Section 338(dd) of Chapter 9 of the Laws of Malta is one against public order and therefore, requires a degree of public disturbance, in terms of the judgement above quoted. On the basis of the evidence adduced, it is clear that Van Der Stichel was not accompanied by his friends during his conversation with accused, as he states that he then went to call them. It is not however clear whether the security guards at Stiletto actually witnessed the altercation as although Van Der Stichel states that a number of security guards went over from Stiletto, none of them were summoned as witnesses during these proceedings. Although Mr. Stivala, one such security guard, was initially the one who alerted the police to the incident in question, said security guard did not testify during these proceedings and thus, it is not clear whether he had informed the police on the basis of what he had actually seen or what he had been told by Van Der Stichel. In any case, it results that the police went inside Footloose to find accused, accompanied by Van Der Stichel, and the Court deems it unlikely that

accused would have been allowed inside the club again, had the security guards actually seen him holding a knife. There is therefore no evidence that the conversation or altercation between accused and Van Der Stichel brought about any public disturbance. For these reasons, the Court deems that this charge has not been proved to the degree required by law.

By means of the seventh charge, the accused is being charged with having uttered insults or threats to the detriment of Kristoff Van Der Stichel. As stated above, whilst Van Der Stichel states that accused pointed a knife at him, accused admits to having threatened Van Der Stichel, telling him that he had a knife in his possession, whilst asking him to pay up a sum of money. Either way, accused's version is clearly sufficient to lead the Court to conclude that this charge has been proved to the degree required by law.

Finally, by means of the eighth, ninth and tenth charges, the accused has been charged with possession of the cannabis plant, cocaine and ecstasy for personal use and this with reference to 16th February 2018 and the years prior to this date. It is clear from the evidence adduced, in particular the testimony of the police officers who conducted the frisk search on the accused and accused's statement, that these charges result to the degree required by law.

Considered further that:

For the purposes of the punishment to be inflicted, the Court took into consideration the clean criminal record of the accused and that he cooperated with the police to such an extent that the Prosecution declared that accused should benefit from the provisions of Section 29 of Chapter 101 of the Laws of Malta and its corresponding section in Chapter 31 of the Laws of Malta.

As regards Chapter 31 of the Laws of Malta, the Court however notes that Section 120A(2B) of said Chapter, renders Section 29 of Chapter 101 of the Laws of Malta merely applicable to the offences mentioned in Section 120A(2A) of Chapter 31, namely, the offences of selling or dealing in a drug mentioned in Part A of the Third Schedule, promoting, constituting, organising or financing a conspiracy for the purposes of selling or dealing in such drug, possession of a drug in circumstances denoting it was not intended for the exclusive use of the offender and the offences in sub-sections (IC) and (ID). In this case, the accused is being found guilty of possession of ecstasy for personal use and therefore, Section 29 of Chapter 101 is inapplicable in this case. This is not the case however with respect

to substances regulated under Chapter 101 of the Laws of Malta, as Section 29 does not make any such distinction between offences.

The Court is also taking into consideration the amount of drugs found in possession of the accused, in particular ecstasy pills. On the basis of the evidence adduced, however, it is clear to the Court, that accused is a heavy drug user and that he requires support and assistance to deal with his drug problem.

Conclusion

For these reasons, the Court after having seen Parts IV and VI, Sections 8(d), 22(1)(a), 22(2)(b)(ii) and 29 of Chapter 101 of the Laws of Malta, Regulation 9 of Subsidiary Legislation 101.02, Sections 40A, 120A(1)(a) and 120A(2)(b)(ii) of Chapter 31 of the Laws of Malta and Regulation 3(1) of Legal Notice 22 of 1985 and Sections 17 and 339(1)(e) of Chapter 9 of the Laws of Malta, finds accused Daniel Hæggløv not guilty of the first, second, third, fourth, fifth and sixth charges brought against him and acquits him thereof, but finds him guilty of the seventh, eighth, ninth and tenth charges and in respect of the eighth, ninth and tenth charges, by application of Section 7 of Chapter 446 of the Laws of Malta, places him under a Probation Order for a period of three (3) years from today, subject to the conditions indicated in the said Order, which Order shall form an integral part of this judgement.

In respect of the seventh charge, the Court is condemning the person sentenced to a fine (*ammenda*) of fifty five euro (€55). Furthermore, in terms of Section 383 of Chapter 9 of the Laws of Malta, it is binding Daniel Hæggløv not to approach or communicate in any way, directly or indirectly, with Kristoff Van Der Stichel against a recognizance of seven hundred euro (€700), which recognizance shall be valid for a period of twelve months from today.

The Court explained to the person sentenced the legal consequences should he fail to abide with the conditions of the Probation Order or should he commit any other offence during the operative period of the Probation Order.

In terms of Section 533(1) of Chapter 9 of the Laws of Malta, the Court condemns the person sentenced to the payment of expenses relating to experts appointed by the Court during these proceedings, namely, the expenses relating to the appointment of expert Scientist Gilbert Mercieca, amounting to the sum of nine

hundred, seventy three Euros and fifty cents (€973.50)⁷, which costs shall be paid by the person sentenced within three (3) months from today.

Orders the destruction of Documents NS 9 and NS 11, 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 process verbal shall be inserted in the records of these proceedings not later than fifteen days from the said destruction.

Natasha Galea Sciberras
Magistrate

⁷ The Court notes that in terms of its decree of 28th March 2018, it appointed expert Gilbert Mercieca to analyse Documents NS 9 and NS 11, but not Document NS 10 (consisting of a knife), which was nonetheless analysed by said expert. Accordingly, it is deducting from the total costs of €1062, indicated in expert Mercieca's report, the sum of €75 (namely the cost of one sample analysis by GCMS) and 18% VAT, totalling to €88.50.