



**In the matter of the Drug Trafficking (Bailiwick of Guernsey)
Law, 2000 & in the matter of Wesley Guilbert**
Royal Court
12th May, 2015

**JUDGMENT
16/2015**

Application under Section 2 of Drug Trafficking (Bailiwick of Guernsey) Law, 2000, as amended for a confiscation order.

**Approved Text
12.05.2015**

IN THE ROYAL COURT OF GUERNSEY

**In the Matter of the Drug Trafficking
(Bailiwick of Guernsey) Law, 2000, as amended.**

and

In the Matter of WESLEY GUILBERT

Application under Section 2 of the said Law for a Confiscation Order

Date of hearing: 28th April 2015

Date Judgment handed down: 12th May 2015

Before: John Russell Finch, Esq., Judge of the Royal Court

Counsel for the Law Officers: Crown Advocate F M Russell

Counsel for the Respondent: Advocate S Steel

Legislation referred to:

The Drug Trafficking Offences (Bailiwick of Guernsey) Law, 2000, as amended, Sections 2, 4, 11, 16, 17 and 29.

JUDGMENT

Introduction

1. This matter was heard on the 28th April, 2015. A Prosecution Statement under Section 11 of the Drug Trafficking (Bailiwick of Guernsey) Law 2000, as amended (“the Law”) and a Defendant’s response were produced in advance and a joint bundle (“the bundle”) with the relevant documentation was before the Court, which was constituted by the Judge sitting alone. The Prosecution (“P”) relied on the oral evidence of Customs Officer Gammie and the

States Analyst, Dr Archer. The Defendant (“D”) gave evidence, as did an expert, Mr Booker (via a telephone link from Derby).

2. The amount of the Order to be made (the realizable amount) was agreed between the parties as £1,025.60, the issue was the appropriate figure for the proceeds of drug-trafficking. D suggests £3,702.50, P, £68,568.10. The following areas of dispute were examined:
 - (i) D claims the 4-MEC found in the Golden Lion public house (value £140.00) was not his. The £700 cash on his person was his cohabitee’s rent money. The relevant date for this is 11th April, 2013;
 - (ii) £325.60 found in D’s wallet on 31st March, 2014 was also legitimate money;
 - (iii) there is a dispute as to the value and volume of the drug produced (hereafter “Meth”). In particular it is questioned whether 14 batches were made; whether the yield of 6.4 grams per batch is correct; and if the end product is inferior to that claimed, and not cut as suggested by P. Most of the evidence here came from the two experts called.

Basic Legal Framework

3. Under Section 2(7) of the Law, as in England, the requisite standard of proof is that applicable to civil proceedings, when determining any question arising as to whether D benefitted from drug trafficking, or the amount to be recovered. The burden is on D to show, on a balance of probabilities that the statutory assumptions in section 4(3) of the Law do not apply, subject to sub-section (4). Put basically, the assumptions relate principally to any property transferred to D within the six years prior to the institution of proceedings, or expenditure in that period being the proceeds of drug trafficking.

Facts relating to Convictions

4. On the 18th August, 2014, D was sentenced to a total of 9 years’ imprisonment on an Indictment comprising five Counts. The sentencing is shown at pages 44-74 of the bundle and the Prosecution facts given at the trial are at pages 76-218. The main offence was Count 7, being concerned in the production of the Class A drug Methylamphetamine by another. Guilty pleas were entered. It is helpful to note the list of items seized by the Police on 31st March, 2014, at paragraph 2.7 of Officer Gammie’s Section 11 statement, at pages 5-6 of the bundle.

Expert Evidence at the Hearing

5. The majority of what was put forward was based on the expert reports of Dr Archer and Mr Booker respectively. Officer Gammie relied upon her Section 11 statement and was not cross-examined on it. There have been no other Meth-production cases (fortunately) in Guernsey, indeed only one previous offence involving this substance. Dr Archer’s reports are attached to the statement, at pages 14-28.8. Dr Archer is the States’ Analyst and sets out his experience and qualifications at page 14. He told the Court that he has expertise and interest in the clandestine manufacture of controlled substances and emerging synthetic drugs. Whilst he does not only deal with drugs he had about 140 cases or so a year. Dr Archer described what he found in photograph 20 at page 154, the funnels and beakers. There were traces of ephedrine and pseudoephedrine, the latter being the main constituent of the over-the-counter nose medicine Sudafed, which the local chemists will only sell one packet of at a time. The pseudoephedrine is a direct precursor of Meth. Mention was also made of other photographs, particular number 34, at page 161, a white powder residue with a pungent smell of ammonia. There were small pieces of black matter, found to be lithium; the white powder had low levels of Meth.

6. Dr Archer accompanied the Police into the flat on 31st March, 2014. There was a very strong smell of the chemicals used in lithium batteries, which are solvents. This only persists for a few hours and the batteries have vents for release. Ammonia was found released from a fire extinguisher. The comments at page 28.6 are relevant to these findings. Dr Archer then referred to page 28.7 to explain his twice-repeated replication of the manufacturing process. He used 13 boxes of Sudafed, one from each of the local pharmacies. The process was as set out at page 28.7. It took about 3 hours to replicate and, as stated, Dr Archer was able to produce 6.4 grams of Meth, which he considered would be adulterated to 10% due to the high potency of the material, resulting in the 64 grams provided. The reconstruction was attained using a new fire extinguisher and similar ingredients to those found at the address. It used the same amount of chemicals, calculated from an analysis of the waste products found. The evidence put forward on behalf of P is that D bought at least 14 fire-extinguishers. Officer Gammie's Section 11 statement, at paragraph 6.2 shows £67,200 as an estimated street value for the Meth – as adulterated to 10%.
7. Dr Archer could not see the consistency of the results being affected by variables. He further explained what Crystal Meth was and how it could be obtained by way of a simple crystallisation process, mixing and evaporating over a period of time. Essentially, Methylamphetamine is a stimulant which increases the heart rate and impacts on the heart and brain. Tolerance does develop. It is taken orally, through the nose or by injection. Only unadulterated material can be smoked.
8. Dr Archer referred to Mr Booker's report (pages 34 – 42). He agreed that the use of the word "residue" referred to at page 39 was wrong. It was a pasting error. Dr Archer disagreed, and this was one of the principal points of contention, that the quality or yield produced in the laboratory would be necessarily higher. There are no factors that would affect that. He estimated a 10% purity after adulteration based on information from the Forensic Science Service in 2004, 10% - 20% was the usual concentration. Developing his evidence, Dr Archer agreed his findings were not peer-reviewed, there is no-one in Guernsey to do it. It is unusual for Guernsey, but he encountered Crystal Meth in the UK, though none of it was seized in this case. He indicated that normally people would come to him for advice on this topic. Dr Archer stated that it was not fair to say that the purity or yield would be low on an amateur setting. From the residues found, Dr Archer can make a fair estimate as to the purity. If the purity was low then other materials would be identifiable. The 10% adulteration was based on evidence Dr Archer had gathered, it was possible that it could not have been adulterated at all. The figures relied upon by Dr Booker (at page 41), including Slovakia and Latvia, from a 2011 review do not change his mind. The review would have relied on reports from laboratories that concentrated on the ongoing problem of Crystal Meth. In Dr Archer's experience, which he described as considerable, purity is low because something else is present that can be identified. Cutting agents were not found in the flat. It was accepted that the less Sudafed used, the lower would be the yield. Mr Booker points out that only ten boxes were located at the property. The second scenario postulated by Mr Booker at page 42 was put, namely that the residues originated from chemical reactions that were not well-controlled and "despite best efforts" nothing more than traces of the desired product were obtained. Dr Archer considered that if there was a failed production something else that would be detectable would be formed, showing on analysis.
9. Although D gave evidence, it is convenient to jump to Mr Booker's opinions at this stage, so they can be compared with those of Dr Archer. He adopted his report as evidence and confirmed he calculated on 10 packets of Sudafed rather than 13. The purity figures he found show a wide range. The 10% given by Dr Archer is an assumption, particularly if the substance was less than 100% pure to begin with. There was no evidence of crystallisation. Mr Booker also referred to the residue arising after an unsuccessful production. Mr Booker had received a letter of instruction, plus Dr Archer's statements, so had not seen the committal papers. He had only encountered synthetic chemicals a few times, he had no work published on them, and had not read any of Dr Archer's articles on the subject. He had not tried to replicate the process. He had dealt with other synthetic drugs back at University.

There is better equipment in a laboratory and less control in amateur household manufacture. There was no evidence of crystallisation - all you need is a container and water.

10. Mr Booker agreed that there was not a lot of information out on the question of purity. The Slovakian figures averaged 60 – 70%, Latvia only 26 – 32%. This is a very wide range. This information is from the European Monitoring Centre and is based on reports from laboratories all across Europe. Assuming only a 50% purity from home-made Meth is the mid-point on the very wide range of information available. It was accepted that in Dr Archer's replication, nothing other than Meth was detected in the residue, but he is not an amateur.

Assessment of Expert Evidence

11. Both witnesses were helpful and well-intentioned. They gave evidence diligently and reasonably. Both tried to be helpful and neither displayed partisanship that coloured their findings. Dr Archer has an enviable academic and practical background and rather more experience in this area than Mr Booker. Where their evidence conflicted I preferred Dr Archer's conclusions. This is no reflection on Mr Booker, who was straightforward and conscientious. Nevertheless, Dr Archer's familiarity with this area was undoubtedly greater and his background impressive. This is a specific area of expertise for Dr Archer. I accepted his conclusions on purity and his explanations behind them and found his conclusions on the amount persuasive on the balance of probabilities. In reaching this conclusion I paid careful attention not only to the helpful reports produced by both experts, but the oral explanations on oath. I find that it is not an unreasonable assumption, indeed a wholly understandable one, to proceed on the basis of obtaining 13 packets of Sudafed, where manufacture has taken place over a period and where sales are restricted to one packet per purchaser (see paragraph 2.5 of Officer Gammie's statement). Dr Archer was also firm on the question of an amateur being able to produce Meth to the purity he obtained on replication. On the facts Dr Archer's evidence is preferred in any contentious area.

D's Evidence

12. Mr Guilbert gave evidence, but not at great length. His role, he stated, was just to purchase the ingredients - a maximum of 10 packets of Sudafed were obtained. He referred to his statement, at page 32. The figures given in paragraph 8.1-2 (from Officer Gammie's paragraph numbering) were a guess. D does not know where the four productions by a third party mentioned, and the 3 grams figure come from. The 25% figure for adulteration was just plucked out of the air. D had nothing to do with the production. Nothing found in the property had been added from January 2014. He purchased seven fire extinguishers, two were found on the premises – others were given to a third party D would not name. He had a list of items and the money was given to him. *"I purchased the Sudafed. I do not understand the chemistry. Whoever did it did not leave fingerprints; I put everything in the loft."* The £700 found at the Golden Lion was his cohabitee's rent money, but he ended up with it all day. He was going to pay it in for her as she suffers from anxiety. Mr Guilbert relied on his statement, apart from the modifications referred to for his explanations.
13. D was not an impressive witness even in the short time he gave evidence. He made a bad start by changing his account, as indicated above, and appeared evasive throughout. He still seemed to have something to hide. Looking fairly at the whole body of evidence on the matter and carefully considering D's account, he certainly failed to rebut any of the statutory assumptions to the required standard and was vague and unconvincing on the drug production. No reliance is therefore placed on his account. Although correctly described by P as a "side issue", his explanations of the Golden Lion incident are rejected in their entirety as are his other explanations on cash found also. This finding is made on the facts and the responses given in Court.

Conclusions

14. Upon considering all the material adduced and, in particular having had the opportunity to weigh and evaluate the oral evidence, especially when the subject of skilled cross-examination, and bearing in mind the relevant statutory provisions, I consider:
- (i) D has benefited from drug-trafficking in the amount of £68,568.10, as submitted by P;
 - (ii) as agreed, the realizable amount is £1,025.60, held by the Guernsey Police.

Accordingly, I order that this amount is paid to HM Sheriff forthwith and he is appointed Receiver under Section 29 of the Law. Liberty to apply, as sought, under Sections 16 and 17 of the Law for adjustment of the final figure. It is necessary under Section 7(2) of the Law to fix a period in default, which is 30 days consecutive to any sentence D is now subject to.

J R Finch
Judge of the Royal Court