

JERSEY / JUDGMENT

# Representation of Leigh Francis Mauger [2000] JRC 65 (12 April 2000)

**[2000] JRC 65**

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[2000] JRC 65 [ New search ] [ Help ] 2000/65 7 pages ROYAL COURT (Samedi Division) th  
April ,2000 Before: Sir Philip Bailhache sitting as a Single Judge Representation of Leigh  
Francis Mauger, challenging validity of order for detention of money, made under Article  
16B of the Drug Trafficking Offences (Jersey) Law, 1988 Advocate C. M. Fogarty for the  
Representor Advocate A. J. Belhomme for the Attorney General

## JUDGMENT.

THE BAILIFF: 1. On Tuesday 14th April, 1998, police officers on duty at Jersey Airport stopped and carried out a routine check on Leigh Francis Mauger ("the representor") as he was about to board a flight to Gatwick. He was taken to an office and volunteered that he was in possession of a large amount of money. The representor told the officers that it was £12,000 but it was counted in his presence and found in fact to total £10,925. The representor could offer no explanation as to the missing £1,075. His baggage was searched and the officers found packets of hypodermic syringes and swabs, a pot containing vitamin C powder, a wrapped surgical scalpel blade, and two address books. The address books contained the names of no fewer than seventeen persons known to the police to have convictions for drug-related offences. Police records were checked and the representor was found to have been convicted on 16th May, 1997, of possessing heroin and cannabis resin. Later in the evening of 14th April, 1998, the representor was interviewed under caution. He explained his possession of the cash by stating that it represented his life savings and that he intended to buy a car. Police enquiries suggested that this explanation was not compelling but it is unnecessary for the purposes of this judgment to go any further into that issue. Finally the representor admitted that he took heroin on a regular basis, but he denied that he was addicted to it. 2. The police officers determined that they had reasonable grounds for suspecting that the money either represented the proceeds of drug trafficking or was intended by the representor for use in drug trafficking. They accordingly exercised their power under Article 16B of the Drug Trafficking Offences (Jersey) Law 1988 , as amended, ("the Law") to seize and

detain it. It has not been suggested by counsel for the representor that this action was unlawful. On 15th April, 1998, the officers applied to the Deputy Bailiff for an order under the same Article authorizing the continued detention of the money for a period of three months, and that application was granted. 3. The proper construction of Article 16B and Article 16C of the Law is the matter in dispute, and it is convenient here to set out the material parts of those Articles. "Article 16 B Seizure and detention of drug trafficking money (1) A police officer may seize and in accordance with this Article, detain any money which is imported into or exported from the Island if he has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of, or it intended by any person for use in, drug trafficking. (2) Money seized by virtue of this Article shall not be detained for more than 48 hours unless its continued detention is authorized by an order made by the Bailiff and no such order shall be made unless the Bailiff is satisfied that - (a) there are reasonable grounds for the suspicion mentioned in paragraph (1); and (b) the continued detention of the money is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in the Island or elsewhere) of criminal proceedings against any person for an offence with which the money is connected. (3) Any order under paragraph (2) shall authorize the continued detention of the money to which it relates for such period, not exceeding three months beginning with the date of the order, as may be specified in the order; and the Bailiff, if satisfied as to the matters mentioned in that paragraph, may thereafter from time to time authorize the further detention of the money but so that - (a) no period of detention specified in such an order shall exceed three months beginning with the date of the order; and (b) the total period of detention shall not exceed two years from the date of the first order made in respect of the money under paragraph (2). ..... Article 16C Forfeiture (1) The Royal Court may order the forfeiture of any money which has been seized under Article 16B if satisfied, on an application made while the money is detained under that Article, that the money directly or indirectly represents any person's proceeds of, or is intended by any person for use in, drug trafficking. (2) Any application under this Article shall be made by or on behalf of the Attorney General. (3) The standard of proof in proceedings on any application under this Article shall be that applicable to civil proceedings; and an order may be made under this Article whether or not proceedings are brought against any person for an offence with which the money in question is connected." 4. On 16th April, 1998, pursuant to Article 16E of the Law, the money was paid into an interest-bearing account. Pursuant to Article 16B (3) the order authorizing the continued detention of the money was extended by orders made on 14th July, 1998, 16th October, 1998, 14th January, 1999, 14th April, 1999, 14th July, 1999, 14th October, 1999 and 14th January, 2000. In accordance with Article 16F (1) each order provided properly that notice should be given to any person affected by it, i.e. the representor. Counsel has not suggested that all proper efforts were not made to give notice to the representor of these orders.

On 2nd February, 2000, the Attorney General applied, pursuant to Article 16C of the Law, for an order of forfeiture in relation to the money. Counsel was appointed under the legal aid scheme to the representor. On 9th March, 2000, counsel, in response to the Attorney General's application,

filed her own representation challenging the validity of the detention order made on 16th October, 1998, and all subsequent orders. On 17th March, 2000, the Court ordered that this representation, which raised a point of law, should be determined prior to consideration of the Attorney General's application for forfeiture. 5. The argument advanced by Miss Fogarty for the representor can be shortly stated. The order of 14th July, 1998, expired after three months on 14th October, 1998. Thereafter the money ceased to be lawfully detained. The order made by Hamon, Deputy Bailiff, on 16th October, 1998, was invalid because at that date there was no detention order in existence which was capable of being extended. It followed that all the subsequent orders were equally invalid and that it was no longer open to the Attorney General to apply for the forfeiture of the money. 6. Mr. Belhomme for the Attorney General, conceded very properly that there had been an oversight by the police when they had not applied on 14th October, 1998 for an extension of the detention order. He submitted however that Miss Fogarty's argument was not based upon a proper interpretation of Article 16B. He also prayed in aid a number of principles of statutory construction in support of his submission. The Crown's submission can be stated as follows. Article 16B (3) provides that the Bailiff: "may thereafter from time to time authorize the further detention of the money ...". The words "thereafter from time to time" meant no more than "after the granting of the previous order". Article 16B (3) did not provide that the Bailiff may, "at any time prior to the expiration of the term of the previous order", authorize the further detention of the money; nor did it provide that the Bailiff may, "on the date of expiration of a previous order", authorize the further detention of the money. Mr. Belhomme submitted that the words "from time to time" should be construed as authorizing the making of an order for the continued detention of the money at any time after the making of the previous order. An order could therefore have been made, for example, on 16th September, 1998, (prior to the expiration of the previous order) or on 16th November, 1998, (after the expiration of the previous order) and both would have been equally valid. The only consequence of an hiatus would be, in Mr. Belhomme's submission, that the representor could during that period have demanded the return of his money. 7. Mr. Belhomme underlined this submission by drawing attention to a number of principles of statutory construction. First he relied upon the presumption that the Court will seek to avoid a construction which achieves an unreasonable or absurd result. Secondly he relied upon the presumption that the Court will strive to avoid adopting a construction which leads to an injustice or unfairness. Thirdly he contended that the courts will strive to avoid adopting a construction which is adverse to the public interest. It would be absurd, or unfair, or adverse to the public interest, he submitted, to adopt a construction which would permit the return of the proceeds of drug trafficking to the representor. The difficulty with these submissions, it seems to me, is that they beg the question of whether this money is the proceeds of drug trafficking. That question has not yet been determined. The only determination which has been made is that there is a reasonable suspicion that the money is associated with drug trafficking. It could equally be said to be absurd, unfair, or adverse to the public interest to adopt a construction which allowed the police to retain money seized from an individual other than in strictly defined circumstances laid down by law. 8. Finally Mr. Belhomme submitted that there was a presumption that the Court will find against a construction which seeks to circumvent or otherwise evade the object of the enactment. He cited an extract from

## Maxwell on the Interpretation of Statutes (12th Ed'n

1969) at page 45 where the author writes: "If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. Where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system. In accordance with these principles, the court should avoid interpretations which would leave any part of the provision to be interpreted without effect; will not narrow enactments designed to prevent tax evasion; may sometimes find it necessary to depart from the principle that mens rea is an essential ingredient of criminal offences; and may give a wide sense to words in a penal statute." 9. It is certainly true that the purpose of this statutory provision is to make subject to forfeiture the proceeds of drug trafficking. But this canon of construction also begs the question of whether the money is in fact the proceeds of drug trafficking. Furthermore this principle applies only where alternative constructions are equally open. Is that the case here? 10. The equivalent provision in English legislation is Section 42(3) of the Drug Trafficking Act 1994 which for practical purposes is in identical terms to the article now under consideration. A note in Archbold 2000 paragraph 26-180 states: "Because the measure is draconian, officers must comply strictly with its provisions. Where officers were out of time they were to be given no latitude; *R v Uxbridge Magistrates' Court, ex parte Henry* [1994] Crim LR 581." The note of that case is not entirely clear but it seems that the customs officers were some hours out of time in applying for a detention order after seizing £45,000 at Heathrow Airport. On appeal to the Divisional Court it was held that the measure was a draconian one and it was particularly important that its provisions should be strictly complied with. It appears that the officers could not therefore apply for a continued detention order. 11. I return to Article 16B (3) of the Law. The question for me is whether the order made on 16th October, 1998, was invalid because the previous detention order had expired on the 14th October. If so, the subsequent detention orders are also invalid and it is not open to the Attorney General to seek an order of forfeiture. 12. With some reluctance I have reached the conclusion that the order of 16th October, 1998, was invalid. I do so because it seems to me that the tenor of Article 16B necessarily implies a continuum during which the money in question is lawfully detained. The language of Article 16B (2) is imperative; " money seized by virtue of this Article shall not be detained for more than forty-eight hours unless its continued detention is authorised by an order made by the Bailiff ". The continued detention authorised in this case came to an end on 14th October, 1998. Thereupon, in my judgment, the police were under a duty to return the money to the representor. I cannot accept Mr. Belhomme's argument that the words "from time to time" authorize the making of an application in effect at any time. The practical result of that interpretation would be to countenance a

situation where the police might continue for months to detain money without the authority of a court order but, if the person appeared at the police station to demand its return, thwart that demand by immediately obtaining another detention order. That would not be an attractive construction but, more importantly, it is not in my judgment the correct construction. The power to "authorize the further detention of the money" in paragraph (3) depends upon the existence of an order authorizing "the continued detention of the money to which [the order] relates". There was no jurisdiction to make the order made on the 16th October, 1998, which was therefore invalid. That invalidity taints all the subsequent orders and renders it impossible for the Attorney General to apply for a forfeiture order pursuant to Article 16C. 13. I reach that conclusion with some distaste because there is clear prima facie evidence that this money is tainted by association with drug trafficking. But it is not for the Court to supplement the provisions laid down by the legislature. Provision could be made for the seizure of property upon reasonable suspicion that it is associated with drug trafficking and for the burden of proving that the property is not tainted in that way to be upon the claimant. If a claim were not made within a specified period, the property could be forfeited. That is not however the position under the Law. The right of police officers to seize and detain money imported into or exported from the Island is limited to a period of forty-eight hours. The right to continue to detain money beyond that time is subject to obtaining a court order, which can last for a maximum of three months. These time limits must be strictly observed. If a detention order expires the money should be returned. If it is considered that this is an unsatisfactory state of affairs, then that is a matter for the legislature to rectify. 14. I therefore order the payment to the representor of the money seized from him on the 14th April, 1998, together with interest accrued. Authorities. Drug Trafficking Offences (Jersey) Law, 1988; Articles 16B, 16C, 16E, 16F; Maxwell on Interpretation of Statutes (12 th Ed'n: 1969): p.45; Archbold (2000 Ed'n): paragraph 26-180 Page Last Updated: 02 Nov 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII URL: [https://www.bailii.org/je/cases/UR/2000/2000\\_65.html](https://www.bailii.org/je/cases/UR/2000/2000_65.html)

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