

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

Magistrate Dr Josette Demicoli LL.D

The Police

(Inspector Leeroy Balzan Engerer)

(Inspector Matthew Spagnol)

vs

Mohamed Hussein Abdi

Case No: 135/2018

Today 28th February 2019

The Court,

Having seen the charges brought against **Mohamed Hussein Abdi**, holder of Maltese residence permit number 155698(A)

Accused of having on the 10th November 2018, at around 04:00hrs, in St George's Road, in the locality of St Julian's:

1. had in his possession the whole or any portion of the plant cannabis, 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;
2. committed these offences in, or within 100 metres of the perimeter of, a school, youth club or centre, or such other place where young

people habitually meet in breach of article 22(2) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

The Court is requested to treat Mohamed Hussein Abdi as a recidivist in terms of Articles 49 and 50 of Chapter 9 of the Laws of Malta.

The Court is also requested to sentence the accused to the payment of the costs incurred in connection with the employment in the proceedings of any expert or referee, and this in terms of Article 533 of Chapter 9 of the Laws of Malta.

Having seen the Attorney General's order in terms of Article 22(2) of Chapter 101 of the Laws of Malta.

Having heard witnesses.

Having heard oral submissions.

Having seen all the acts and documents of the case.

Considers

The accused is being charged with having, on the 10th November 2018 at around 04:00hrs, in his possession the whole or any portion of the plant cannabis which drug was found under circumstances denoting that it was not intended for his personal use; with the aggravating circumstance of the distance and of being a recedivist.

PS 850 Stephen Micallef testified¹ that at about 04:00hrs in the morning of the 10th November 2018 he was patrolling St George's Road in St Julians together with PC 573 and Inspector Bernardette Valletta and they noticed a male person, without a shirt, who was heavily drunk and was causing some problems with other drunken people. They asked for his details and he did not have any documents. Hence, they decided to detain him until his details were confirmed. They took him to the Police van and carried out a frisk search and nothing resulted out of it. Then, PC 573 and himself escorted the accused to St Julians Police Station. PC 573 was the designated driver and the witness sat at the back alongside

¹ On the 22nd November 2018

the accused who was handcuffed at the back. PS 850 stated that he noticed the accused wriggling about in the vehicle and from underneath his clothes he produced a small bag. The witness informed Pc 573 of this and he also noticed the bag. They continued to the station. Upon arrival, they took the accused out and took him to the Police Station and once they were trying to get hold of the handcuffs he was holding another white bag in his hands. The accused was ordered to remove the bag from his hands, which he did, and *it resulted that there were two (2) other sachets*. The witness removed the handcuffs and informed the accused that he was under arrest not just for failing to provide an identity card but also because he was in possession of illegal substances *and I had noticed him that he threw something in the car. Meanwhile Pc 573 searched the car and found at this black bag which contained approximately eleven (11) sachets*. There were in total 13 sachets found. Thus, the sergeant proceeded to a strip search once inside the Police station but nothing irregular was noticed. Then they left the accused at the Station. With regards to the sachets found on the accused's person, the said accused admitted that they were for his personal use and told the witness that he did not know anything about the black bag which contained the majority of the drug. The black bag was hidden at the back in his underpants. The witness stated that he elevated the alleged substances, sealed them in an envelope and handed them over to the first watch duty, PS 249, to be handed over to the Inspector. Upon being shown Dok EM, an envelope containing sachets and a black bag and a white bag the witness recognized the envelope and contents therein. He explained further *The black bag contained the majority part of the sachets found, he took out once inside the vehicle, once he was being escorted and he left it in the vehicle*. This bag was in the accused's underpants at the back. The white bag contained two or three sachets and he was holding it in his hands and it was elevated from his hand. He confirmed that the bags in Dok EM are the same bags which were seized by him. The paper with some numbers on it indicates the weight of the sachets containing the alleged substance which were weighed by the witness in the presence of the accused at the Drug Squad Offices. The witness confirmed the PIRS report which was drawn up by him².

² Dok MS1 at fol 7 of the cats

PC 573 Nicholas Bonnett testified³ that while he was on duty on the 10th November 2018 at around 04:00hrs near Burger King in Paceville, the accused was brought to where he was stationed and he was already under arrest. He was not present during the accused's arrest. On the way to the Police station the accused was moving at the back of the car and the sergeant was seated near the accused. The sergeant noticed that the accused had taken out a black bag and there was some substance. The sergeant informed PC 573 of what was happening and the witness in turn looked back quickly and saw the bag and he kept driving. In the bag there was a brown and green substance.

Inspector Matthew Spagnol testified⁴ that on the 10th November 2018 was informed by PS 850 that an arrest had been performed at around 04:00hrs in Paceville and the suspect was a certain Mohamed Hussein Abdi. The accused eventually released a statement⁵.

The expert **Joseph Mallia** took a copy of the accused's fingerprints and palm prints⁶. He presented these documents. **PC 169 Jurgen Schembri** testified⁷ that he examined Dok EM to try to examine for possible fingermarks development on the document. He carried out a visual examination and did not find any fingermarks and then carried out two chemical examinations and a final visual examination but no fingerprints were developed⁸.

Godwin Sammut⁹ , the court-appointed expert, testified that he examined

an envelope marked as S/B/451/2018 which was handed over to him by Andre Azzopardi. This exhibited was given laboratory code number 268_18_01. He performed the analysis on the contents of the envelope which consisted of a piece of black plastic, a piece of transparent plastic and thirteen sachets containing each green substance. In his report he concluded :

³ On the 5th December 2018

⁴ On the 5th December 2018

⁵ Dok MS4 at fol 11 of the acts

⁶ On the 3rd January 2019 – Dok MHA1 and MHA2

⁷ On the 16th January 2019

⁸ Dok JS at fol 54 of the acts of the case

⁹ Testified on the 5th December 2018

From the results obtained, the Court Expert, Godwin Sammut, can conclude that:

- (a) Tetrahydrocannabinol was found in the extracts taken from the green substances that are in the exhibit labelled as S/B/451/2018. The total weight of the green substances is 9.35g. The purity of THC was approximately 12%. Cannabis is controlled under part III of Chapter 101 of the Laws of Malta.*
- (b) According to the Malta Country Drug Report 2017, the drug value of herbal cannabis was between €10 and €28 per gram. This gives a total of €93.50 and €261.80.*

Mohamed Hussein Abdi, the accused, testified¹⁰ that on the 10th November 2018 he went out with some colleagues. Some of them were not allowed to go to Clubs so they ended up in a bar. Whilst in an Italian bar the accused asked a friend of his to smoke weed and then some individual went in and sold to them some marijuana totalling two grams. The security went and without any question pointed fingers at the accused and asked why was he going out and the situation escalated. He had an argument with the security person. Suddenly the Police showed up and without even telling him what happened they handcuffed him. They asked whether he had any identification document which he said he did because he had a copy of his refugee's status card. Then, he was taken to the Police station. His papers, house keys and phone were taken away from him. At the Police station they asked him whether he had anything illegal on him, he replied that he had two grams of marijuana for personal use which was in a white bag. Then, they took him downstairs and handcuffed him and he had to wait for the Inspector. But when he got back up instead of 2 grams there were 14 grams. He saw a black bag which the police testified was found in the car. This black bag with its contents is not his.

In cross-examination he admitted that before his arrest he had been drinking. He contested the allegation that he was arrested because he was drunk. That day he went to Paceville at about 10.30p.m and stayed till 04:00a.m. He went into an Italian Bar in front of Havana Club.

¹⁰ On the 6th February 2019

Considers

The first charge

The accused is being charged with possession of the cannabis plant in circumstances denoting that it was not intended for his personal use

The accused admits that he had two sachettes which he states were for his personal use but otherwise denies that he had in his possession the black plastic bag containing the other eleven sachets.

As was stated in the case in the names of *Il-Pulizija vs Marius Magri*¹¹:

“Illi dawn il-kazijiet mhux l-ewwel darba li jipprezentaw certa diffikolta’ biex wiehed jiddetermina jekk id-droga li tkun instabet ckienetx intiza ghall-uzu personali jew biex tigi spaccjata. Il-principju regolatur f’ dawn il-kazijiet hu li l-Qorti trid tkun sodisfatta lil hinn minn kull dubbju dettat mir-raguni w a bazi tal-provi li jingabu mill-prosekuzjoni li l-pussess tad-droga in kwistjoni ma kienx ghall-uzu esklussiv (jigifieri ghall-uzu biss). Prova, ossia cirkostanza wahda f’ dan ir-rigward tista’, skond ic-cirkostanzi tal-kaz tkun bizzejjed. (Ara App.Krim. Il-Pulizija vs Carmel Degiorgio” 26.8.1988) Meta l-ammont tad-droga ikun pjuttost sostanzjali, din tista’ tkun cirkostanza li wahedha tkun bizzejjed biex tissodisfa lill-Qorti li dak il-pussess ma kienx ghall-uzu esklussiv tal-hati (Ara Appell. Kriminali; “Il-pulizija vs Carmel Spiteri” 2.9.1999)

Illi pero’ kif gie ritenut minn din il-Qorti, kif presjeduta, kull kaz hu differenti mill-iehor u jekk jirrizultawx ic-cirkostanzi li jwasslu lill-gudikant ghall-konvinzjoni li droga misjuba ma tkunx ghall-uzu esklussiv tal-akkuzat, fl-ahhar mill-ahhar, hija wahda li jrid jaghmilha l-gudikant fuq il-fattispecje li jkollu quddiemu w ma jistax ikun hemm xi hard and fast rule x’inhuma dawn ic-cirkostanzi indikattivi. Kollox jiddependi mill-assjem tal-provi u mill-evalwazzjoni tal-fatti li jaghmel il-gudikant u jekk il-konkluzzjoni li jkun wasal ghaliha l-gudikant tkun perfettament raggungibbli bl-uzu tal-logika w l-bon sens u bazata fuq il-fatti, ma jispettax lil din il-Qorti li tissostitwiha b’ohra anki

¹¹ App Krim. 12/05/2005

jekk mhux necessarjament tkun l-unika konkluzjoni possibbli. (App.Krim. Il-Pulizija vs Brian Caruana 23.5.2002)”.

There is no doubt as to the contents of the sachets upon the expert's examination and the report which was mentioned previously in this judgment, that is that they contained cannabis.

This Court also remarks that the amount of cannabis 9.35 g which was in the packet Dok EM is not a negligible amount. There were 13 sachets, two of which were found in a white plastic bag and the other 11 sachets were found in a black plastic bag as also evidenced by the photos in PC 169 Jurgen Schembri's report. The accused admits that two grams found in the white bag were his and intended for his personal use but denies that the rest of the sachets were not his.

The accused's version of events is clearly in contrast with the version of events provided by the police officers involved in his arrest. Whilst accused claims that the black bag was not his and practically he is suggesting that this bag was added on by the police, whilst admitting to be in possession of 2 grams, the police officers version is totally different. As pointed out already, **PS 850 Stephen Micallef** testified¹² that at about 04:00hrs in the morning of the 10th November 2018 he was patrolling St George's Road in St Julians together with PC 573 and Inspector Bernardette Valletta and the accused was noticed, without a shirt, heavily drunk and causing some problems with other drunken people. They asked for his details and he did not have any documents. Hence, they decided to detain him until his details were confirmed. They took him to the Police van and carried out a frisk search and nothing resulted out of it. Then, PC 573 and himself escorted the accused to St Julians Police Station. PC 573 was the designated driver and the witness sat at the back alongside the accused who was handcuffed at the back. PS 850 stated that he noticed the accused wriggling about in the vehicle and from underneath his clothes he produced a small bag. The witness informed PC573 of this and he also noticed the bag. They proceeded on their way to the station. Upon arrival, they took him out and took him to

¹² On the 22nd November 2018

the Police Station and once they were trying to get a hold of the handcuffs he was holding another white bag in his hands. He ordered him to remove the bag from his hands, which he did, and *it resulted that there were two (2) other sachets the sergeant noticed that the accused threw something in the car. Meanwhile Pc 573 searched the car and found the black bag which contained approximately eleven (11) sachets.* **PC 573** testified that on the way to the Police station the accused was moving at the back of the car and the sergeant was seated near the accused. The sergeant noticed that the accused had taken out a black bag and there was some substance. The sergeant informed the witness of what was happening and the witness in turn looked back quickly and saw the bag and he kept driving. In the bag there was a brown and green substance.

Despite the accused's assertions, the Court sees no reason to refute PS850 and PC 573 version of events.

It is to be noted that in his oral submissions, the accused's lawyer stated that the fact that the accused was drunk does not mean that he should be found guilty. Undoubtedly, the Court is in agreement with such an assertion. However, the Court is finding the accused guilty because the Prosecution has managed to prove beyond reasonable doubt that all the thirteen sachets belonged to the accused and that same were not intended for the accused's personal use. This emerges from the fact that it is more than evident to this Court that the accused had hidden the white bag and black bag containing the sachets with cannabis in his underpants. When he was handcuffed with his hands at the back and being escorted to the St Julian's police station and he found himself at the backseat he tried to get rid of the drugs. Contrary to what has been submitted by the defence's lawyer, it was possible for the accused to take out the bag from his underpants and leave them on the car's seat. Also contrary to the defence's submission the police officers have mentioned the black bag and PS 850 has identified in Court the envelope which he had sealed which contained the two bags and which he had handed over and finally exhibited in this case. Having established that all of the sachets pertained to the accused, it is to be established whether these were not intended for his personal use. The Court is sure that they were not, particularly because the 13 sachets containing the drug weighed approximately the same. Moreover, the explanation given by the accused that he was in a Bar talking with his friend and wanting to

smoke weed and out of nowhere and by pure coincidence a man sells to them cannabis is not credible at all.

The defence also emphasized that there no fingerprints on the sachets and this means that they were not his. The Court disagrees. The absence of fingerprints on the bags and sachets does not mean that they did not belong or were not in the accused's possession. In this case, as has been previously pointed out, it has emerged that all the sachets found in the white and black bag were in the accused's possession and on his person.

The Court cannot but conclude to the degree required by law that the accused was in possession of said substances in circumstances denoting that these were not intended for his exclusive use.

Second charge

As regards the second 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, in front of Havana Club, which is certainly a place where young people normally meet. Thus, such aggravating circumstance also results proven to the degree required by law.

Recidivism

Notwithstanding the fact that the accused has been charged with recidivism the Prosecution has not exhibited a judgment and thus the accused cannot be found guilty.

Considers further that:

For the purpose of 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 criminal record of accused which shows that the accused has already been found guilty of charges similar to the present case.

Conclusion

For these reasons, the Court after having seen Sections 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 finds the accused guilty of the two charges brought against him 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 under preventive custody in connection with the offences of which he is being found guilty by this judgement – and a **fine (*multa*) of eight hundred euro (€800)**. The Court is not finding the accused guilty of recidivism and thus he is being acquitted from same.

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 expert in these proceedings, namely the expenses relating to the appointment of expert Scientist Godwin Sammut, amounting to the sum of two hundred and ninety-three euro and seventy seven cents (€293.77)

The Court orders the destruction of Document EM 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.

Dr Josette Demicoli
Magistrate

