

JERSEY / JUDGMENT

AG -v- Caversham and Bell

[2005] JRC 143 (13 October 2005)

[2005] JRC 143

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

JUDGMENT

THE commissioner: 1. The three Defendants in this case are charged on two Counts. Failing to comply with the requirements of Article 2 1(a) of the Money Laundering (Jersey) Order, 1999 , contrary to Article 37 (4) of the Proceeds of Crime (Jersey) Law, 1999 , and then those two are broken down into different components when the particulars of offence are set out. At the close of the Prosecution case, Defence counsel Advocate Baker submitted that there was no case to answer. Article 37

(4) of the Proceeds of Crime (Jersey) Law, , reads:- "If a person carrying on a financial services business contravenes or fails to comply with a requirement that is contained in any Order made under this Article and applies to that business, the person shall be guilty of an offence." And Article 2 1 of the Money Laundering (Jersey) Order, 1999 , says:

(1) No person shall, in the course of any financial services business carried on by him or her in Jersey, form a business relationship, or carry out a one-off transaction, with or for another person unless -

(a) the person carrying on the financial services business maintains the following procedures in relation to his or her business - (i) identification procedures in accordance with Articles 3 and 5, (ii) record-keeping procedures in accordance with Article 8, (iii) internal reporting procedures in accordance with Article 9, and (iv) such other procedures of internal control and communication as may be appropriate for the purposes of forestalling and preventing money laundering; 2. The nub of Advocate Baker's argument is that the offence charged is intended to prevent a systemic failure in the maintenance in procedures. He argues that it was not in the concept of the law and a criminal offence should not be made for one failure or omission when there is no other evidence of failure. We agree that the Crown has provided no evidence of a failure over a period of time or with more than one client. There is, for example, no evidence of a failure to maintain procedures in any but this particular case. As far as Mr Bell and the two companies are concerned, there is no criticism of them at all, apart from this particular case. 3. The offences of course are particularised but all three Defendants are charged with an offence that has two elements and they turn around the prohibited act of forming a relationship with Gary Stevens and the failure to make

procedures in that particular case, for, as I have said, there is no other. 4. Now Article 37 (10) of the Proceeds of Crime (Jersey) Law, 1999 , says this: "In proceedings against a person, or an offence under this Article, it is a defence to prove that the person took all reasonable steps and exercised due diligence to avoid committing the offence." 5. This leads me to suppose (and I have had regard to the definition in the Oxford English Dictionary, rather than cases on the English Highways), that maintenance must be kept up and prescribed and in my view maintenance is an absolute duty and one breach, if it is more than a mere oversight, is in my view sufficient for the purposes of a criminal trial. If, as the Crown alleges (and we haven't heard the defence case as yet), there was a sustained failure to verify the identity of Mr Bell then the particulars so clearly set out in the guidance notes that we have seen are in my view breached. Of course the guidance notes refer to a regular basis for certifying compliance and other procedures, but that is a general guide in my view to maintain good discipline. 6. If an offence has occurred, then there has been a breach of the maintenance and procedures. It is specifically in the case of failure, if such it was, to identify Mr Lee, of whom Mr Stevens was the Attorney, no more and no less that constitutes the basis of this prosecution and in my view the application does not succeed. Authorities Proceeds of Crime (Jersey) Law, 1999. Money Laundering (Jersey) Order, 1999. Page Last Updated: 15 Oct 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://www.bailii.org/je/cases/UR/2005/
CASE PAGE	https://chat.esheria.ai/case-law/jersey/ag-v-caversham-and-bell-2005-jrc-143-13-october-2005

Prepared on 26 October 2026 · Esheria