



MALTA

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

**MAGISTRATE DR.
ANTONIO MICALLEF TRIGONA**

Sitting of the 23rd July, 2004

Number 176/2000

The Police
(Inspectors Mario Bonello, Sandro Gatt and Sandro Zarb
– Immigration Officer)

vs

Brian Patrick Mawdsley

The Court,

Having seen the charges brought against the accused Brian Patrick Mawdsley son of Gavin and Gillian nee Greenwood born Zimbabwe and residing Swieqi, holder of South African passport number Z A443382, accused:

- with having in these Islands on the 28th July 2000 and during the previous months had in his possession restricted and psychotropic medicine when he was not duly authorized according to Regulation 5(1) of Legal

Notice 22 of 1985, as subsequently amended, and 40A and 120A and the Third Schedule of the Medical and Kindred Profession Ordinance, Chapter 31 of the Laws of Malta, and Article 16 of Act V of 1985 as amended, in circumstances which show the drug was not for his own exclusive use.

The Court being requested that besides awarding punishment according to law declares the mentioned Brian Patrick Mawdsley as a prohibited immigrant and issue a removal order against him in terms of section 15 of Chapter 217 of the Laws of Malta.

Having seen Attorney General's note in terms of Section 120A subsection 2 that this Court sitting as a Court of Criminal Judicature adjudge the case.

Examined and heard the evidence.

Seen all the acts and documents submitted.

Considers:

That the case under review is solely concerned with possession of restricted and psychotropic medicine, which the prosecution alleges, belonged to the accused and was not for his exclusive use.

That the police discovered the drug in question when they had carried out a search of the apartment in which the accused resided and shared with two other persons. It was retrieved from a trouser pocket of a jeans which evidence shows did not belong to the accused and which jeans were in a wardrobe in one of the bedrooms which was not the one where the accused slept in.

That the search was carried out on a report, which the police had received from accuser's employer after the latter had discovered some missing computer items from his business establishment, is to this Court immaterial to the charges, which the accused has to answer for.

That although the accused chose not to give his testimony in these proceedings it clearly results that he had from the very outset refuted all claims that the drug was his.

That after carefully evaluating all the evidence this Court finds no plausible reason to make any inferences on this fact that the accused chose not to depose, more so, as the Court does not detect any shared of evidence which can or could likely lead to the conviction of the accused relative the charges on which this Court has been called to decide upon. In this context the Court observes: that no connection, be it direct or indirect, results between the trousers and the accused; that furthermore the trousers in question was not in accusers's wardrobe and neither in the bedroom which he slept in; that coupled with accused categorical denial that the drug was his there is no other evidence be it of fingerprints or any other probable evidence which connects the accused to the drugs; that the fact alone that the other flat occupants also denied that the drug was theirs cannot be taken as sound evidence that by deduction it belonged to the accused more so when it is a proved fact that the drug was neither found in a place which accused used or in trousers which belonged to him.

That on the strength of the above the Court concludes that the charges have not been proved against the accused and consequently acquits him.

< Final Judgement >

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