



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

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

Case Number: 193/2015

Today, 14th October 2015

**The Police
(Inspector Gabriel Micallef)**

vs

**Mohamed Omar Kaahin
(ID 80340(A))**

The Court,

After having seen the charges brought against the accused, Mohamed Omar Kaahin, born in Somalia on 1st January 1992, holder of Maltese identity card number 80340(A):

Charged with having on the night of 25th July 2015, in Paceville, St. Julians:

1. Had in his possession (otherwise than in the course of transit through Malta or 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 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 was also requested, upon pronouncing judgement or in any subsequent order, to sentence the person convicted to the payment, wholly or in part, to the Registrar, of the costs incurred in connection with the employment in the proceedings of any expert or referee, including such experts as would have been appointed in the examination of the process verbal of the inquiry, within such period and in such amount as shall be determined in the judgement or order.

Having heard the evidence 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), for this case to be heard by this Court as a Court of Criminal Judicature;

Having heard the accused plead not guilty to the charges brought against him;

Having heard final oral submissions by the parties.

Considered that:

Considerations on Guilt

In the sitting held on 31st July 2015, **Inspector Gabriel Micallef** stated on oath that on 25th July 2015, observations were being conducted in Paceville by police officers stationed at the Drug Squad, including himself. The accused was noticed in St. George's Road, standing next to a door, which had a broken glass pane and led to abandoned premises. According to the witness, the accused was observed standing in the same place for quite a long time. The accused was also noticed making contact with some persons and picking up a packet of cigarettes from behind the mentioned door or the broken glass pane and placing it back inside. The witness stated that the accused was observed making these movements twice or three times. Upon being requested to clarify what he had actually seen the accused doing, the witness replied that he had personally seen the accused picking up a packet of cigarettes from behind the door, opening the packet and taking out an object from inside, showing it to third parties and putting it back behind the door. Subsequently at about 9.30 p.m., the accused was approached by police officers and the mentioned packet, which contained eighteen pieces of suspected cannabis resin, was seized from behind the said door. The accused was arrested and released a statement upon his questioning the next day.

During his cross-examination, Inspector Micallef stated that he had seen the accused picking up the packet twice or three times and that he had seen the accused standing by the door for quite a long time. At the time, said accused was in the company of another Somali, who escaped as soon as the police officers approached them. Although he was apprehended further down the road, nothing illegal was found in his possession. When questioned about the third parties to whom the accused showed the packet of cigarettes, as indicated by the witness earlier on in his testimony, Inspector Micallef stated that these were passers-by and that the night in question was a Saturday night and thus the area was busy. According to Inspector Micallef, it was the accused who approached these passers-by.¹

In the sitting held on 26th August 2015, **PS 1174 Adrian Sciberras** stated on oath that on 25th July 2015, he was observing the area in front of the establishment previously known as Axis, in Paceville, from the balcony of a first-floor restaurant situated in the said establishment. He observed the accused, who was wearing yellow jeans, tampering near a door leading to abandoned premises or near the rear of a car, which was parked there. He could see the accused holding a packet or a red object in his hand. The witness explained that he could see the accused bending down, picking up an object and then placing it back in its original place. The witness stated that although he did not have a complete view since the accused was positioned with his back to the witness, when the accused turned from his original position, he could see that he was holding a red object in his hand. He also stated that although a car was parked by the abandoned premises, yet the said car was not blocking his view of the door and he could see that the accused was kneeling down in the corner behind the car and near the door. He could also see the accused going back to the door and this time, when he turned back from the door, he was not holding anything. The witness stated that he saw the accused approaching other persons of dark complexion and talking to them, and then walking back to the door, at which stage when he turned he was no longer holding the red object. The said persons were sitting on a wall on the opposite side of the road, about five to six metres away from the abandoned premises. At this stage and upon noticing these movements, the witness contacted PC 213 and told him to approach the area. Whilst making contact with PC 213, who in the meantime was also approaching, the witness once again noticed the accused going to the same spot and conducting the same movements which he had observed previously, namely, kneeling down and which, in his testimony, he describes as ‘tampering’. The accused again approached the two persons sitting on the wall by which time,

¹ *Vide* a fol. 14 *et seq* of the acts.

PC 213 arrived and affected the arrest. According to the witness, the accused reacted by resisting the arrest and thus, he proceeded to assist PC 213. Subsequently, PC 213 searched the area where the accused had been noticed earlier and from behind the door of the said premises, which had a broken glass pane at the bottom, he picked up a red packet of cigarettes that contained cannabis resin sticks. Nothing illegal was found during a search carried out on the person of the accused. The witness also stated that he was not present during a search carried out on the other two persons.

Upon being cross-examined, the witness stated that apart from talking to these two persons who were sitting on the wall, he did not see the accused speaking to anyone else.²

In his testimony during the same sitting, **PC 213 Nikolai Borg** stated that on that night, PS 1174 had instructed him to approach the Axis area where members of the Drug Squad were conducting their observations, since he had observed a man of dark complexion and wearing yellow trousers, acting suspiciously. As soon as he approached the area, he saw the accused near a car and picking up an object from a door leading to abandoned premises, approaching other persons, then going back to the original spot and placing this object there again. He stated that immediately he informed PS 1174 of what he had just noticed, who on his part confirmed to him that he had seen the same movements. As soon as he approached the accused to affect a search and to arrest him, the accused panicked. Whilst PS 1174 stayed with the accused, he went to the door where the accused had been previously noticed. The witness stated that the door had a broken glass pane and as he put his hand inside this space, he found a red packet of cigarettes full of suspected cannabis resin pieces. The witness stated that he had been observing the accused for about 10 to 15 minutes, after PS 1174 contacted him.

During his cross-examination, the witness stated that apart from talking to these other persons of the same nationality as himself, he did not see the accused talking to anyone else. The witness also stated that he was not involved in these persons' search.³

According to the report exhibited by **expert Godwin Sammut**⁴, the document which he was given for the purpose of his analysis consisted of a packet of cigarettes with the words 'Pallmall', which contained eighteen brown substances.

² *Vide* a fol. 31 *et seq* of the acts.

³ *Vide* a fol. 39 *et seq* of the acts.

⁴ This report is exhibited a fol. 54 *et seq* of the acts.

An extract taken from the said substance was found to contain the substance *Tetrahydrocannabinol*⁵ and the total weight of the said substances amounted to 18.96 grams, with a purity of circa 7%.

In his statement⁶, after having been cautioned in terms of law and also after having consulted with a lawyer, the accused stated that he has been in Malta since May 2012, that he previously worked at Havana Club but was not currently working and that his income consisted in social security benefits. He stated that he paid rent and that rent and electricity bills amount to €150 monthly. He stated that he smoked maybe a packet a day and he has a mobile phone. Regarding the night in question, he stated that he was due to meet a girl and that he stopped there to buy ‘haxix’. “*I asked the guy and he told me to take from the packet on the ground, and I paid him €10*”. He stated that he only knew this man by sight, but he did not know his name. He confirmed that he had actually picked up the packet of cigarettes with the ‘haxix’, he had asked the guy for €10 worth of ‘haxix’ and he was told that he would be given half. This man told him to pick up the packet, at which point the police arrived. He confirmed that he smokes about two grams of cannabis a week and that he buys a gram for €10, that he buys it every day from Marsa, near the Open Centre, but that during the previous night, he bought it from Paceville. He had never bought cannabis from Paceville before, but he was told that he could buy cannabis there. He stated that he was told to take cannabis from the packet, but that he did not know that there was anything else in this packet. He denied that he sold cannabis.

Considered also that:

The accused is therefore denying that the packet of cigarettes containing eighteen pieces of cannabis resin were his and is alleging that he actually had no knowledge that there were eighteen pieces of resin in this packet and that in actual fact he was the buyer and not the supplier of the drug. In his statement, the accused states that he had been instructed by the man purporting to sell him the cannabis to take the cannabis from the packet on the ground and that he paid him €10. Subsequently in the said statement, however, he states that he was instructed to pick up the packet from the ground, at which point the police arrived. Thus, the accused first gives the impression that the deal had already taken place, in the sense that he had

⁵ Although the said expert was not appointed by the Court in order to analyse the substance exhibited by the Prosecution, but merely to weigh it (*vide* minute a fol. 30 of the acts), yet the defence declared during the sitting held on 31st July 2015 that it was not contesting that this substance is in fact cannabis resin (*vide* minute a fol. 12 of the acts).

⁶ Exhibited a fol. 22 *et seq* of the acts.

already paid €10 for the cannabis and later he states that he was apprehended as soon as he picked up the packet from the ground. Yet, this version of events does not tally with the evidence given by the police officers, who had been observing the accused for quite some time. First of all, a search carried out on the person of the accused yielded no illicit substances, which means that the accused, up to that point, had not bought any cannabis from any third party. Secondly, if one were to go by the version of the accused that he had actually been instructed by a third party purporting to sell him the drug to pick up the packet of cigarettes containing the cannabis from the ground, as he states, he would have had no reason to loiter around in the area for such a long time merely for the purpose of doing so. Indeed, Inspector Gabriel Micallef testified that he had seen the accused standing by the door behind which the packet with the cannabis resin was found, for quite some time and that he observed the accused picking up the packet from behind the door and placing it back at least twice. Similarly PS 1174 Adrian Sciberras stated that he had noticed the accused going back and forth more than once – the first time clearly holding a red object in his hand after he had kneeled down by the door of these premises, moving away from the premises and towards other persons sitting on a wall nearby, then going back to the door, moving away this time empty handed and later again approaching the said door and kneeling down. If the version of the accused were to be believed, he would have had no reason to go by the door a third time. He would have simply taken cannabis from the packet the first time round and left or at least he would have had no reason to go back to the premises again. Even PS 213 Nikolai Borg stated that he had been observing the accused for about ten to fifteen minutes in the same area, after he was contacted by PS 1174. Furthermore, the Court considers it very unlikely that a drug supplier would first of all indicate to his client the hiding place of his drugs and secondly, entrust his client, in this case the accused, who states that he only knew the supplier by sight, with taking possession of a packet containing not one piece of cannabis but eighteen pieces, weighing in all 18.96 grams.

On the basis of the above, the Court is morally convinced that the packet of cigarettes containing eighteen pieces of cannabis resin was indeed in the possession of and within the effective control of the accused. Furthermore, the Court considers that it has also been proved beyond reasonable doubt that the amount of cannabis and the circumstances in which it was found, clearly denote that this was not intended for the sole use of the accused. As already stated, the packet of cigarettes contained eighteen pieces of cannabis resin which weighed a total of 18.96 grams and therefore, not an insignificant or negligible amount. On the other hand, in his statement the accused stated that he consumed about two grams of cannabis a week and thus, the amount found does not tally with the

consumption habits of the accused. And this apart from other considerations, namely, the number of pieces of cannabis resin and the place where the packet of cigarettes was found, hidden in abandoned premises but within easy reach, in the midst of Paceville, on a busy Saturday night.

The Court is therefore satisfied that the Prosecution has proved the first charge brought against the accused beyond reasonable doubt.

Secondly, the accused has been charged with having committed this offence in or within 100 metres of the perimeter of a school, youth club or centre or such other place, where young persons habitually meet, in terms of the proviso to Section 22(2)(b) of Chapter 101 of the Laws of Malta. There is no doubt that the accused was in possession of the said drug in the midst of Paceville and thus, very clearly in a place where young people habitually meet. This aggravating circumstance has thus also been proved to the degree required by law.

Considerations about Punishment

For the purposes of the punishment to be inflicted, the Court took into consideration the amount of cannabis resin found in the possession of the accused and that the punishment to be inflicted for the first charge must be increased by one degree due to the aggravating circumstances, of which the accused is also being found guilty.

The Court notes that the criminal record of the accused has not been exhibited by the Prosecution.

Conclusion

For these reasons, the Court after having seen Sections 8(a), 22(1)(a), 22(2)(b)(i), the second proviso to Section 22(2)(b) of Chapter 101 of the Laws of Malta and Regulation 9 of Subsidiary Legislation 101.02, finds the accused guilty of the charges brought against him and condemns him to **twelve months effective imprisonment** – from which term one must deduct the period of time, prior to this judgement, during which the accused has been kept in preventive custody in connection with the offence of which he is being found guilty by means of this judgement – and **a fine (multa) of nine hundred and fifty Euro (€950)**.

In terms of Section 533 of Chapter 9 of the Laws of Malta, the Court condemns the accused to pay **half of the expenses**⁷ relating to the appointment of expert Godwin Sammut during these proceedings, namely the **amount of seventy seven Euro and seventy four cents (€77.74)**.

The Court orders that the drugs exhibited as Document GM3 are destroyed, once this judgement becomes final, 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

⁷ The Court considers that during the sitting held on 31st July, the defence declared that it was not contesting that the substance exhibited is cannabis resin and that it was not contesting the weight of the substance as indicated by the Prosecuting Officer in his testimony. The defence therefore declared that it was not necessary to appoint an expert for the purpose of analysing the substance exhibited. During the sitting held on 26th August 2015, the Prosecuting Officer requested the appointment of an expert to weigh the said substance, to which request, the defence did not object and the Court appointed the expert for this purpose. However, the expert did not merely weigh, but he also analysed the said substance. Thus, the Court is condemning the accused only to the payment of half the expenses involved in appointing the said expert.