



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

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

Case Number: 214/2015

Today, 4th December 2015

**The Police
(Inspector Jonathan Cassar)**

vs

**Awet Estifanos Weldetinsae
(Police Number 13K-014)**

The Court,

After having seen the charges brought against the accused, Awet Estifanos Weldetinsae, 24 years of age, born in Eritrea on 1st January 1991, son of Estifanos and Wejni Hagos, residing at Hal Far Open Centre, Birzebbugia, holder of Police Number 13K-014:

Charged with having on these Islands in the night between the 13th and 14th September 2015 and during the preceding two years:

Had in his possession (otherwise than in the course of transit through Malta of 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;

Committed this offence 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;

Committed an offence punishable by imprisonment whilst being under an operative period of a suspended sentence, which judgement was delivered by the Court of Magistrates (Malta) presided by Magt. Dr. A. Bugeja LL.D. on 26th September 2014 and has become final.

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

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 heard by this Court as a Court of Criminal Judicature;

Having seen that during his examination in terms of law, the accused pleaded not guilty to the charges brought against him;

Having heard final oral submissions by the parties.

Considered that:

Considerations on Guilt

PS 1174 Adrian Sciberras stated on oath that on 13th September 2015, he was carrying out inspections in Paceville with PC 213, when they stopped the accused near the area of the establishment previously known as 'Axis'. As soon as they stopped him, the witness held the accused's left hand, whilst PC 213 took hold of his right hand, at which stage, the witness noticed the accused trying to dispose of a wrapped paper, which he held in his left hand. PS 1174 stated that the accused dropped this paper on his lap and that this was then picked up by PC 213. The said paper contained pieces of a substance suspected to be cannabis resin. He also explained that earlier, whilst walking uphill towards the 'Axis' area, he was approached by a foreigner, who informed him that nearby, there was a coloured man with dreadlocks, wearing a cap and selling drugs. As soon as the witness approached the area, he immediately noticed a man, namely the accused, fitting this description and they immediately approached him. According to PS 1174, at that moment, the accused was sitting down on a fence leading to the parking area near 'Axis'. The accused was informed that he was under arrest, he was given his rights and escorted to Police Headquarters for further investigation, at which point he stated that he was homeless.¹

PC 213 Nikolai Borg stated that on 13th September 2013, whilst he was on duty in Paceville with PS 1174, and after obtaining information from a third party that a man

¹ A fol. 24 *et seq* of the records of the case.

with dreadlocks and wearing a hat, was selling drugs near the Axis area, they noticed the accused, who fitted this description and decided to stop him. Whilst PS 1174 took hold of the accused's left hand, the witness took hold of his right hand, when he noticed that the accused was holding a wrapped paper in his left hand. Although the accused made an attempt to throw this paper away, it landed on his left foot. At that point, the accused was sitting down. PC 213 picked it up, opened it and found that it contained suspected cannabis resin. The accused was then given his rights, he was arrested and taken to Police Headquarters.²

According to the report exhibited by **expert Godwin Sammut**, the document which he was given for the purpose of analysis consisted of a piece of paper containing brown substances. Extracts taken from the brown substances were found to contain *Tetrahydrocannabinol* and the total weight of the said substances amounted to 7.27 grams, with a purity of circa 6%.³

In his statement, after being duly cautioned in terms of law and after refusing legal advice⁴, **the accused** confirmed that he understands the English language and that he has been living in Malta since 2013. Upon being asked whether he works in Malta, he stated that "*Sometimes I go from Marsa to paint*"⁵. About the night of his arrest, he stated that he went to Paceville, where he was found to be in possession of cannabis. He confirmed that the said drug was weighed in his presence and that it weighed approximately 7.327 grams. The accused stated that he had bought said cannabis from Paceville for the price of €60 and that he "*was going to put it in my room and then smoke it*"⁶. Upon being asked how often he smoked cannabis, he stated that since he has been in Malta, he has been smoking cannabis every night and that he buys it every week. When he was questioned as to whether he knows the price of cannabis, he stated that he did not know this and that he buys it from the same Libyans, whose name he did not know and that he meets them in Paceville. He denied selling cannabis. He stated that he had bought cannabis at around seven o'clock on the previous night, but later when his attention was drawn to the fact that Police arrested him at around quarter to eleven, namely about four hours after he bought cannabis, he stated that he arrived at Paceville at seven o'clock and that "*he came at 10 o'clock*"⁷. The accused denied that he was in Paceville to sell the drug and stated that he was going to smoke cannabis in his room. When it was suggested to him that the price that he paid for cannabis was rather low, he stated that it is not low, that maybe some people sold it for a higher price and that one gram costs €7. He confirmed that he lives alone in his room and that he only smokes (cannabis) in his room.

² A fol. 29 *et seq* of the records.

³ A fol. 37 *et seq* of the records.

⁴ A fol. 21 *et seq* of the records.

⁵ A fol. 21.

⁶ A fol. 22.

⁷ A fol. 22.

The accused chose to testify in these proceedings.⁸ He stated that on the night of his arrest, he went to St. Julians to buy cannabis for his personal use. This was the cannabis that was found in his possession. He stated that he had bought cannabis from a Libyan man at around 11.30 p.m., that he bought 7 grams and that he has been using cannabis for circa four years. He stated that he has been in Malta for the past two years and five months and he confirmed that he was already addicted to cannabis before arriving in Malta. Upon being asked why he had bought seven grams of cannabis, the accused stated that he did not have any time to go to Paceville, because he was always looking for a job. He stated that he uses cannabis on a daily basis, that he smokes a gram a day and he confirmed that the said 7 grams were intended to be used over a period of one week. He stated that he normally buys cannabis for a whole week and that every time he goes to Paceville, he buys drugs for a week. He spends other days looking for a job. He had bought the cannabis found in his possession for €60.

On being cross-examined, the accused stated that during the night in question, he arrived in Paceville at 11.30 p.m. and he bought cannabis ten minutes later, since he knew where he could find his supplier. He stated that he buys cannabis from the same place, because he likes the drug that he normally buys and he knows that he can find his supplier only in Paceville. Later he stated that he does not always buy cannabis from the same supplier, but he had bought cannabis from him on a number of occasions. He confirmed that the only reason he went to Paceville was to buy cannabis and he stated that he was arrested after he had bought some food and drink, about twenty or thirty minutes later. Regarding his use of cannabis, he stated that “*I just wrap it and smoke it*”⁹ and upon being asked to explain how the police found nothing in his possession relating to the use or smoking of cannabis, the accused stated that he had used up everything and that his intention was to go back home and then buy “*paper for wrapping*”¹⁰. He stated that “*Yes sure it was a coincidence yes and I usually smoke at home and the things that I had for smoking were already used up so I needed to buy*”¹¹. He denied trafficking in drugs and stated that he had no contact with anyone.

Inspector Jonathan Cassar stated on oath that although the accused stated during his interrogation that he lived at Hal Far Open Centre, upon being escorted there, he pointed towards a container indicating that this was his residence, but the accused had no keys to gain access to it. Subsequently, upon gaining access through a window, police officers noted that this was completely empty. The witness stated that he went to the said Centre, in order to get clothes for the accused and also to check whether there were any items relating to drug abuse at his residence.¹²

⁸ A fol. 53.

⁹ A fol. 59.

¹⁰ A fol. 60.

¹¹ A fol. 60.

¹² A fol. 16 *et seq.*

Considered also that:

The Court notes that during the sitting held on 9th October 2015, the defence informed the Court that the accused did not understand the English language well, whilst in reply, Inspector Jonathan Cassar stated that the accused understood the said language well and that indeed his statement was taken in English. In this regard, the Court notes that during his arraignment on 14th September 2015, when the accused was examined in terms of law, he answered all questions in English. He also answered all the questions put to him in English during his interrogation and it is clear from his statement that although he does not speak English fluently, yet his answers were certainly comprehensible and leave no doubt that he understood the questions that he was asked.

The accused is not denying that cannabis resin was found in his possession on the night in question, but claims that said cannabis was solely for his personal use and denies that he had any intention of selling the drug in Paceville that night.

The Court notes first and foremost that although the weight of the drug found in the possession of the accused was not substantial, yet it was not insignificant and furthermore, after having seen the exhibit, the Court also notes that said cannabis consisted in a substantial number of pieces - sixteen in all – apart from five other very small pieces. These sixteen pieces consist of three pieces similar in size, approximately six centimeters long, another two smaller pieces also similar to each other in size, then another four slightly smaller pieces but also similar in size, another five pieces smaller in size to the previous four, but similar to each other and another two pieces, smaller than the latter, but also similar to each other in size. Given that a dose of cannabis in a joint normally consists of 0.2 grams, the amount of cannabis found in the possession of the accused were sufficient for approximately 36 joints.¹³

In considering the evidence, apart from the amount of cannabis and the number of pieces found in the possession of the accused, the Court also deems significant the fact that both PS 1174 and PC 213 immediately noticed the paper containing such cannabis in the left hand of the accused, as soon as they apprehended him. Although the Court certainly cannot take into account that which PS 1174 and PC 213 state to have been told by a third party, prior to approaching the accused, since this clearly amounts to hearsay evidence which was not confirmed by the third party who provided them with this information, yet it is significant that as soon as the accused's hands were seized by the two officers, immediately upon being approached, he was found to be holding cannabis resin in his left hand. Had the accused bought cannabis for his personal use, half an hour earlier, as he states under oath, he would have had no reason to continue holding it in his hand, unless he wanted it be immediately

¹³ *World Drug Report 2006 Volume I. Analysis*, pagina 96 et seq.

accessible. The Court also notes that the area where the accused was noticed prior to being stopped by the said Police Officers is renowned as an area where drug trafficking frequently takes place.

Furthermore, the Court notes a number of inconsistencies between the statement of the accused and his testimony during these proceedings. Whilst in his statement the accused states that he had arrived at Paceville at 7.00 p.m. and met with his supplier at about 10.00 p.m., which was when the supplier arrived, on oath he states that he arrived at Paceville at about 11.30 p.m. and that within ten minutes, he bought the drug, since he knew where to find his supplier. The Court also notes that whereas in his statement the accused states that he smokes cannabis every night, yet on oath he states that he smokes cannabis on a daily basis and that he consumes a gram in a day. It is clear to the Court that the latter declaration is a very convenient mathematical calculation on the part of the accused in order to justify having been found in possession of 7 grams and thus as he states, a whole week's supply. On the other hand, at the time of his arrest, the accused stated that he smoked cannabis every night and given that a gram of cannabis would produce about five joints, the Court deems it very unlikely that the accused consumed such substantial amounts of cannabis every night. Furthermore, given that the accused also states on oath that he only went to Paceville once a week in order to buy cannabis since on the remaining days he was busy looking for work, it is certainly not credible that the accused had the time to smoke one gram of cannabis during the day. Furthermore, it is also clear that the fact that one makes use of drugs, cannabis resin in this case, does not necessarily exclude drug possession other than for personal use. The Court also considers the lack of credibility of the accused when, after duly being informed of his rights, he first informed PS 1174 Adrian Sciberras that he was homeless, then during his interrogation, he stated that he smoked cannabis in his room and that he lived at the Open Centre¹⁴ – which means therefore that he was not homeless – and later he directed Police Officers to a container at the Open Centre, to which he had no access and which resulted to be completely empty and devoid of any of his belongings. The Court also considers that the accused has no stable employment. Indeed in his statement, he declares that sometimes he carries out some painting jobs and on oath, he states that he spends his days looking for work. Given these circumstances, the Court notes that it is highly unlikely that the accused could afford to spend €60 a week on cannabis resin, without having any other source of income, even if for the sake of argument, he also perceived some form of social benefits.

Given these circumstances, namely the amount of cannabis and the substantial number of cannabis pieces found in the possession of the accused, the fact that when apprehended, the accused was noticed holding such cannabis in his left hand, considering also the area in Paceville where the accused was apprehended, the lack of credibility of the accused given the inconsistencies noted between his statement and

¹⁴ Vide evidence given by Inspector Jonathan Cassar, a fol. 17 of the records.

his testimony during these proceedings, and the financial situation of the accused, the Court concludes that it has been proved beyond reasonable doubt that said cannabis was not intended solely for his personal use. However, since the accused was apprehended in possession of the said substance on the night between 13th and 14th September 2015, the Court is finding the accused guilty of the first charge (possession of cannabis in circumstances denoting it was not for his personal use) only in respect of the said date and not in terms of the charge brought against him, which also refers to the preceding two years. In respect of the preceding two years, once in his statement and in his testimony, the accused admitted to making use of cannabis every night since he has been in Malta and that he has been in Malta for two years and five months, the accused is being found guilty of simple possession of cannabis resin, which offence may be regarded as comprised in the offence contemplated in the first charge.

For these reasons, the Court is finding the accused guilty of the first charge brought against him in so far as this refers to the night between the 13th and 14th September 2015 and guilty of simple possession of cannabis resin in respect of the preceding two years.

The accused is also being accused of having committed such offence in or within 100 metres of the perimeter of a school, youth club or centre, or such other place where young people habitually meet, which is an aggravating circumstance in terms of law. Clearly, it results from the evidence brought that the accused was in Paceville on the night in question – certainly a place where young people habitually meet – and upon his arrest he was in the area of the establishment previously known as ‘Axis’. It is thus clear that these aggravating circumstances have been proved beyond reasonable doubt.

Finally, the accused is also charged with having committed an offence, punishable by imprisonment, during the operative period of a suspended sentence, delivered by this Court on 26th September 2014. In this regard, the Prosecution exhibited a true copy of a judgement, dated 26th September 2014, delivered by the Court of Magistrates (Malta) as a Court of Criminal Judicature, as presided by Magistrate Dr. Aaron Bugeja in the names ‘Il-Pulizija (Spettur Kevin Pulis) vs Awet Estifano Weldetinsae et’’. The Prosecution did not produce Inspector Kevin Pulis as a witness to identify the accused. From the said judgement, it results that the accused in that case was Awet Estifano Weldetinsae, 24 years of age, son of Stefanos and Asmara, born in Segeniti on 1st January 1991 and holder of identity card with number 0116951(A). In this case, the details of the accused are given as Awet Estifanos Weldetinsae, 24 years of age, son of Estefanos and Wejni Hagos, born in Eritrea and holder of Police Number 13K-014. The documents issued by the Refugee Commission and produced by the Prosecution, indicating the details of the accused are not a true copy of the original but merely a copy. Once the Prosecution failed to produce the Prosecuting Officer in that case to identify the accused and since the Court cannot even ascertain

that the identity card number of the accused in that case is identical to that of the accused in the present case, given further that the mother's name in that case is different to the mother's name in the present case, the Court is not satisfied beyond reasonable doubt that the judgement in question refers to the accused and thus that this charge has been proved in terms of law.

Considerations on the Punishment to be Inflicted

The Court is taking into consideration the serious nature of the offence of which the accused is being found guilty as well as the aggravating circumstances. Furthermore it is also taking into account the quantity of cannabis resin found in the possession of the accused.

Conclusion

For these reasons, the Court after having seen Sections 8(a), 22(1)(a), 22(2)(b)(i) and (ii), the second proviso to Section 22(2)(b) of Chapter 101 of the Laws of Malta, Regulation 9 of Subsidiary Legislation 101.02 and Section 31 of Chapter 9 of the Laws of Malta, finds the accused not guilty of the third charge brought against him and acquits him of said charge, but finds him guilty of the first and second charges (with respect to the night between 13th and 14th September 2015 of possession of cannabis resin in circumstances denoting it was not for personal use and with respect to the preceding two years, of simple possession of cannabis resin) and condemns him to **a term of eleven (11) 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 offences of which he is being found guilty by means of this judgement – and a **fine (multa) of seven hundred and fifty Euro (€750)**.

In terms of Section 533 of Chapter 9 of the Laws of Malta, the Court condemns the accused to pay the **expenses** relating to the appointment of expert Godwin Sammut during these proceedings, namely **the amount of one hundred, fifty four Euro and seventy six cents (€154.76)**.

The Court orders that the drugs exhibited as Document JC6 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