

[2023]GRC056

**IN THE ROYAL COURT OF GUERNSEY  
ORDINARY DIVISION**

**IN THE MATTER OF THE FORFEITURE OF MONEY, ETC IN CIVIL  
PROCEEDINGS (BAILIWICK OF GUERNSEY) LAW, 2007**

**-and-**

**IN THE MATTER OF THE SUM OF £2,336.61 IN CASH SEIZED ON  
THURSDAY 16 JULY 2020 AT 15:00 HOURS FROM GUERNSEY POLICE**

**-and-**

**ON APPLICATION BY  
HIS MAJESTY'S COMPTROLLER**

**Application pursuant to section 13 of the Forfeiture of Money, etc in Civil  
Proceedings (Bailiwick of Guernsey) Law, 2007**

**Before: Jessica E Roland, Deputy Bailiff**

**Judgment handed down: 24 October 2023**

**Counsel for the Applicant: Advocate R L Donaldson**

**Mr Cowens represented himself.**

**Legislation, texts and cases considered:**

Misuse of Drugs (Bailiwick of Guernsey) Law, 1974

Regulation of Investigatory Powers (Guernsey) Law 2003

The Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007 (as amended)

**Introduction**

1. This is an application pursuant to section 13 of the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007 (as amended) by His Majesty's Comptroller of the sum of £2,336.61 seized from Tyler David Ronald Cowens ("Mr Cowens") on the 1 May 2020 (the "Application").
2. In support of the Application there were four affirmations by Sarah Withers, who was a Customs Officer employed as an Economic Crime Investigator dated 17 July 2020, 30 October

2020, 15 December 2020 and 1 October 2021. In addition, there was an affidavit of Denise Sutton, also an Economic Crime Investigator dated 22 January 2021 and the affirmation of Heidi Sheppard dated 27 January 2023. Ms Sheppard gave evidence at the hearing on 16 February 2023. In support of Mr Cowens's opposition to the order being made, he filed an affidavit dated 22 December 2020 and gave evidence at the hearing.

## **The Law**

3. The Application is made pursuant to Section 13(2) of the Law, namely:

*“The Royal Court may order the forfeiture of the money or any part of the money, if satisfied, on a balance of probabilities, that the money or any part –*

- (a) is any person's proceeds of unlawful conduct, or*
- (b) is intended by any person for use in unlawful conduct.”*

4. Unlawful conduct is defined by Section 61(3) of the Law:

*(1) Conduct which occurs in any place in the Bailiwick is "unlawful conduct" if it is unlawful under the criminal law of that place.*

*(2) Conduct which -*

- (a) occurs in a country outside the Bailiwick and is unlawful under the criminal law of that country, and*
- (b) if it occurred in any place in the Bailiwick, would be unlawful under the criminal law of that place, is also unlawful conduct.*

*(3) The Royal Court must decide on a balance of probabilities whether it is proved –*

- (a) that any matters alleged to constitute unlawful conduct have occurred,*
- (b) that any money is any person's proceeds of unlawful conduct, or*
- (c) that any person intended to use any money in unlawful conduct.”*

5. HM Comptroller makes his application under Section 13 (2) (a) and (b).
6. Although the Law changed with effect from the 31 January 2023, this Application was made prior to the law change, and therefore, is on the basis of His Majesty's Comptroller having the burden of proof to the requisite standard.

## **Summary of Evidence and Submissions**

7. On 1 May 2020 a section 22 Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 search warrant was executed by Police officers at Les Gaucheres, Les Mouilpieds, St. Martin, the home address of Mr Cowens and his brothers, Joshua Nicholas Cowens and Kyle Brian Cowens.
8. The witness statement of PC142 Hewlett, which is exhibited to Ms Withers's affirmation, confirmed that during the execution of the warrant PC Hewlett had searched Mr Cowens's bedroom and seized quantities of cash which amounted to the sum of £2,336.61. The money was found in various places in his bedroom. Police officers also searched a barn or den at the rear of the property where amounts of cannabis resin were discovered, along with drugs paraphernalia and bongs. Mr Cowens (along with his brother Joshua) was then arrested on suspicion of possession of the controlled drug, suspicion of money laundering and being in possession of a controlled drug with the intent to supply. At an interview, which was conducted on the same day, Mr Cowens's Advocate advised the Law Enforcement Officers that Mr Cowens would be exercising his right not to answer any questions on money located in his bedroom, on the basis that it was from a legitimate source.

9. A Production Order was subsequently granted in relation to Mr Cowens's bank account with the Royal Bank of Scotland International Limited. At an interview on 26 June 2020, Mr Cowens stated that the seized cash originated from his earnings from Ravenscroft Construction. Mr Cowens said that he would withdraw the majority of his wages in cash, as he does not trust banks. He said that he had bought tools for work with the cash and the rest of the money located at his address was savings for a house.
10. On analysis of the bank statements received, as a consequence of the Production Order, over a period of 4 months Ms Withers established that cash withdrawals from the account amounted to £2,040 and the majority of expenditure on the account was to Amazon, with a small number of payments to Microsoft Xbox. There was a minimal expenditure in local supermarkets and garages. The only rent or board payment made to Mr Cowens's parents was the sum of £100, paid on 6 April 2020. Taking that into account, along with the seized cash found in Mr Cowens's bedroom, Ms Withers concluded that on the balance of probabilities the source of the cash seized from Mr Cowens's bedroom was unlikely to have originated from his legitimate earnings.
11. In her second affirmation, Ms Withers confirmed that on 11 May 2020 a witness statement was provided by States Analyst, John Bullock, who confirmed that the resin seized from the search of Mr Cowens's property at the time of his arrest, amounted to 91.37 grams of Class B cannabis resin. This had a street value of between £2,284.25 and £2,741.10. This estimated amount was amended to between £1827.40 and £2741.10 by Denise Sutton in her affidavit dated 22 January 2021.
12. A report dated 9 July 2020 by Mr Neville Williams, a fingerprint expert at Avon and Somerset Constabulary was attached to Ms Withers's second affirmation. The report concluded that Mr Cowens's fingerprints were on the lid of the pot and the base of the square tub which were seized during the search and later found to each contain cannabis resin.
13. The affidavit of Denise Sutton sets out that bank records for the longer period of 1 January 2019 to 6 May 2020 were examined. During this 70 week period, Mr Cowens's net income from Ravenscroft Builders was £19,539.83. Further, Mr Cowens received his full wage from Ravenscroft during lockdown. During the same period, Mr Cowens withdrew cash amounting to £9,660 and spent £11,394.72 on online purchases. Mr Cowens only withdrew £50 between 20 March 2020 and 29 April 2020.
14. Miss Sutton also confirms that she has calculated on the basis of Mr Cowens's assertion that he pays £75 per week board to his parents, reduced during the lockdown period to £25 and that the total amount paid would have been between 1 January 2019 to 1 May 2020 (the affidavit contains a typographical error referring to this as 2021) would be £4,900. Taking into account the cost of the Class B drugs that were found at his property, Miss Sutton concludes that there are reasonable grounds for suspecting that Mr Cowens and/or his brother, Joshua Cowens spent in the region of £2,284.25 on the purchase of controlled drugs. As neither party has admitted purchasing the drugs, for the purpose of this calculation, Ms Sutton has deemed that each have paid half, therefore, £1,237.88.
15. With respect to Mr Cowens's assertion that he only goes out occasionally and purchases only occasional additional food for himself (the rest being covered by the board he pays to his parents), Ms Sutton has calculated that if he had saved the seized cash in the sum of £2,336.61 from cash he has withdrawn from his bank account, he would have, after paying his board, as little as £15 to £21 per week over the 70 week period which she considers to be unrealistically low and not credible.
16. In the fourth affirmation of Sarah Withers, she sets out that at 4.30am on 21 March 2021 a caller reported to the Joint Emergency Services Control Centre that there was suspicious behaviour

in the Grand Bouet. At 5.00am on 21 March 2021, PC Romeril stopped a Silver Ford Focus vehicle which was occupied by four passengers, including Mr Cowens. The Police officer noted that Mr Cowens's (and another occupant's) eyes were glazed and that they appeared to be 'spaced out'. PC Romeril suspected that they were under the influence of drugs and detained the four passengers. A search was undertaken and another Police Officer found a large bag of green herbal matter, three vials of a liquid and a Nescafe Gold jar suspected to contain controlled drugs in the footwell where Mr Cowens was sitting. Other items were also found in the car which lead to all four occupants being arrested for suspicion of possession of an offensive weapon in a public place, suspicion of possession of a bladed article in a public place and suspicion of possession of a controlled drug. Following these arrests, a search was conducted at Mr Cowens's home where synthetic cannabinoid nicotine and ecstasy were seized. The items from the car were found to be cannabis and a Class C drug boldenone (an anabolic steroid) and testosterone. Mr Cowens's mobile phone was seized. He subsequently refused to provide a pass code for this. Ms Withers concludes that there is a pattern of Mr Cowens's behaviour linking him to drug-related incidents and associates with those concerned with drug taking and that there are strong grounds to suspect that on the balance of probabilities, he was, and has been, in the possession of controlled drugs for his habitual use and/or to sell for his own profit.

17. Mr Cowens did not have any questions for Ms Sheppard. Ms Sheppard confirmed in evidence that it was her belief that there were strong grounds to suspect that the seized cash is the proceeds of drugs sales and confirmed orally that she also thought it was to buy more drugs. She says that Mr Cowens could not have had the expenditure that he must have had, as well as the savings which he says the money represents. Ms Sheppard confirmed that there was no conviction in relation to the 2020 incident but, nevertheless, she said that there was sufficient evidence from the drugs found on the premises that there was criminal conduct, including Mr Cowens's fingerprints which were found on the containers which contained the cannabis. In relation to the 2021 incident, a brief adjournment established that Mr Cowens was found guilty of a Regulation of Investigatory Powers (Guernsey) Law 2003 offence and received a sentence of 9 months' Youth Detention which ran concurrently with another unrelated offence.
18. Mr Cowens denied that the funds seized were from the proceeds of crime or unlawful conduct and/or that they would be used for that purpose. He says he worked as an apprentice for Ravenscroft Construction from October 2018. He earns about £300 per week, which is paid directly into his bank account. He would leave a small amount in his bank account withdrawing the rest because he prefers to deal in cash and does not trust the banks to keep his money safe. From the cash he withdraws, he pays £75 per week to his parents, which includes all his food and board expenses. When he goes out he also uses the cash to pay for his entertainment costs. He will only occasionally buy additional food from his cash e.g. at the Baguette shop. He does not always pay his parents in cash, he sometimes transfers the money. He saved any remaining money because he intends to buy a home for himself. He did not save a regular amount, but what he managed to save, he saved in cash, which he kept around his home. He kept some of the cash in a shoe box because it was the easy place to keep it. In addition to his savings from his wages, he had a bag of coins which he thinks amounts to around £150. These coins were seized by the Police officers. He stated "*no comment*" in his interview after the 2020 incident because that was the advice given to him by his advocate. He said he did not know or could not remember about being invited to attend a financial interview but thought his advocate had done everything that was necessary. He could see from the correspondence that Advocate Donaldson referred him to, that he could have made an application to release the cash but thought that the current process was the one he needed to deal with to get the money back.
19. During lockdown between March and June 2020 his parents reduced the board he was required to pay to £25 per week. He continued to earn his normal wage but seldom went out, although continued to withdraw money. He thought he spent more during lockdown. All of these additional savings were kept at home and constitute part of the seized funds. Mr Cowens says

that although he has a van, he does not have a licence and does not drive his van. In his affidavit, he said that the moped that he owns does not start although he said at the hearing it belonged to his brother. He said he has not driven it for about 6 years. He was not on the roads at the time so he got around on his push bike. Therefore, he has no petrol expenditure. As he was been in paid employment from October 2018 he considers the amount seized is a reasonable amount to have saved.

20. Mr Cowens denied that any of the drug paraphernalia or dealer bags in the photographs exhibited to Sarah Withers's 17 July 2020 statement were his. He said he did not recognise the pots that had his fingerprints on. He could not explain why his fingerprints were on the pots. Although he initially refused to answer whether they were his drugs in cross-examination, he said that they were not his drugs. He was not sure what was being sent to him in the now empty packages in the bin. He refused to answer how the drugs that were found at his home were paid for. He said that he was never found guilty of anything to do with the drugs so did not understand how the Applicant could say that they were his. He said he did not give his Pin number for his mobile phone because it contained his own personal data and to protect his privacy, but he was not hiding anything.
21. Mr Cowens said he was just getting a lift in the car when questioned about the 2021 incident. He said he did not know about the drugs and drug paraphernalia found at his property from the subsequent search after the 2021 incident and that they were not his.
22. HM Comptroller says that taking into account the written and oral evidence it is more likely than not that the cash seized was the proceeds of unlawful conduct and/or intended for use in unlawful conduct. Mr Cowens was evasive and unable to provide a proper explanation in relation to the drugs and paraphernalia on his property, including in relation to his fingerprints being found on the containers which had drugs in them. He has a history of being caught up in unlawful activity. The explanations as to how he spent his money enabling him to save the amount of cash found on the property are not credible. It has been shown on the balance of probabilities that there is not a legitimate source of funds to produce the seized cash. The unlawful conduct relied on is possession and/or possession with intent to supply of controlled drugs. HM Comptroller's case is that the seized cash was either from the supply of controlled drugs to others and/or for the purchase of further controlled drugs. Even if some of the seized cash was from legitimate earnings, it was His Majesty's Comptroller's case that it was going to be used for unlawful conduct.
23. Mr Cowens said that he worked hard in his legitimate employment to earn the cash that has been seized. He has a 10 month old daughter so he needs his savings back.

## **Discussion**

24. The unlawful conduct that His Majesty's Comptroller relied on for this case is the possession of controlled drugs and/or the supply of controlled drugs. Whilst Mr Cowens was not convicted of either of these crimes, there is ample evidence in my view to find that on the balance of probabilities that unlawful conduct has taken place and that Mr Cowens was involved in this unlawful conduct. Not only the presence of drugs and drug paraphernalia at his home on the two occasions that the police searched his property, but also his fingerprints being present on containers within which cannabis was found, without any alternative explanation being offered from Mr Cowens as to how they got there. I take account of the fact that the money was seized at the 2020 incident and 8 months later the second search occurred revealing more drugs at his home (as well as where he was sitting in the car), along with the conviction for a RIPL offence and his demeanour as observed by Police officers at that time. Mr Cowens evidently did not expect to be asked about the drugs and the drug paraphernalia etc found at his home. His answers to the cross-examination by Advocate Donaldson were evasive and unconvincing. Taking into account both the direct and the circumstantial evidence, I am able to conclude that

Mr Cowens has been involved in unlawful conduct and continued to be so after the seizure of the cash. Further, although Mr Cowens said he withdrew his earnings in cash because he distrusted banks and was saving for a house, quite clearly from the bank statements he did use his accounts for expenditure, including for small amounts locally, even if he predominantly used cash. His biggest regular expense, he says he had was his board, which he said he paid mostly in cash but he provided no evidence from his parents that this was the case. Even if some of the cash may have originated from legitimate earnings, I consider that His Majesty's Comptroller was able to show that it was more likely than not, that the cash which was seized was from the profits of the sale of drugs and/or was intended to be used for the purchase of further controlled drugs.

### **Conclusion**

25. On the balance of probabilities, His Majesty's Comptroller has made out his case and the Application succeeds in relation to the total sum in question. Having read and heard the evidence, including from Mr Cowens himself, His Majesty's Comptroller has demonstrated that it is more likely than not that the seized cash was from proceeds of unlawful conduct and/or was intended for use in unlawful conduct. I therefore make the order sought in the terms of the draft order provided, including that His Majesty's Comptroller's costs of and occasioned by this Application shall be deducted and paid from the sum distrained.