

Judgment 61/2004

Robin John Hutchinson – Court of Appeal (Criminal Appeal 311) – 16 December, 2004

Drug Trafficking (Bailiwick of Guernsey) Law, 2000 – appeal from confiscation order in the sum of £89,033 made by the Royal Court – assessment of proceeds of drug trafficking – issues of fact to be decided by the Jurats – civil standard of proof applicable – appeal dismissed – delivery of reasons for the Jurats’ verdict or verdicts on applications for confiscation orders – concern at expenditure on legal aid.

IN THE COURT OF APPEAL OF GUERNSEY

The 16th day of December, 2004 before Richard Charles Southwell, Esq., Q.C., Presiding, Peter David Smith, Esq., Q. C., and Christopher Simon Courtenay Stephenson Clarke, Esq., Q.C.

LAW OFFICERS OF THE CROWN

v.

ROBIN JOHN HUTCHINSON

Appellant

In the appeal of the Appellant from the Drug Trafficking Confiscation Order made by the Royal Court on 23rd October, 2003;

THE COURT, having heard Advocates A. M. Merrien for the Appellant and P. Robey for the Crown, thereon, this day GAVE JUDGMENT in the terms attached hereto and DISMISSED the appeal.

K. H. TOUGH
Registrar of the Court of Appeal

Approved Text
29.12.04

16th DECEMBER 2004

COURT OF APPEAL

Before

Richard Southwell, Esq., QC; presiding
Peter Smith, Esq., QC
Christopher Simon Courtenay Stephenson Clarke Esq., QC

LAW OFFICERS

v.

ROBIN JOHN HUTCHINSON

Judgment delivered by Southwell, JA

1. On 4th March 2002 Mr Hutchinson pleaded guilty to one count by which he was charged with having been concerned in the fraudulent evasion of the prohibition on the importation of Class B drugs (for which he had been arrested on 18th June 2001) and a verdict of guilty was recorded on that count. The drugs consisted of no less than 30.13 kilos of cannabis resin having an average street value of about £240,000. The plea of guilty was entered in the face of overwhelming evidence as to Mr Hutchinson's involvement. He was sentenced by the Royal Court to a term of imprisonment on 28th May 2002 which was reduced on appeal by this Court on 9th January 2003.
2. Application was made to the Royal Court by the Crown for a Confiscation Order, which involved that Court in making a determination: -
 - (i) Whether Mr Hutchinson had benefited from drug trafficking, and if so
 - (ii) What amount was to be recovered in his case in connection with such benefit.

The making of that determination was the subject of postponements. The hearings before the Royal Court took place on 7th July 2003 (for legal submissions before the

substantive hearings) and on 5th and 6th August and 7th, 8th, 9th, 10th, 13th, 14th, 15th, 16th and 23rd October 2003. For the purposes of these hearings, Mr Hutchinson was in receipt of legal aid. The determination of the Royal Court by the Jurats was that Mr Hutchinson had benefited from drug trafficking to the extent of £89,033, and that this was to be the amount to be recovered from him. Accordingly on 23rd October 2003 the Royal Court made a Confiscation Order in the sum of £89,033 with 12 months to pay, and if not so paid he was to serve imprisonment for 21 months.

3. Mr Hutchinson has appealed to this Court from the Confiscation Order of the Royal Court by an initial Notice of Appeal dated 21st October 2003 filed after the determination of the extent of his benefit from drug trafficking, but before determination of the amount to be recovered and the making of the Confiscation Order. His Notice of Appeal has subsequently been supplemented by his Advocate, Advocate Merrien. On 21st April 2004 an order granting legal aid for the appeal was made by Sir John Nutting Bt QC sitting as a single Judge of Appeal. In applying for legal aid, Mr Hutchinson stated that his weekly income was just over £84. This statement was to be contrasted with his evidence before the Royal Court that in the relevant period prior to his arrest in June 2001 he had been earning at the rate of £40-50,000 a year.
4. The application for the Confiscation Order was made in accordance with the Drug Trafficking (Bailiwick of Guernsey) Law 2000 (“the 2000 Law”). Section 2 lays down the primary provisions in relation to the making of Confiscation Orders. Under s.2(2) the Royal Court is first to determine whether the defendant has benefited from drug trafficking. Section 2(3) reads as follows: -

“For the purposes of this Law, a person has benefited from drug trafficking if he has at any time (whether before or after the coming into force of this Law) received any payment or other reward in connection with drug trafficking carried on by him or another person.”

Under s.2(4) the Court proceeds to determine in accordance with section 5 the amount to be recovered in his case. Under s.2(5) the Court is then to order the defendant to pay that amount. (Section 2(5) contains further provisions as regards sentencing and making the Confiscation Order which are not material to this appeal.) Section 2(7) reads as follows: -

“The standard of proof required to determine any question arising under this law as to: -

- (a) whether a person has benefited from drug trafficking; or*
- (b) the amount to be recovered in his case by virtue of this section,*

is that applicable in civil proceedings.”

5. There seems to have been some discussion in the Royal Court whether these proceedings were criminal proceedings. In our judgment they clearly were criminal proceedings, despite the s.2(7) provision for the civil standard of proof, on the balance of probabilities, to apply.
6. Section 3 deals with the postponement of determinations; no point arises on the appeal under section 3, except for a general complaint by Mr Hutchinson about the time taken to complete the confiscation proceedings. Nothing turns on that complaint on this appeal, and in any event there was a multiplicity of causes for the length of time taken in this case. In future cases, however, the appropriate course will be either to deal with confiscation orders before sentencing (if that is practicable) or to deal with them within as short a time after sentencing as can reasonably be achieved.
7. Section 4 concerns the manner of assessing the proceeds of drug trafficking, and we here set out sub-sections (1), (2), (3), and (4) of Section 4: -

“(1) For the purposes of this Law: -

- (a) any payments or other rewards received by a person at any time (whether before or after the commencement of this Law) in connection with drug trafficking carried on by him or another person are his proceeds of drug trafficking; and*
- (b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.*

(2) Subject to subsections (4) and (5), the Court shall, for the purpose: -

(c) *of determining whether the defendant has benefited from drug trafficking, and*

(d) *if he has, of assessing the value of his proceeds of drug trafficking.*

make the required assumptions.

(3) *The required assumptions are: -*

(a) *that any property appearing to the Court: -*

(i) *to have been held by the defendant at any time since his conviction, or*

(ii) *to have been transferred to him at any time since the beginning of the period of six years ending when the proceedings were instituted against him,*

was received by him, at the earliest time at which he appears to the Court to have held it, as a payment or reward in connection with drug trafficking carried on by him;

(b) *that any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug trafficking carried on by him; and*

(c) *that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a reward, he received the property free of any other interests in it.*

(4) *The Court shall not make any required assumption in relation to any particular property or expenditure if: -*

(a) *that assumption is shown to be incorrect in the defendant's case;*
or

(b) the Court is satisfied that there would be a serious risk of injustice in the defendant's case if the assumption were to be made:

and where, by virtue of this subsection, the Court does not make one or more of the required assumptions, it shall state its reasons."

8. Section 5 provides for the assessment of the amount to be recovered under a confiscation order which is to be the amount assessed as the value of the defendant's proceeds of drug trafficking, unless the Royal Court determines that the amount that might be realised is less. No point arises on this appeal under Section 5.
9. The 2000 Law contains many other provisions relating to Confiscation Orders, but it is unnecessary to refer to any further such provisions.
10. At the time when Mr Hutchinson was arrested in June 2001 he and Miss Soosiang Bougourd had been living together for some time in a rented flat. They had bought a house and were refurbishing and altering the house with a view to moving into the house from the flat. He ran a business called Prime Décor doing decorating and refurbishment. Miss Bougourd ran a hairdressing salon. Each of them gave evidence that part of each's takings from their respective business were paid into bank accounts and found their way into the annual accounts submitted for tax purposes, while another part of the cash takings were retained in cash, not declared for the purposes of tax, and mostly not paid into any bank account except when a bank account required to be replenished.
11. For the purposes of assessing what was Mr Hutchinson's benefit from drug trafficking, the Royal Court had to consider Mr Hutchinson's income, both declared and undeclared, and to decide to what extent the Crown had succeeded in discharging its burden of proof (the standard of proof being, as previously stated, the civil standard) of showing that Mr Hutchinson's income was derived from drug trafficking. The Court had also to consider his expenditure, and to decide to what extent the Crown had succeeded in discharging the burden of showing that his expenditure was derived from drug trafficking. Adopting the approach of the Crown's expert, Miss Elizabeth Nicholls (an accountant attached to HM Customs and Excise in the UK), the Crown took first Mr Hutchinson's deposits in his personal accounts, whether his sole accounts or a joint account with Miss Bougourd. The Crown then deducted Mr

Hutchinson's drawings from his business account and such undeclared income from his business as the Jurats might find to have been Hutchinson's. This calculation would leave either what the Crown and Miss Nicholls called a "surplus" in Hutchinson's favour, or a "deficit", i.e. a net amount derived from drug trafficking. Such surplus or deficit would be carried forward into the further calculations.

12. The Crown then turned to specific categories of expenditure of Mr Hutchinson. Insofar as they succeeded in showing expenditure by him, they relied on the assumption set out in Section 4(3)(b) (see above) that expenditure in the relevant period was met out of payments received by him in connection with drug trafficking carried on by him.
13. The first specific category of expenditure was expenditure on their new house. For this purpose it was necessary to distinguish between money actually paid for work on or goods supplied for the house, and monies promised but not actually paid.
14. The second specific category was expenditure on cars, which was agreed between Counsel to be £9,045. The third category was miscellaneous cash expenditure agreed to be £6,309.
15. The next item was £5,000 found in the flat after Mr Hutchinson's arrest. The burden was on the Crown to show, if they could, that this money was Mr Hutchinson's, and not Miss Bougourd's.
16. Once all these figures had been determined, there would be a net total which the Crown claimed to be either income of Mr Hutchinson or expenditure by him, and to which the statutory assumptions would apply, subject to Mr Hutchinson showing that the assumptions were incorrect, or the Court being satisfied that there would be a serious risk of injustice if the assumptions were made.
17. Finally there was the issue as to how far (if at all) Miss Bougourd had contributed to the expenditure from her own undeclared cash earnings, and if there was an amount under this head it would be deducted from the total referred to in paragraph 16 above. It has to be noted that no charges were pressed against Miss Bougourd, and therefore the statutory assumptions did not apply in respect of her income or expenditure. What the Crown had to show was that Miss Bougourd did not contribute to the income or

expenditure otherwise sought to be attributed to Mr Hutchinson, or if she did so contribute, to what extent.

18. Once any contribution by Miss Bougourd had been deducted from the total referred to in paragraph 16 above, there would be a final net figure which would represent the benefit obtained by Mr Hutchinson from his drug trafficking.
19. This approach was different from the approach adopted by Miss Robinson of Deloitte & Touche, Jersey, who was instructed on behalf of Mr Hutchinson and paid for out of legal aid. But by the end of the evidence, at the time when the closing speeches and the Bailiff’s summing up to the Jurats came to be made, it had been accepted that it was appropriate to present the issues to the Jurats in the way which we have described. This enabled Counsel to present to the Jurats a schedule containing some agreed figures and several blanks for the Jurats to fill in once they had determined the appropriate figures.
20. At this point we should mention an issue which had arisen in the course of the legal submissions in July 2003. Mr Hutchinson, through his Counsel, Advocate Merrien, asked for the Bailiff to sit alone and to determine all the issues including the figures himself. But the Bailiff decided (in the view of this Court, correctly) that normal practice in the Royal Court required the issues of fact to be decided by the Jurats on the basis of the legal directions by the Bailiff. We will at the end of this judgment suggest a possible change in the procedure for consideration by the Bailiff and the other appropriate authorities.
21. We set out below the form of the schedule as presented to the Jurats. We have made some minor amendments for clarity, including numbering each of the items. The figures included in this form of schedule were agreed: the rest were to be filled in by the Jurats.

1.	Deposits into Hutchinson’s personal account	£38,699.00
2.	Deposits into joint account	
3.	Total of items 1 and 2	
4.	<u>Deduct</u> Hutchinson’s drawings from business account	£40,711.00
5.	“Undeclared” income	
6.	“Surplus” or deficit	
7.	<u>Add</u> Expenditure on house	
8.	Expenditure on cars	£9,045.00

9.	Miscellaneous cash expenditure	£6,309.00
10.	Cash attributed to Mr Hutchinson on arrest	
11.	Total of items 6 – 10	
12.	<u>Deduct</u> Extent of Miss Bougourd’s contribution	
13.	Difference between income and expenditure	
14.	Drug trafficking benefit	

22. The Jurats filled in the blanks in the schedule by their responses to the relevant questions, though a completed schedule was not in fact prepared, or placed before this Court on the hearing of the appeal. We repeat the schedule below with the figures given by the Jurats included: -

1.	Deposits into Hutchinson’s personal account	£38,699.00
2.	Deposits into joint account	£12,508.00
3.	Total of items 1 and 2	£51,207.00
4.	<u>Deduct</u> Hutchinson’s drawings from business account	£40,711.00
5.	“Undeclared” income	£16,233.00
6.	“Surplus” [in favour of Hutchinson]	£5,737.00
7.	<u>Add</u> Expenditure on house	£74,416.00
8.	Expenditure on cars	£9,045.00
9.	Miscellaneous cash expenditure	£6,309.00
10.	Cash attributed to Mr Hutchinson on arrest	£5,000
11.	Total of items 6 – 10	£89,033.00
12.	<u>Deduct</u> Extent of Miss Bougourd’s contribution	£Nil
13.	Difference between income and expenditure	£89,033.00
14.	Drug trafficking benefit	£89,033.00

We then consider each item in turn, dealing with the arguments on this appeal in relation to the disputed items.

23. Item 1 As we have indicated, the amount of the deposits into Mr Hutchinson’s personal account was agreed.
24. Item 2 The amount of the deposits into the joint account was in dispute at trial. For the prosecution the total of the deposits was put at £25,016, and Advocate Robey for the Crown was prepared to accept that half of this total might have been deposited by Miss Bougourd rather than Mr Hutchinson, so that the figure for insertion was half, i.e. £12,508. Advocate Merrien submitted that in the light of some evidence that in the months before his arrest Mr Hutchinson had been working less for other people and more for himself on the house, accordingly he would have paid into the joint

account less than Miss Bougourd. The Jurats accepted the Crown’s figure of half. Mr Hutchinson did not challenge this figure on appeal.

25. Item 3 The figure of £40,171 was agreed for Mr Hutchinson’s legitimate drawings.

26. Item 4 This figure was of Mr Hutchinson’s cash income which was not put into the bank accounts or declared for tax purposes. This was the subject of much evidence from Mr Hutchinson and the two accountants, and also evidence from other witnesses called for Mr Hutchinson to speak to the payment of cash sums by them to him. The prosecution did not put forward any specific figure, their essential case being that there would have been only a small amount, if any. Mr Merrien for Mr Hutchinson also did not put forward a specific figure; but he relied on a schedule prepared by Mr Hutchinson (A6 pages 17-18) listing what he described as “cash jobs” where he had been paid in cash by his clients. The total of these “cash jobs” would be a substantial sum.

27. The Jurats arrived at a figure of £16,233 (transcript page 721). At pages 722-723 of the transcript, they stated as follows: -

“The undeclared income, we did not accept the Crown’s figures here, sir. We thought that was because there was a serious risk of injustice if we accepted them.”

The Jurats went on to show how they had arrived at the total of £16,233: they started with the figure of £20,049 given in Miss Robinson’s report, and deducted two amounts: -

- in respect of Mr Cummings £2,589
 - in respect of Mr Skillett £2,500
- out of the total of £12,000 claimed in respect of Mr Skillett

and further added £1,273 in respect of Mr Hill.

28. The figure of £16,233 was attacked by Mr Merrien on the hearing of the appeal. He pointed out that the Jurats’ reference to “a serious risk of injustice” was a reference to the circumstances under section 4(4)(b) of the 2000 Law in which the Court could decline to make the statutory assumptions. Such reference was misconceived, because

the primary issue was whether or not Mr Hutchinson received the cash he alleged that he received.

29. Mr Merrien submitted that by reason of this error, the Jurats had led themselves to approach their determination in the wrong way. In our judgment, however, the effect of any error cannot be assessed until we have examined their determination as to the facts.

30. The Jurats correctly started with Miss Robinson's figure of £20,049. The deduction in respect of Mr Cummings depended on their assessment of the evidence, and cannot in our view be faulted. Mr Hutchinson, and initially Mr Skillett, gave evidence that Mr Skillett paid about £12,000 in cash. But Mr Skillett's evidence was potentially caused irretrievable damage once he was referred in cross-examination to his statement to the Police dated 25th September 2001, a detailed statement, in which (inter alia) he stated:

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"I always paid Robin by cheque for the total amount but on a couple of occasions I paid him cash but these have been highlighted on my cheque book stub. According to my records I have paid him £990 (nine hundred and ninety pounds) in cash."

This was out of a total of £24,624 which Mr Skillett said he had paid Mr Hutchinson. The Jurats reduced the £12,000, which was part of Miss Robinson's total of £20,049, by £2,500 to £9,500. It was open to the Jurats in the light of Mr Skillett's statement and his damaging cross-examination, to reduce this further to £990, and it seems somewhat surprising that the Jurats did not do so. In respect of Mr Hill, though Mr Hutchinson's list of "cash jobs" included a total of about £15,000, there was little evidence to support this. But some notes on filofax pages were produced on 13th October 2003, and no doubt it was in reliance on these notes that the Jurats were prepared to add £1,273 as an adjustment upwards to Miss Robinson's figure.

31. It follows that in our judgment the Jurats adopted a correct approach on this item. The reference to "a serious risk of injustice" seems to us to be explained in this way. The Jurats were satisfied that Mr Hutchinson probably had received £16,233 in cash. To adopt the Prosecution's approach would have led to an assessment that he had received nothing in cash. The phrase "a serious risk of injustice" which appeared in section 4(4)(b) was a convenient phrase for the Jurats to use to justify rejection of the

prosecution’s case on this item. Given that the Jurats’ general approach was a correct one, we reject Mr Merrien’s submission that the Jurats thought that the statutory assumptions were relevant to this item.

32. Item 6 It follows that in our judgment the Jurats correctly arrived at a surplus figure for item 6 in favour of Mr Hutchinson, though in truth they could, if their assessment of the figures had been slightly different (e.g. in relation to Mr Skillett) have reached a deficit figure of about the same amount.
33. Item 7 This item related to expenditure by Mr Hutchinson on renovation of the house which had been paid and not merely incurred. The figure arrived at by Miss Robinson was £60,124, and by Miss Nicholls for the prosecution was £74,416 (A5 page 15). These figures were derived primarily from a combination of the figures under the heading “House Costs” in a red book used by Mr Hutchinson and of his evidence. On this, as on the other disputed items, the Jurats had to assess the credibility of his evidence in the light of such documentary evidence as was available, and also that of witnesses such as Mr Hearn, Mr Clark and Mr Hawkins, and also Miss Bougourd.
34. The Jurats accepted the figure put forward by Miss Nicholls based on Mr Hutchinson’s contemporaneous notes in the red book. It is plain that the Jurats did not accept as credible the evidence that some parts of the total of £74, 416 had not been paid by Mr Hutchinson. It is not for the members of this Court, who have not seen the witnesses give evidence, to second-guess the Jurats’ assessments of credibility. The figure of £74,416 is supported by the notes in the red book. In our judgment, therefore, there is no persuasive basis for holding that the Jurats reached the wrong figure for this item.
35. Items 8 and 9 These were agreed, and the application of the statutory assumptions was not challenged.
36. Item 10 The sum of £5,000 exactly was found in a red box under the bed in the flat occupied by Mr Hutchinson and Miss Bougourd. When interviewed after his arrest, Mr Hutchinson declined to comment on whose this sum was. He later said that it was a residue of money he had stored along with Miss Bougourd. Subsequently he said that it was all the money that was left in the “pot”, and because Miss Bougourd had paid most into the pot, he either gave it to her or treated it as hers.

37. At the time when the £5,000 was found and seized by the Customs Officers, Miss Bougourd said that the money was hers. When interviewed, she said on three occasions that it belonged to Mr Hutchinson. At the trial she maintained that the money was hers.
38. In the light of this testimony, the Jurats had the task of assessing the credibility of these two witnesses and concluding to whom the money had belonged.
39. When giving their verdicts on this item, the Jurats said this (transcript, page 722): -

“The cash we have again accepted the Crown’s assumption that that was Mr Hutchinson’s, so it is £5,000.”

This statement was attacked by Mr Merrien. Mr Robey had made it clear in his final speech to the Jurats (transcript, page 632) that the first matter which the prosecution had to prove (there being no burden of proof in this respect on Mr Hutchinson) was that the £5,000 was Mr Hutchinson’s. It was only after that had been proved on the balance of probabilities by the prosecution that the statutory assumptions could become relevant. Similarly the Bailiff in his directions to the Jurats (transcript, page 701) had made this abundantly clear to the Jurats. So Mr Merrien submitted that the Jurats had elided the two steps, first, deciding whether the £5,000 was Mr Hutchinson’s, and then, and only then, if it was Mr Hutchinson’s, applying the statutory assumptions.

40. We recognise that the words used by the Jurats were ambiguous and not well chosen. They were capable of giving the impression that the Jurats were referring to the statutory assumptions. But we are satisfied that that was not the case. Given the way the point was put by Mr Robey and by the Bailiff in the clearest terms, explaining the two steps required to be taken, it is in our view most improbable that the Jurats were expressing more than their conclusion that on the evidence before them they found that the money was Mr Hutchinson’s and not Miss Bougourd’s. Use by them of the word “assumption” was most probably equivalent to saying that that was the prosecution’s “contention” or “assertion”. As to their conclusion that the £5,000 was Mr Hutchinson’s, this conclusion was plainly open to them on the evidence, and in our judgment they were justified in reaching this conclusion.

41. Item 11 Accordingly in our judgment there is no sufficient basis for upsetting the Jurats' verdicts resulting in this net total of £89,033.
42. Item 12 Miss Bougourd ran a hairdressing salon. This was a mainly cash business. Miss Bougourd's evidence was that she had received substantial cash sums only some of which reached the bank accounts and were declared as income to the tax authorities. She had kept no record of the undeclared amounts alleged to have been received by her and retained in this way. Miss Robinson tried to arrive at an estimate of her alleged undeclared income by using her business records from July 2001 to June 2002, the first 12 months after Mr Hutchinson was arrested, a period during which Miss Bougourd took care to include in her records and to pay into her bank account all cash she received. Miss Robinson then used the results for those twelve months to project backwards (reducing by use of the Guernsey retail price index) and to obtain an estimate of Miss Bougourd's total income actually received from January 1998 to June 2001. From this Miss Robinson deducted Miss Bougourd's declared income so as to reach an estimate of her undeclared income during that period of £128,468. Miss Nicholls, while not objecting to the overall methodology used by Miss Robinson, did attack the underlying assumptions made, e.g. that Miss Bougourd's times of opening, average daily takings and work done by her assistants had not changed between the two periods. Miss Nicholls stated that adjustments to allow for such changes would be speculative, as there was no reliable evidence available to support any such adjustments. Miss Nicholls concluded that there was no reliable figure for any such undeclared income.
43. Miss Bougourd gave evidence of a general nature as to the extent to which she was able to set aside during the period before June, 2001 a substantial part of her takings in cash. The figures she spoke to were very large, and their size alone must have given rise to doubt about the credibility of this part of her evidence. It was for the Jurats to assess her credibility, taking into account also the rival opinions of the accountants. The Jurats plainly did not accept the evidence as being credible, and therefore stated (transcript, page 722) that they had assessed her contributions as nil.
44. The Jurats had returned during their deliberations to ask a question of the Bailiff (transcript, pages 712-713), which was whether they would: -

“be correct in firstly applying all or part of any undisclosed income that we assessed was earned by Miss Bougourd to cover the shortfalls disclosed by Miss

Nicholls in her report dated 2nd February, 2002, Annex C, paragraph 4.1 and 4.2, namely £39,045 and £15,559 before allocating the surplus, if any, as a contribution to Mr Hutchinson’s expenditure?”

After discussion with counsel in the absence of the Jurats, the Bailiff answered this question (transcript pages 718-719). In so doing, he emphasised entirely correctly that no statutory assumption could be made in respect of Miss Bougourd, and that it was for the Jurats to assess the credibility of the evidence and to make such inferences based on the evidence as they might decide to be appropriate.

45. Mr Merrien submitted that the asking by the Jurats of this question presupposed that there must in the Jurats’ view be some undisclosed income of Miss Bougourd, since otherwise the asking of the question was otiose. In our judgment this submission is not well-founded. The Jurats made clear, in the wording of the question, that they had yet to decide whether there had been “any undisclosed income that we assessed was earned by Miss Bougourd”; and the wording of the question cannot be used to found the inference that they had then decided that there was such undisclosed income, but subsequently changed their minds.

46. As we have stated above, it was for the Jurats, looking at the whole of the evidence, to assess the credibility of the case that Miss Bougourd had some undisclosed income, let alone £128,468. The Jurats as the judges of fact decided on the balance of probabilities that there was no such undisclosed income. In our judgment no basis for disturbing the Jurats’ verdict on this has been shown.

47. Drug Trafficking Benefit It follows from what we have said above that we dismiss Mr Hutchinson’s appeal against the Confiscation Order.

48. Observations There are two observations which we add to this judgment: -

(1) The Bailiff and the other Island authorities may wish to consider whether, in applications for drug trafficking confiscation orders, it might be more convenient for the Judge, after giving the Jurats directions in open court, to retire with the Jurats, to assist them in arriving at their verdict or verdicts, and then to formulate and deliver in open court their reasons for their verdict or verdicts. It would be much easier for the Judge to formulate the reasons than it would be for the Jurats themselves.

(2) Mr Hutchinson was assisted throughout by legal aid. That was essential. But we venture to question whether the large amounts which were spent on legal aid in resisting the Confiscation Order were entirely justified. These were:

Legal fees	- first instance	£21,177.56
	- appeal – more than	£3,796.70
Deloitte and Touche	- first instance	£46,740.00

	Total more than	£71,714.26

The words “more than” indicate that legal fees for the day of appearance before this Court are not yet known. The President was asked, sitting as a single Judge of this Court, to approve a further grant of legal aid to pay the cost of two days’ work by Miss Robinson of Deloitte and Touche amounting to £3,920 in respect of the appeal. The President refused to approve this on the ground that the further services would not be needed (and in fact they were not needed). It will be for the relevant legal aid authorities to learn any lessons which should be learned from the size of these figures. These figures do not include any of the costs of the prosecution which also fall on the public purse.