



MALTA

COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE
MAGISTRATE DR.
MIRIAM HAYMAN

Sitting of the 3rd February, 2015

Number. 1421/2011

The Police
Inspector Pierre Grech

VS

David Lee Rogers holder of identity card number 53577A
and British Passport Nr 204938240;

The Courts;

Having seen charges proffered against the above-mentioned **David Lee Rogers** who was accused of having on these Islands on the 22nd December, 2011 and during the preceding week:

- a. Had in his possession the psychotropic and restricted drug (mephedrone) with a special authorisation in writing by the Superintendent of the 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;
- b. Also of having had in his possession the psychotropic and specified medicine (Ketamine) without due authorisation, 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;
- c. Also of having 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 the Chapter 101 of the Laws of Malta
- d. Also committed these offences in, or within 100 metres of the perimeter of a school, youth club or centre, or other such place where young people habitually meet in breach of Article 120A of the Medical and Kindred Professions Ordinance Chapter 31 of the Laws of Malta.

Seen also that once the examination of the accused was conducted, the accused answered he was not guilty of the charges proffered.

Seen both Counter Orders issued by the Attorney General (once Godwin Sammut's report was filed, charges and Counter Order were also issued under Chapter 101 of the Laws of Malta).

Inspector Pierre Grech thus testified that after a search warrant effected by PS 891, PS 1086 and WPC 127, David Lee Rogers the accused. He thus exhibited the statement released by accused as Dok PG (folio 31), as also two mobile phones Dok PG1.

From his part **Inspector Malcolm Bondin** confirmed all rights and cautions were given to accused at Law before same released the statement produced.

PS 891 Oscar Baldacchino and **WPC 127 Carmen Gauci** testified about the search effected at the accused's residence. Thus Baldacchino testified he had, together with other police officers from the Drug Squad, executed the said search warrant. Accused was first arrested and found in possession of a small container (two) containing drugs, he described it as a bullet shape container. In his apartment at Sancho Panza Court, in his bedroom drawer, a red tin box was found containing a very small amount of plastic bags, self sealing, and yet another bag containing white substance. He added that syringes were found in the drawer, as also electric scales. Two bottles were found in his wardrobe containing traces of liquid drug. He further added that other objects as empty plastic yoghurt cup containing traces of substance, a colander in use

were also discovered in its search. A carton box parcel was also found, a plastic bag containing drugs and a plastic bag containing seeds.

WPC 127 Carmen Gauci confirmed that once accused was stopped, a fish shaped plastic bottle containing traces of a transparent liquid was found, as also a small plastic container containing white substance – these on his person.

Regarding the findings on accused's person and in his residence, **Godwin Sammut**, appointed for this purpose, exhibited his findings and thus concluded:

“

- a. **Mephedrone** and **Ketamine** were found in the extracts taken from the pipettes which are in the exhibits labelled as 410_11_01. Mephedrone is controlled by Chapter 31 of the Laws of Malta under Part 4 of the Third Schedule while Ketamine is controlled under Part B of the Third Schedule of the same Chapter;
- b. No illegal substances were detected on swabs and extracts taken from the teaspoon, spoon, wooden mortar and pestle, 4 syringes, 2 plastic containers in the form of a fish and the brown bottle which are in exhibits labelled as 410_11_01;
- c. **Mephedrone** and **Ketamine** were detected on a swab taken from the green attachment which is in the exhibit 410_11_01. Mephedrone is controlled by Chapter 31 of the Laws of Malta under Part A of the Third Schedule while Ketamine is controlled under Part B of the Third Schedule of the same Chapter ;

- d. **Mephedrone** was detected on an extract taken from the white powder which was in the metal container which is in the exhibit 410_11_01. The amount of white powder were only traces. Mephedrone is controlled by Chapter 31 of the Laws of Malta under Part A of the Third Schedule;
- e. **Mephedrone** was detected on extracts taken from the white powder which is in the exhibit 410_11_02. The weight of the white powder is **54.18 grams**. Mephedrone is controlled by Chapter 31 of the Laws of Malta under Part A of the Third Schedule;
- f. **Mephedrone** was detected in the extracts taken from the white powder which is in the exhibit 410_11_03. The weight of the powder is **99.4 grams**. Mephedrone is controlled by Chapter 31 of the Laws of Malta under Part A of the Third Schedule;
- g. **Mephedrone** was detected on a swab taken from the scales which is in the exhibit 410_11_04. Mephedrone is controlled by Chapter 31 of the Laws of Malta under Part A of the Third Schedule;
- h. **Mephedrone** was detected on extracts taken from the white powder which is in the exhibit 410_11_05. The weight of the powder is **19.7 grams**. Mephedrone is controlled by Chapter 31 of the Laws of Malta under Part A of The Third Schedule;
- i. No illegal substances were detected on a swab taken from the colander which is in the exhibit 410_11_06;

- j. **Mephedrone** and **Ketamine** were detected on a swab taken from the inside of the yoghurt container. Mephedrone is controlled by Chapter 31 of the Laws of Malta under Part A of the Third Schedule while Ketamine is controlled under Part B of the Third Schedule of the same Chapter.
- k. **Gamma-butyrolactone (GBL)** was detected in an extract taken from the liquid which is in the exhibit 410_11_07. The total volume of the liquid was **1ml**. This substance is not controlled by the Laws of Malta;
- l. No illegal substances were detected in two plastic containers in the form of a fish which are in the exhibit 410_11_08;
- m. **Gamma-butyrolactone (GBL)** was detected in an extract taken from the liquid which is in the exhibit 410_11_08. The total volume of the liquid is **14ml**. This substance is not controlled by the Laws of Malta;
- n. **Mephedrone** was detected on a swab taken from the green attachment which is in the exhibit 410_11_09. Mephedrone is controlled by Chapter 31 of the Laws of Malta under Part A of the Third Schedule;
- o. **Mephedrone** was detected in the extract taken from the white powder which is in the brown bottle which is in exhibit 410_11_09. The weight of the white powder is **0.16 grams**. Mephedrone is controlled by Chapter 31 of the Laws of Malta under Part A of the Third Schedule.

- p. No illegal substances were detected in a plastic container in the form of a fish which are in the exhibit 410_11_09;*
- q. **Mephedrone** and **Ketamine** were detected on a swab taken from the violet attachment which is in exhibit 410_11_10. Mephedrone is controlled by Chapter 31 of the Laws of Malta under Part A of the Third Schedule while Ketamine is controlled under Part B of the Third Schedule of the same Chapter;*
- r. No illegal substances were detected in three plastic containers in the form of a fish which are in exhibit 410_11_10;*
- s. **Tetrahydrocannabinol** was detected on swabs taken from the blue container and the crusher which are in the exhibit 410_11_10. This substances is controlled by Chapter 31 of the Laws of Malta under Part A of the Third Schedule;*
- t. **4-Methylethcathinone (4-MEC)** was detected in an extract taken from the white powder which is in exhibit 410_11_11. The weight of the powder is **0.07 grams**. This substance is not controlled by the Laws of Malta;*
- u. No illegal substances were detected on the pipette which is in the exhibit 410_11_11;*
- v. Only 2% of the seeds taken at random from the exhibit 410_11_10 were germinable.”*

With regards to establishing the value of the drugs found, he explained that since only traces were found, he could establish no value, this regarding the Tetrahydracannabinol.

PS 122 Arthur Borg as a SOCO exhibited his report, as did **PS 465 Daniel Abela** appointed also as a SOCO who collected all the items seized in the above-mentioned search.

Architect Valerio Schembri purposely appointed concluded that the primary school found in School Street, Msida, does not fall within the hundred (100) distance required by Law.

Dr Martin Bajada presented his reports concerning the extractions, contents and information contained in mobiles found on accused's person: Dok MB exhibited on the 31st August, 2012, and Dok MB exhibited on the 26th October, 2012. **To be noted are the text messages extracted that accused testified about later on in the proceedings.**

Seen also the statement released by accused in which he answered - as was his right, very few of the questions put to him. He stated that he was in Malta since 2009 and was a professional DJ, as also with HSBC as a customer service. He stated he was now living with his friend Lee. He admitted to using drugs, however refused, as was his right, to answer which

Vice voce he informed that Court that he had come to Malta because of a drug problem that ailed him in the UK. He lived in London and worked there as a DJ. He also ran a business there - a tanning shop. He explained that he came to Malta because his drug problems were very acute and his body was in a very bad condition. He was passing blood and could not

walk. He admitted to doing a multitude of drugs, but mainly was on ketamine.

He exhibited a medical certificate, which certified that he was HIV positive. He also testified that he used recreational drugs – ketamine, methadone, ecstasy, and the likes. He continued these were a sort of designer drugs. He informed the Court that before he left London he was daily doing fifteen (15) doses of these in a day, three (3) grams of which was methadone. He also mentioned the drug GBL - a sex drug enhancing sexual performance, continuing he also took doses of that.

He explained that initially he started taking recreational drugs for fun, but this resulted in a daily occurrence to the extent that he had increased the dosage to reach a high. He decided because of the easy accessibility of these drugs in UK, to leave and come to Malta. For him the Island was an obvious choice because of the English speaking community.

He explained his dire drug addiction, stating that he felt nervous without them.

He came to Malta backed up financially by the sale of his home and business.

He explained that he was suffering from what was known as ketamine bladder – symptoms being inability to walk, passing blood in his urine and enlargement of the gall bladder.

He explained he relapsed once in Malta and was doing methadone and ketamine. He further stated that he stopping

taking ketamine once after having spent days in St James' Hospital and was thus alarmed by his physical state.

He exhibited Dok DLR1 – a medical certificate of his condition, explaining the results marked as excessive. He also exhibited Dok DLR2 – a medical report reflecting his medical condition.

He explained that he stopped taking ketamine because of the harm it inflicted physically, thus he switched to methadone.

Asked why he was in possession of one hundred and seventy-five (175) grams of methadone, he answered that due to the fact that he was taking quite a lot, he found that buying in bulk was cheaper.

He confirmed that once in Malta he relapsed to the consumption he did in London, and was thus consuming seven (7) to eleven (11) grams daily. This addiction was concurrent with his HSBC work. He confirmed that because his tolerance was very high, it did not reflect on his work performance, further adding that when he was off work because of sickness, it was due to physical not mental sickness.

He denied ever having dealt in drugs or having supplied anyone with drugs.

With regards to the accessories found at his residence by the police, he replied that the plastic containers were used by him as measures in order not to overdose. He explained that the container found was watertight, containing the exact amount of the dose required. He explained that the drug GBL was

dangerous if an overdose of one or two mils occurred. With regards to the electronic scales retrieved, he insisted these were intended as the fish containers to measure doses, intended for his personal use.

Referring to Dr Martin Bajada's technical report, (page 4 thereof at folio 416), he explained in regards to the texts extracted, that the message referring to the one thousand seven hundred and fifty (1,750) in account, that the sum was intended as a payment for the methadone. He confirmed that he had given the sender the cash point card to draw from his account. The other text referring to the day of his arrest, on the 9th of December, reading "*Steve, please start taking the cash, I need more urgently.*", he answered that his was of the very same nature.

He explained that the amount of seventeen thousand and five hundred Euros (€17,500) would buy him five hundred (500) grams of methadone. He explained that the other text asking to bank the cash was intended to refer to a loan to pay for his drug order. He explained that the hundred (100) referred to in the next text referred to the hundred Euros (€100) left for him to pay as debts for the dosage acquired.

He explained that this Steve was his methadone supplier in UK, adding that he could even obtain the drugs mentioned on internet: GBL, methadone and ketamine.

He explained that business with Steve was conducted by the accused sending money on account, giving him the pin number to retrieve. On his part, Steve would send the drug by post.

He further testified that nowadays, he was managing a guest house locally, and was not abusing at all.

He added that he frequently travelled to the UK for his medication due to the fact it was not available in Malta. He also acquired free medication through NHS.

Under cross examination, he explained that he did not explain all this to the police (as was his right not to answer), due to the fact that he was in a mess, afraid, scared (folio 261).

He thus explained that receiving substance by post did not tantamount to him as an import because it was not intended for a commercial nature. He confirmed that the substance received by post were the GBL and methadone, in the case of methadone five hundred (500) grams every occasion for three (3) to four (4) times.

Considers:

Before the Court examines the facts proposed in relation to the charges proffered, an examination of the documents exhibited by the accused is much pertinent to establish the nature of the possession of the drugs.

Dok DLR2 is dated 28th April, 2014. Therein issuing doctor certified accused as suffering from a condition called ketamine uropathy, thus consonant to what accused stated with regards to his medical condition due to the frequent ketamine use.

Further considers:

That without any doubt, as case law has itself established, proving a charge of aggravated possession is one that rules on the circumstances of the case presented, each situation or rather case deferring from any other. The collective facts examined and considered together have to be taken into account, and must prove beyond reasonable doubt that accused did possess illegal substances not exclusively for his personal use.

Case law has also established that the amount held in possession may be indicative of the intention of the accused.

Accused explained his addiction to ketamine and has succeeded according to the Court to the level of probability in proofing the frequent and abundant use thereof as also the damage sustained by this. He testified that because of the damage incurred, he transferred his addiction to methadone which he consumes, *ex admissis*, in alarming quantities. To the level of probability, the Court finds no opposed reason to disbelieve him. His explanations do not reach the level of probability and therefore finds him guilty only of the simple possession of mephadrone, ketamine, and cannabis plant, after having seen Articles 40A, 120A(1)(2)(b) of Chapter 31 of the Laws of Malta; LN 22/1985; L.S. 31.18; and Articles 8 and 22(2)(b) of Chapter 101 of the Laws of Malta; and Reg 9 of L.S. 101.02, and condemns him to one (1) year imprisonment suspended for two (2) years; And to a fine of one thousand Euros (€1,000).

Orders that all drugs and accessories KB120.2012 therein related be destroyed.

Orders that accused pays all legal expenses incurred in Court experts fees, amounting to two thousand two hundred and seventy four Euros (€2,274), this after having seen Section 533 of Chapter 9 of the Laws of Malta.

Acquits him from the charge of aggravated possession.

< Final Judgement >

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