

JERSEY / JUDGMENT

AG v Lumb [2021] JRC 185 (07 July 2021)

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JUDGMENT

THE BAILIFF: 1. This is an application by the Attorney General for a confiscation order arising out of the conviction of David Lumb ("the Defendant") for one count of being knowingly concerned in the fraudulent evasion of the prohibition on the importation of a controlled drug, contrary to Article 61(2)(b) of the Customs and Excise (Jersey) Law 1999 . The Defendant had pleaded guilty and was sentenced on 10 August 2020 to 4 years' and 6 months' imprisonment. 2. The facts that underpin the conviction are that the Defendant had organised the importation of 13.55 grams of cocaine to be delivered to a property neighbouring his own on 8 th March 2019. He had admitted that he intended to sell some of the drugs for profit and use the rest for himself. When seeking to collect the package containing the drugs when it arrived, he forced open a private post box. The sentencing judgment is to be found at AG v Lumb

[2020] JRC 159. At the sentencing the question of confiscation was adjourned to 22 nd March 2021. 3. The street value of the cocaine imported was £1,120 and the sum of £401.30 was seized with the drugs. An investigation resulting in the financial report prepared for the Attorney General identifies, at paragraph 5.21, certain unexplained cash deposits between the 5 th June 2017 and the date of the Defendant's arrest of the 8 th March 2019. 56 separate cash deposits were paid into the Defendant's account in Jersey. 4. It was the Crown's case before us that although the Defendant was sentenced for a single count of importation, he was in fact a drug dealer and over the preceding two years had made money from dealing drugs which fell to be confiscated under the provisions of Articles 3 and 5 of the Proceeds of Crime (Jersey) Law 1999 ("the Law"). The Crown seeks a declaration that the Defendant has benefitted from criminal conduct in the total of those sums, namely £40,256.30. 5. Our task is, accordingly, to determine whether or not the Defendant had benefitted from drugs trafficking and the extent of that benefit applying the presumptions set out in Article 5 of the Law. Article 5 of the Law identifies those assumptions in the following terms: "(5) Those assumptions are - (a) that any property appearing to the Court to be held by the defendant at any time since the date of the defendant's conviction, or appearing to the Court to have been transferred to the defendant at any time since the beginning of the relevant period - (i) was received by the defendant at the earliest time when he or she appears to the Court to have held it, and (ii) was received by the defendant as a result of or in connection with the commission of offences specified in Schedule 1; (b) that any of the defendant's expenditure since the

beginning of the relevant period was met out of payments received by the defendant as a result of or in connection with the commission of offences specified in Schedule 1; and (c) for the purposes of valuing any property that the defendant had or is assumed to have had at any time, that the defendant received the property free of any other interests in it. (6) The Court shall not make an assumption in paragraph (5) in respect of any particular property or expenditure - (a) if the assumption, so far as it relates to that property or expenditure, is shown to be incorrect; (b) if the assumption, so far as it relates to that property or expenditure, is shown to be correct in respect of an offence from which the defendant's benefit has been the subject of the previous confiscation order; or (c) if the Court is satisfied that, for any other reason, there would be a serious risk of injustice if the assumption were made in respect of that property or expenditure. (7) Where the assumptions in paragraph (5) are made the offences from which, in accordance with those assumptions, the defendant is found to have benefited shall be treated as if they were compromised, for the purposes of this Part, in the conduct that is to be treated as relevant criminal conduct by the defendant. (8) In this Article, the "date of the defendant's conviction" means - (a) in the case not falling within sub-paragraph (b), the date on which the defendant is convicted of the offence in question; and (b) where the defendant is convicted of that offence and one or more other offences in the proceedings in question, and those convictions are not all on the same date, the date of the latest of those convictions." 6. Much of the factual background is not in dispute. The Defendant originates from the United Kingdom and was working in Jersey under a temporary contract with Jersey Telecoms. The Crown's assertion is that he was living beyond his legitimate means and that he was, in the process, making a number of payments to a Brian Leen ("Leen") to whom he owed money from drugs dealing. The Defendant had a lot of unexplained cash with cash deposits exceeding £38,000, a substantial amount of which was transferred from Jersey to accounts in the United Kingdom. The Crown alleges that the Defendant had paid some £40,000 over a period to Leen and there was no explanation for any legitimate payments in that regard. The Crown relies on a financial report to which we will make reference hereunder which identifies cash deposits made to the Jersey account held in the name of the Defendant and further cash deposits made to his account in the United Kingdom. It is the Crown's case that Leen received a number of regular payments in the sum of £400 or £500 from the Defendant's account in the United Kingdom and that these, so the Crown asserts, are payments for drugs debts. 7. So far as we are aware, we have before us the full statements from the Defendant's Jersey and UK bank accounts and indeed have the benefit, as we have indicated, of reports analysing each for the period that is the subject of the evidence before us, 3rd January 2017 until March of 2019. This period is when the offending in Jersey, in respect of which the Defendant was sentenced, took place. Evidence 8. We first heard evidence from Police Sergeant Robert McCallum, who is drugs trafficking expert for the States of Jersey Police. He identified for us his statement by way of an expert report dated 11th July 2019. 9. Police Sergeant McCallum was able to give us evidence as to the street value of the cocaine in question and indicated that the purity of the cocaine seized in this case could have

allowed for adulteration with such substances as caffeine or creatine. He gave evidence relating to the fact that drugs were often supplied "on tick", in other words by credit, and he referred to a list that had been seized on a search of the Defendant's premises, which in manuscript reads: "Young No. 30 Marc No. 100" 10. He indicated that a list of this nature is very typical of dealing lists that he has seen in the course of his profession and which suggested that they were reminders as to who owed money to the Defendant for drugs deals. A number of other factors were consistent with drugs dealing including information seized from the Defendant's iPhone which contained other information compatible with being a deal list. 11. On cross-examination, the officer conceded that both of the examples of deal lists mentioned above could conceivably have innocent explanations, but they were nonetheless consistent with deal lists in his view. In his report, Police Sergeant McCallum concluded that the value of the cocaine in the Defendant's possession was approximately £1,120 to £1,400 if dealt with as 14 underweight 1 gram deals although it would likely be further adulterated, an hypothesis strengthened by the seizure from the Defendant of creatine, which could have adulterated the drugs by 200% giving an overall value of between £3,360 and £4,200 based on the supply of 42 x 1 gram deals. In conclusion, the officer in his report states: "I would consider this seizure to be a small commercial amount imported into the Island as an underweight half ounce with the intention of ultimate disposal at street level by a supply in single grams." 12. We then heard from Mr Niall Murray who is a chartered accountant in the Economic Crime and Confiscation Unit specialising in forensic analysis. He had conducted a number of detailed analyses of the Defendant's bank accounts, the first being dated 3rd July 2020, the second being 25th September 2020, and the third being 9th March 2021. He had analysed the Jersey and UK bank accounts with particular emphasis on the supposed explanation to be provided by the Defendant that he won significant amounts by gambling, which accounted to a great extent for the balances on his accounts that did not derive from his income from employment. 13. Mr Murray analysed the UK current account for the years 2017, 2018 and 2019. The betting had stopped in October 2019, but over the relevant period Mr Murray had identified for the UK account a total number of 516 bets apparently placed at a value of £13,568 and winnings of £9,972 totalling a loss of £3,596 or 26.50% of the total stakes. 14. For the Jersey account over the same period, he identified 1628 bets in the total sum of £74,718 with winnings of £54,887.54 and a total loss of £19,830.46 or 26.54% of the amount staked. Over the period in question covering both accounts, therefore, the total loss sustained from gambling was £23,426.00. 15. He also assessed the total levels of household expenditure and income from work and the various bets on record. 16. In his first report Mr Murray concludes as follows: "For most of the period under review Lumb was employed by the Jersey Telecoms provider JT. His pay fluctuated between £2500 and £4500 suggesting a piece work basis. In the earlier sections of the statement I have drawn attention to a huge number of electronic payments made to Skybet and the "virtual" absence of any normal domestic payments e.g. for rent or grocery shopping. I have noted that varying sums seem to be remitted under the reference "kids". I have concluded that Lumb has (or had) a gambling addiction. His financial position was relatively precarious,

throughout his time with JT, and would have precluded him from being in possession of any substantial amounts of cocaine, unless he intended to deal in it for profit. He must have paid for rent, food and clothing almost entirely in cash." 17. In the conclusions to the first report, he says, amongst other things: "During January and February 2019, Lumb made numerous payments to Brian Leen and he continued to do so in April 2019, when receiving a substantial final wage payment from JT..." 18. Even after his arrest, the Defendant continued to make payments to Leen and payments to Skybe amongst others. 19. Mr Murray referred to the bank statements relating to the United Kingdom accounts and was able to point to a very substantial number of payments paid to Leen. With regard to income, he confirmed that the Skybet entries could not be considered a source of income - they were expenditure and that the UK account received £64,160.75 from the Defendant's Jersey account. There was a flow of money from Jersey to the United Kingdom. A schedule had been prepared of payments made to Leen from the Defendant's UK account into which for the period 15 th December 2017 - 1 st March 2019, some 67 payments were made. There appeared to be a direct link between payments from the Jersey account to the UK account and thereafter payments to Leen. 20. In cross-examination it was put to him that it was possible for gambling to produce an income and/or an individual to be a successful gambler. Whilst agreeing this in principle, Mr Murray confirmed that in his judgment the Defendant was not a successful gambler. He confirmed that there was no evidence for alcohol or other entertainment or tobacco expenditure. In cross-examination he also confirmed that at every month end it appeared that the Defendant was short of funds and was borrowing money. Some payments were described in the accounts as "wage" but they were not income payments from the Defendant's employment with JT or otherwise. Many entries had no explanation but a single word entry. It was observed that no money came back from Leen into the bank accounts on any occasion. 21. We also heard from the Defendant who confirmed that he gambled extensively and operated an online account with Skybet. He told us that one can place bets from that account and take winnings back into that online account. If in a bookmakers, he would also place football bets or play a roulette machine and he therefore suggested that he received significant amounts in cash from the roulette machines which would not be accounted for in the bank accounts. He offered various explanations for payments that he has made. With regard to payments made to Leen, he described him as a friend from school, his best friend, and they grew up together. They both gamble and he told us that he lends money to Leen and whenever he visits in the United Kingdom, the money is returned to him in cash at that point. That is why money is being paid out to Leen and not back to the account. Any reference to "wage" is meant to be a reference to "wager". 22. He gave evidence as to the various other recipients of payments who were members of his family, his ex-partner, individuals he had worked with and one individual, V Mistry, to whom he lent money and received money from in return by way of loans. Some of the payments out were to other individuals who gambled with him. He was taken through a number of entries in the accounts explaining such entries as "watch" as indicating a watch that he was buying for himself back in the United Kingdom and "two gold necklaces" as

something he was buying for himself and for his son. They had boxing glove charms on them. With regard to the alleged deal lists, he indicated that the lists were in his handwriting and referred to Mr Andrew Young and Mr Mark Roberts from whom he borrowed the sum of £130.00 for a party and was not a record of any drugs dealing. With regard to the entries on the iPhone these two had nothing to do with drugs, they were all to do with requirements for carrying out his job. 23. In cross-examination, he conceded that one of the payments was made to an individual, Mr Lines, who was in prison having been convicted dealing in drugs whilst working for JT. The Defendant denied that the payment had anything to do with drugs, it was another gambling debt. He had used the creatine for the gym and not known it could be used to adulterate cocaine. He was surprised to hear that he was apparently losing money gambling as he thought he was winning and he asserted that he made a profit when at the bookmakers. When the level of payments made to Leen was put to him, he referred to having good days at the bookmakers and for some occasions a "very good day" which would be winnings of £1,000 to £2,000 in total. He denied that the payments to Leen amounted to a drugs debt and maintained his evidence to the effect that Leen was his friend and a gambler as well.

Discussion and conclusion 24. The burden of proof lies upon the Defendant in this case to persuade the Court not to apply the assumptions contained within Article 5 of the Law. The standard to which he must persuade the Court is on the balance of probabilities. 25. The evidence is not without its complications. The Court is not able to say with absolute certainty precisely what all of the various payments made from the Defendant's bank accounts have been for. 26. As the Crown submits, this is a matter that turns upon the Defendant's credibility as a witness and the Court accepting that he is a successful gambler and that the payments to Leen were made as part of that gambling activity. 27. It appears to the Court, however, that the pattern of payments is consistent with payment for drug dealing and we note the connection that the Defendant has with Mr Lines who was also engaged in drug dealing activity. 28. As this Court has said on an earlier occasion, to the effect that the Defendant is facing one charge of importation of a small commercial quantity of drugs and has accepted an intention of supplying some of those drugs means that the Defendant must, to an extent, have been involved in the drugs' world simply to know how to source the drugs, the amounts to pay, and indeed how to sell them on. We do not accept that the creatine found in the Defendant's possession was not intended to be used for the purposes of adulterating the drugs for onward sale. 29. Importantly, from the Court's perspective, the Defendant's story is unsupported by any evidence. If, indeed, his connection with Leen was as straightforward as the Defendant has suggested, it is of surprise to the Court that we have not heard from him in evidence nor indeed have we heard from any other witness to support either the Defendant's alleged gambling habit or whether he would have been capable of making the kind of money involved in this case in that way. Nor have we heard from any of the Defendant's colleagues to whom, he contended, he lent money on a regular basis. 30. The Court is not persuaded on the balance of probabilities that the assumptions provided for in Article 5 of the Law should be disapplied and accordingly applying those assumptions we declare that the Defendant

has benefitted from drugs trafficking in the sum of £40,256.30 and order the confiscation in the sum of £401.30 as requested by the Crown. Authorities Customs and Excise (Jersey) Law 1999. AG v Lumb

[2020] JRC 159. Proceeds of Crime (Jersey) Law 1999. Page Last Updated: 12 Jul 2021 BAILII: [Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#) | [Donate to BAILII](#)

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Prepared on 23 October 2026 · Esheria