

JERSEY / JUDGMENT

# AG -v- Capuano [2014]

## JRC 188 (01 October 2014)

[2014] JRC 188

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### JUDGMENT

THE commissioner: 1. At the conclusion of a hearing on 5 th September, 2014, the Court made an order under Article 9(2) of the Proceeds of Crime (Cash Seizure)(Jersey) Law ("the Law") forfeiting the sum of £3,990 seized from the respondent and retained under the Law. 2. The Court heard evidence from four officers (one retired) from the States of Jersey Customs and Immigration Service and from the respondent. The Court accepted the evidence of the officers which can be summarised as follows:- (i) Customs and Immigration Officer Mr Alan Mitchell stopped and questioned the respondent as he was due to depart on a flight to Glasgow (where he resides) on 19 th February, 2013, at approximately 12:15. He was asked whether he was carrying any cash and he replied that he had £4,000 in his bag. A search of the bag revealed the sum of £3,990. When questioned as to the source of the cash, the respondent told Mr Mitchell that the money was his and it represented savings from benefit payments of £500 per month that he received in the United Kingdom. He claimed that he had brought the cash to Jersey earlier for the purposes of purchasing an engagement ring for his fiancée. He stated that he had not been stopped by Customs Officers upon his arrival in Jersey with that cash. The cash was seized and he was allowed to board his flight to Glasgow. (ii) Inquiries revealed that contrary to what he had told Mr Mitchell on his arrival in Jersey on 5 th February, 2013, he had indeed been stopped by Customs and Immigration Officer Ms Elizabeth Haywood (and another officer). (iii) She explained to the respondent the prohibitions and restrictions that applied to anyone coming into the Island in the form of a standard set of questions, namely, whether the respondent was carrying any firearms, ammunition, pornography, drugs or large amounts of cash. The respondent said he had nothing to declare. He informed Ms Haywood that he was unemployed and was visiting the Island to stay with his brother Antonio Capuano. He said he had been on a methadone programme for the past four years, but had not brought any methadone with him. He voluntarily emptied his pockets and his holdall was searched. No significant amounts of cash were found and he was allowed to proceed. (iv) Following the seizing of the cash on 19 th February, 2013, the respondent informed the Customs and Immigration Department that he wished to assist them in their investigation and that he would provide evidence in writing to prove the cash seized was not tainted. (v) On 25 th February, 2013, the respondent telephoned the Customs and Immigration Department and spoke with Senior Officer Mr Paul Le Monnier. During the course of that

conversation, he claimed that the money that had been seized from him consisted of £1,000 he had saved over a period of time and £3,000 which had been loaned to him by a family friend. He was advised to provide proof as to the source of the funds, together with any documentation in support which would include where the £3,000 had come from. (vi) The respondent also spoke on the telephone on a number of occasions with the officer responsible for the management of the investigation, Senior Officer Mr Simon Blackmore. In conversation, the precise date of which Mr Blackmore could not recall, he had put it to the respondent that no cash had been found on him when he entered the Island on 5 th February, 2013. The respondent claimed that the cash had been in his trouser pockets. When he was reminded that it had been recorded that he had voluntarily emptied his pockets, he stated that the cash had been in his back trouser pockets. He made no reference to the amount of cash that had been brought into the Island on that occasion. (vii) On 25 th March, 2013, the respondent met with Mr Le Monnier at Maritime House. He was asked about the money which he had claimed had been lent to him by a friend. The respondent said that this was " nothing, it was just a couple of hundred pounds" . He then claimed that the vast majority of the money was savings from his benefit payments which he had saved in just over two years. He further claimed that he had savings at home of between £6,000 and £7,000, which were held in his mother's account. He provided details of the benefits he received and his regular expenditure. He signed a bank disclosure authority so that the Customs Officers could obtain access to his Post Office card account. (viii) On 9 th April, 2013, the respondent phoned Mr Blackmore inquiring as to the progress of the investigation. During the course of that conversation, he claimed that he had received an inheritance of approximately £18,000 in 2006 when his father had died. He did not mention this previously, as he thought it would be disrespectful to his father. He was requested to provide written confirmation from the solicitors who had administered the estate to support the assertion. A letter was subsequently received from the solicitors who confirmed that he had received £17,376.54 from his father's estate on 8 th September, 2006; that amount had been paid to his mother under a mandate signed by him. (ix) On 20 th September, 2013, the respondent was indicted for conspiracy to commit a statutory offence contrary to Article 1(1)(b) of the Criminal Offences (Jersey) Law 2009 , namely to import a controlled drug, heroin, contrary to Article 61(2)(b) of the Customs and Excise (Jersey) Law 1999 . His co-conspirators, Miss Georgina Mason and Mr Neil McBride were also indicted. They pleaded guilty, but the respondent was found guilty following a trial on 27 th November, 2013. He and his co-conspirators were sentenced on 6 th February, 2014; the respondent receiving a sentence of 11 years' imprisonment. An appeal against his conviction was unsuccessful. The Crown's case was that the conspiracy took place in April and May 2013, with the respondent being a principal organiser. The importation was undertaken by Mr McBride on 2 nd May, 2013. The defendant informed us that during his stay in Jersey between 5 th February and 19 th February, 2013, he was involved in a relationship with Miss Mason. (x) There was evidence of a drugs importation to the home address of Miss Mason on 22 nd February, 2013, but the Attorney General had accepted that the respondent played no part in that. The police did, however, find in her home a SIM card pack for a mobile which matched the mobile number used by the respondent to call Customs and Immigration on 20 th February, 2013. (xi) Mr Blackmore undertook an analysis of the respondent's income and expenditure which was not challenged by the respondent. That showed

that between February 2011 and February 2013 he received a total income of £16,954.02p or £163.02p per week. His declared expenditure during that period was £111 per week which comprised the following:- Rent paid directly by Social Security Food £25.00 Cigarettes £21.00 Alcohol £20.00 Electricity/gas £15.00 Mobile phone £30.00 Total £111.00 Those calculations indicated that the respondent could possibly have saved up to £52.02 per week, which over two years would amount to some £4,800. 3. In his written answer, the respondent stated that the £3,990 seized on 19 th February, 2013, represented the balance of £6,000 he had brought into Jersey on 5 th February, 2013, held in his back trouser pockets. This money had a lawful origin, namely having been derived from his savings and from the inheritance from his father. He had brought the money over to buy a ring for his fiancée (who lives in Scotland). He did not actually buy a ring because he could not afford the rings he saw in the shop windows and he spent approximately £2,000 over the two-week period clubbing and drinking. He also stated that when he was stopped on 19 th February, 2013, he produced both the cash in his bag of £3,990 and a further £900 in his wallet. He stated that the officers took the cash but not the £900 in his wallet. Mr Mitchell had been clear that there was no further sum of £900. 4. In evidence, the respondent told us that when stopped by Customs and Immigration on 5 th February, 2013, he was carrying two bundles of notes of £3,000 each (exactly) comprising £50 notes, one bundle in each back pocket. He said Ms Haywood had not asked him if he was carrying any large sums of cash - something he thought was perfectly legal. If she had asked whether he was carrying cash he would have told her. When she asked him to turn out his pockets, he assumed it was his front pockets to which she was referring. 5. He said he was brought up never to keep money in a bank account. He had a Post Office account to receive his benefits and always withdrew the sums received. That was supported by the bank statements, although we noted that the withdrawals were made piecemeal over a number of days following each receipt resulting in a nil or minimal balance before the next payment was received. He said he would keep his money and other important documents in his " stash " which was a metal box kept under the floorboards in his rented bedroom accommodation. 6. He was a barber and earned additional sums cutting people's hair, mainly friends and family, but he also had additional outgoings supporting his two children and their mother; although no figures were provided either way. He also had a partner over this period. 7. He said his inheritance in 2006 had been paid to his mother, but she had given it to him in cash two weeks or so later which he placed in his stash. He already had other savings at that time, so he had some £23,000 - £24,000 in cash in his stash. By February 2013, this had reduced to some £12,000 or £13,000, £6,000 of which he had brought to Jersey on 5 th February, 2013. He accepted that he had lied when he said he had not been stopped coming into Jersey, but denied telling Mr Le Monnier that the £3,000 had been loaned to him by a family friend - Mr Le Monnier must have been mistaken. He had no need to borrow in view of his savings. 8. He said he could easily save money from his benefits " I could have saved as much as I wanted ". He was often invited out where he was provided with food and drink. In his view, the weekly surplus of £52.02 per week that Mr Blackmore had calculated could be saved was " ridiculously low ". 9. When asked how, if he had spent about £2,000 in Jersey out of the £6,000 he had brought in, he had an additional £900 in his wallet when he left, he told us that he had around £900 in his wallet when he came into Jersey on th February in addition to the £6,000 in his back pockets. He had put his

wallet on the table and Ms Haywood had not looked at it. This had not been put to Ms Haywood.

10. He told us that he had retained the cash he had brought in on the 5 th February throughout his two weeks stay apart from the sums he spent on clubbing and drinking, returning with the balance on th February. However, as the Court pointed out, when the cash was seized on 19 th February, 2013, it comprised almost wholly £20 notes i.e. it was not the same cash. His response to this was that it was difficult using £50 notes in the various clubs and bars in Jersey and so his brother had changed the money - it would seem changed nearly all of it. The Law 11. Article 2(1) of the Law gives the following definition of " tainted cash ":- "2 Meaning of "tainted cash" (1) Subject to this Article, in this Law - "tainted cash" is cash that is tainted property; "tainted property" is property that is (a) Used in, or intended to be used in, unlawful conduct; or (b) Obtained in the course of, from the proceeds of, or in connection with, unlawful conduct." 12. In respect of forfeiture of seized cash, Article 9 provides:- "(9) Forfeiture of seized cash (1) The Attorney General may apply to the Royal Court for an order to be made under paragraph (2) in relation to any cash that has been seized and detained under this Law. (2) The Royal Court shall, if it receives an application under paragraph (1) in relation to any cash seized and detained under this Law, make an order (a "forfeiture order") forfeiting the cash, unless the person against whom the order would be made satisfies the court that the cash is not tainted cash. (3) Proceedings under this Article are civil proceedings." 13. There are two stages therefore. Firstly, the burden is upon the Attorney General to satisfy the Court to the civil standard (these being civil proceedings) that the cash for which the forfeiture order is applied is cash " seized and detained under the Law ". Under Article 5 of the Law, cash seized by an authorised officer may be detained initially for a period of up to 48 hours. We had a copy of the original application for a cash detention order under Article 6 of the Law which was granted by the Deputy Bailiff on 20 th February, 2013, within the 48 hours permitted. We had copies of the further orders granted, authorising the continued detention of the cash through to the date of the hearing. 14. Advocate English tried to argue that the initial seizure and retention were unlawful in that the officers did not have reasonable grounds to suspect that the cash was tainted. We disagreed. We were satisfied that the original seizure had been lawfully made under the Law and that the cash had been subsequently lawfully retained under the Law. The second stage placed the burden upon the respondent to satisfy the Court to the civil standard that the cash was not tainted cash. Decision 15. We were not persuaded by the respondent to the civil standard that the cash was not tainted cash for the following reasons:- (i) When stopped on 19 th February, 2013, he told Mr Mitchell that he had not been stopped by Customs when he had brought the cash into Jersey. This was untrue. (ii) He suggested that when he brought the money in on 5 th February, 2013, he kept the money in his pockets. When it was pointed out that he had voluntarily emptied his pockets, he claimed that the money was kept in his back pockets. (iii) He had provided numerous explanations for the source or sources of the cash. He initially claimed that the cash was derived from his personal savings from his benefits over a two year period. He then claimed that they were part savings and part a loan from an un-named friend. He then claimed that he had £6,000 or £7,000 savings at home and that the money seized was savings from his benefit allowances. He then claimed that the money represented part of an inheritance from his father that he had received in 2006. (iv) He made no mention of having £900 in his wallet on 5 th February, 2013, in

addition to the £6,000 he had in his back pockets, until questioned in Court as to where the £900 he had in his wallet when he left the Island on 19 th February, 2013, had come from. (v) For illustrative purposes we were given by Mr Blackmore a bundle of copy £20 notes totalling £6,000 (300 notes) made on photocopy paper which Mr Blackmore said was thinner than real bank note paper. It makes a very bulky bundle indeed which even if split in two it would be unlikely in the extreme any person would carry in their back pockets. The respondent's response to this, in evidence, was to say that cash was comprised of £50 notes split between two bundles which would comprise 60 notes in each bundle. This would result in smaller, although still not unsubstantial bundles. The difficulty is that the respondent then has to explain how the cash he tried to take out of the Island on 19 th February, 2013, was almost entirely different cash to that which he brought in. We did not believe that the respondent brought £6,000 into the Island on 5 th February, 2013, in his back pockets. (vi) Benefits are paid because a person has no other means of support. The defendant's breakdown of his expenditure, wholly unsupported by any documentary evidence, was unrealistically low in our view, and we did not believe that he would have saved anything material, if at all, from his benefit money. The piecemeal nature of withdrawals he made from his Post Office account indicated to us that he was withdrawing his benefit monies to meet his daily expenditure, as one would expect. (vii) We did not believe that any of the £17,000 he inherited in 2006 would still have been in existence some seven years later in 2013. (viii) The respondent had been convicted of a serious drug trafficking offence. (ix) The cash was being physically removed from Jersey rather than being channelled through the normal banking system. (x) The respondent had failed to provide any cogent evidence to support any of the various explanations that he had provided as to the source or sources of the cash. 16. We accepted the submission of Advocate Gollop that the only inference we could properly draw from all of the circumstances was that that the cash seized was tainted by association with drug trafficking. Authorities Proceeds of Crime (Cash Seizure)(Jersey) Law 2008. Criminal Offences (Jersey) Law 2009. Customs and Excise (Jersey) Law 1999. Page Last Updated: 06 Jun 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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