

PUBLIC PROSECUTOR

AND

JEFFREY TANG SIEW HOCK

(High Court of Brunei Darussalam)
(Criminal Trial No 28 of 2010)

Hairol Arni Majid, J.
25th November, 2014.

Criminal law – possession of 99 grams and 13,666 grams of cannabis– Section 3A and Section 6(a) of the Misuse of Drugs Act Chapter 27 – guilty plea – appropriate sentence.

DPP Pg. Nina Jasmine Binte PLKDR Pg. Hj Bahrin for Public Prosecutor.
Mr. Mohamed Yusof Shaik Abdul Halim (M/S Sankaran Halim) for Defendant

JUDGMENT

Hairol Arni Majid, J.:

The defendant pleaded guilty to two alternative charges under the Misuse of Drugs Act Chapter 27. The charges are as follows:

1st Alternative Charge

That you, on the 20th day of May 2010 at about 2000 hours, inside a vehicle, a black Chevrolet Cruz LS bearing the registration number BAA5513 in the basement car park at Hua Ho Tanjung Bunut, in Brunei Darussalam, not being a person authorized by the Misuse of Drugs Act, Chapter 27, or the Regulations thereunder, did have in your possession for the purpose of trafficking therein a Class B controlled drug, to wit, CANNABIS, total weight 99 grams in contravention of section 3A of the Misuse of Drugs Act, Chapter 27, and you have committed an offence punishable under section 29 read with the Second Schedule

2nd Alternative Charge

That you, on the 20th day of May 2010 at about 2347 hours, at house number 41, Simpang 43, Jalan Hj Halus in Brunei Darussalam, not being a person authorized by the Misuse of Drugs Act, Chapter 27, or the Regulations thereunder, did have in your possession a Class B controlled drug, to wit, CANNABIS, total weight 13.666 grams in contravention of Section 6a of the Misuse of Drugs Act, Chapter 27, and you have committed an offence punishable under section 29 read with the Second Schedule of the said Act.

The statements of facts are in the following terms.

1. *On 20th May 2010 at around 2000 hours, a team of Narcotics Control Bureau Officers arrested the defendant who was driving one black Chevrolet Cruze LS car with registration number BAA5513 at the basement car park of Hua Ho Tanjung Bunut in Brunei Darussalam.*
2. *A body search of the defendant's person was conducted and there was nothing related to drugs found.*
3. *ANO Ahmad Sukarni bin Haji Awang Umar of the NCB then asked the defendant "before we search your car, is there anything relating to drugs that you want to hand over", to which the defendant replied "Yes". The following is the transcript of the conversation that followed, which the defendant agreed to and signed in ANO Ahmad Sukarni's diary:-*

Q (ANO Ahmad) - What do you want to hand over?

A (Defendant) - It's like grass

Q (ANO Ahmad) - What is the name?

A (Defendant) - Cannabis

Q (ANO Ahmad) - Whose car is this?

A (Defendant) - It's mine

Q (ANO Ahmad) - Where is the item that you want to hand over?

A (Defendant) - Inside the compartment, in the sunshade, boot

Q (ANO Ahmad) - Who kept inside the compartment, sunshade, boot?

A (Defendant) - Me

4. *The defendant then himself showed the NCB officers inside BAA5513, in the front compartment near the driver's steering wheel, a sealed plastic packet containing dried leaves. The same was seized and marked as E1.*

5. The defendant then showed to NCB officers a sunshade at the driver door with several sealed clear plastic packets inside the folds which was seized and marked as E2.

6. The defendant then opened the rear boot of the car himself, and showed a black and grey bag labeled "Scott's" which was locked using a gold padlock. From the key chain where the car key was also held, ANO Ali Iskandar then unlocked the padlock of the bag and seized and marked the following items:-

E3a(ii) 28 sealed plastic packets containing dried leaves believed to be drugs.

E3a(iii) One clear plastic package inside were green leaves and also dried leaves believed to be drugs.

E3a(iv) One small wet white tissue package, inside there was 1 clear plastic packet containing dried leaves believed to be drugs.

E3b One cream book labeled "BANK ISLAM BRUNEI DARUSSALAM" with notes believed to be notes of buying and selling of drugs.

7. Also seized as a result of the search on the car BAA5513 was a brown wallet with a HSBC Visa Card, HSBC Master Card, GHK Privilege Card, and a driving licence, all in the name of the defendant. Cash of Brunei dollars amounting to B\$641 and Chinese RMB of \$100 was found in the wallet. The same were all seized and marked.

8. The search at the scene of arrest ended at about 2326 hours. After which, the NCB officers and the defendant went to the defendant's house at No 41, Simpang Jalan Hj Halus, Kampong Bunut, Brunei Darussalam to conduct a further search. The defendant then handed over to NCB officers the following items, which was subsequently seized and marked:-

E6 – One purple bolster containing 1 clear plastic packet labeled "SKH" with 6 clear plastic packets with red stripes containing dried leaves believed to be drugs.

9. The defendant was then brought to the NCB office for further investigation together with the seized items.

10. All the Exhibits were subsequently sent to the Department of Scientific Services for analysis. Upon analysis, all the items seized E1, E2, E3 and E6 were found to contain Cannabis, a controlled B drug under the Misuse of Drugs Act. A copy of the Analyst Report made under Section 14 (21) of the Misuse of Drugs Act, dated 4th August 2001 is attached herewith as **"Appendix 1"**.

11. *Photographs of the arrest and the Exhibits are marked herewith as "Appendix 2".*
12. *With regard to all the items seized marked E1 – E6, the defendant agrees that at all items, the defendant was in possession of those items.*
13. *The defendant admits to being in possession of 99 grams of Cannabis on 20th May 2010, found inside the vehicle BAA5513 parked I the basement car park of Hua Ho Tanjung Bunut in Brunei Darussalam, in contravention of section 3A Misuse of Drugs Act.*
14. *The defendant admits to being in possession of 13.666 grams of Cannabis being the Exhibit marked E6, on 20th May 2010, found at House No 41, Simpang 43, Jalan Hj Halus in Brunei Darussalam, in contravention of Section 6(a) Misuse of Drugs Act.*
15. *The defendant has no previous convictions under the Misuse of Drugs Act.*

In his mitigation Mr. Yusof Halim representing the defendant submits that the defendant is 28 years of age and is a divorcee. He has a 7 years old son who was under his care prior to his arrest and is now under the care of this wife who presently resides in Singapore.

His family is Malaysian but resides in Brunei. The defendant also a Malaysian but was raised wholly in Brunei since he was about 1 month old. He underwent his education in Brunei until Form 5 and prior to this he held a job in a Local Beverages Company as a sales person.

In passing sentence we have taken into account of the defendant clean record and his plea of guilty. We concede that there had been a considerable delay in the disposal of this case. This in itself warrants a discount in sentences. The case had undergone various adjournments despite being fixed for trial, after attempts at negotiations by the parties failed.

We note of the case *Yong Nai Yung vs Public Prosecutor* (Criminal Appeal No 3 of 2011) in which the Court provides guidelines for sentences to be imposed for convictions under Section 3A of the MDA for Cannabis after trial which are in the following terms.

Between 300 and 400 grams – from 14 to 20 years imprisonment and between seven and 10 strokes;

Between 200 and 300 grams – from 10 to 14 years imprisonment and between five and 7 strokes;

Between 100 and 200 grams – from five to 10 years imprisonment and either four or five strokes.

Applying the guidelines above to the present case, we believe that a starting point of a term of 6 years and 6 months and 6 strokes reducing the same to 4 years and 4 months and 3 strokes for the guilty plea is appropriate. We believe due to the delay a further reduction of 4 months is justified in the circumstances of the case making the final custodial sentence of 4 years and 3 strokes.

As for the possession charge on the 2nd Alternative Charge, we believe the appropriate sentence here is a fine. Accordingly, we sentence the defendant to a fine of \$4,000 in default 4 months. Given, that the exhibits for both the 1st Alternative and 2nd Alternative charge were found separately namely in the car and the house respectively, we believe they were offences committed at different transactions and merit to be served consecutively. We so ordered.

Therefore, the sentence of 4 years and 3 strokes on the 1st Alternative Charge is to run consecutively to the 4 months default imprisonment sentence should the defendant failed to pay the fine.

The sentence is to take effect from the date of remand.

Pg. Hjh. Rostaina Pg. Hj Duraman
Judicial Commissioner, High Court

Dato Paduka Hairol Arni Majid
Judge, High Court