

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
3

4 INDICTMENT NO: 008/2011
5

6
7 THE QUEEN

8
9 V

10 CAMILO OSVALDO NARANJO
11 &
12 ~~OSMAN JOEL BONILLA~~
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16 **Appearances:**

For the Crown:

17 Senior Crown counsel Ms. Elisabeth Lees, on behalf
18 of the Crown

19
20 **Defence Counsel:**

21 Mr. Clyde Allen on behalf of the Defendant

22 **Before:**

Honourable Mr. Justice Charles Quin

23 **Submissions Heard:**

6th June 2013
24

25 **CONFISCATION RULING**
26

- 27
- 28 1. The Crown has made an application pursuant to s.15 of the Proceeds of Crime Law
29 (“POCL”) 2008 for a Confiscation Order in relation to cash in different currencies
30 and denominations which amount to CI\$10,626.13 – found in the Defendant’s
31 possession on the 24th November 2010, shortly after his arrest.
- 32 2. On the 24th November 2010 the Defendant, Camilo Naranjo, was arrested for
33 offences under the Misuse of Drugs Law (2009 Revision) and during a search of the
34 Defendant’s home address the police officers recovered CI\$4,200.77, US\$784.00,
35 GBP£ 3,970.00, and, EU€60.00.

1 3. In addition, at the time of the Defendant's arrest, and his subsequent attendance at
2 George Town Police Station, he was searched and found to be in possession of
3 US\$752.00. The Royal Cayman Islands Police Service (RCIPS) officers seized all
4 this cash.

5 4. Cocaine seized in relation to a supply from the Defendant on the 9th November 2010
6 to undercover RCIPS officers has a wholesale purchase price ranging between
7 CI\$50.00 to CI\$100.00 per gram, and the value of the drugs secured on the 9th
8 November 2010 was CI\$39.50 based on the lowest figure.

9 5. On the 4th January 2013 the Defendant pleaded guilty to Conspiracy to Supply
10 Cocaine contrary to s.3(1)(f) of the Misuse of Drugs Law (2009 Revision) as read
11 with s.321 of the Penal Code (2007 Revision) and on the 13th day of March 2013 the
12 Defendant was sentenced to 8 years' imprisonment.



13 The particulars of the offence are that the Defendant, Camilo Naranjo, between the
14 19th October 2010 and the 24th November 2010, within the Cayman Islands,
15 conspired with Osman Joel Bonilla ("Bonilla"), and persons unknown, to supply
16 controlled drugs, namely cocaine, to another, without lawful excuse.

17 6. On the 20th February 2013 the Director of Public Prosecutions filed this application
18 for a Confiscation Order grounded by a Statement of Information from Detective
19 Constable Keith Taylor ("DC Taylor"), pursuant to s.25 of the POCL.

20 7. On the 13th March 2013 the Court ordered that the Confiscation hearing be set down
21 for hearing on the 9th May 2013. The Defence was to file submissions in response,
22 for the hearing, on or before the 23rd April 2013 pursuant to s.26 of the POCL. The
23 Crown was to file any final submissions in response on or before the 5th May 2013.

1 8. No response to the Crown’s application was received from the Defence on or before
2 the deadline date of the 23rd April 2013. Due to that fact, and also due to Mr. Justice
3 Quin’s need to complete a hearing in another court, the Confiscation hearing was re-
4 set for the 6th June 2013.

5 9. On the 31st May 2013 the Crown received, by email, the Defendant’s response to the
6 Crown’s Confiscation application. On the 3rd June 2013 the Crown received a hard
7 copy of the Defendant’s response, together with three letters as follows: a letter
8 dated the 6th April 2013 from Shawn Ebanks of EW Ebanks Watersports; a letter
9 dated the 13th March 2013 from Olga Mayorquin Morris; and, a letter dated the 9th
10 February 2013 from Ristorante Pappagallo.(“Pappagallo”)

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1 *THE LAW*

2 10. I turn now to the relevant sections of the POCL 2008, which govern this application.

3 11. Section 15 reads:

4 “15. (1) *The court or summary court shall have power, in addition to*
5 *dealing with an offender in any other way, to make an order under this section*
6 *requiring the offender to pay such sum as the court thinks fit.*

7 (2) *The court or summary court shall make an order under this*
8 *section if-*

9 (a) *a defendant is convicted of an offence or offences in*
10 *proceedings before the court;*

11 (b) *the Attorney-General asks the court to proceed under*
12 *this section; or*

13 (c) *the court believes it is appropriate for it to do so.*



14 (3) *Where the conditions specified in subsection (2) are satisfied*
15 *the court or summary court-*

16 (a) *shall decide whether the defendant has a criminal*
17 *lifestyle;*

18 (b) *where it decides that the defendant has a criminal*
19 *lifestyle, shall decide whether he has benefitted from*
20 *his general criminal conduct; and*

21 (c) *where it decides that the defendant does not have a*
22 *criminal lifestyle, shall decide whether he has*
23 *benefitted from his particular criminal conduct.*

24 (4) *Where the court or summary court decides under subsection*
25 *(3)(b) or (c) that the defendant has benefitted from the conduct referred to it*
26 *shall decide the recoverable amount and make a confiscation order requiring*
27 *him to pay the amount.*

28 (5) *When considering whether to make a confiscation order the*
29 *court or summary court may take into account any information that has been*
30 *placed before it showing that a victim of an offence to which the proceedings*
31 *relate has instituted, or intends to institute, civil proceedings against the*
32 *defendant in respect of loss, injury or damage sustained in connection with the*
33 *offence.*

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(6) The court or summary court shall decide any questions arising under subsection (4) or (5) on a balance of probabilities.”

12. Section 16(1) reads:

“16. (1) The recoverable amount for the purposes of section 15 is an amount equal to the defendant’s benefit from the conduct concerned.”

13. Under s.19 of the POCL the Court is required to decide if the Defendant has a “criminal lifestyle”. If the Court decides that the Defendant has a “criminal lifestyle”, it is required to decide if he has benefitted from his general criminal conduct. When the Court makes an inquiry as to whether the Defendant has a “criminal lifestyle”, it must take into account s.68 which reads:

“68. (1) A defendant has a criminal lifestyle only if the offence or any of the offences taken into account by the court satisfies any of these tests –

- (a) it is specified in Schedule 1.
- (b) It constitutes conduct forming part of a course of criminal activity; or
- (c) It is an offence committed over a period of at least six months and the defendant has benefitted from the conduct which constitutes the offence.”

14. The Court now turns its attention to Schedule 1 which sets out lifestyle offences and section 1(1) reads:



1 “1. (1) An offence under any of the following provisions of the Misuse
2 of Drugs Law (2000 Revision)-

3 (a) Section 3(1)(a) to (k) and (m) and section 3(2),

4 (b) Section 4;

5 (c) ...

6 (d) ...”

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8 15. The Defendant has pleaded guilty to conspiracy to supply cocaine contrary to
9 s.3(1)(f) of the Misuse of Drugs Law, which is one of the offences listed in Schedule
10 1 of the POCL 2008. Accordingly, conspiracy to supply cocaine is a “*criminal*
11 *lifestyle*” offence that satisfies the condition imposed by s.68(1)(a) of the POCL and
12 triggers the application of the four assumptions set out in s.19.

13 16. The Court must now turn back to s.19 which reads as follows:

14 “19. (1) The court or summary court decides under section 15 that the
15 defendant has a criminal lifestyle it shall make the following four assumptions
16 specified in subsections (2) to (5) for the purpose of –

17 (a) Deciding whether he has benefitted from his general
18 criminal conduct, and

19 (b) Deciding his benefit from the conduct.

20 (2) The first assumption is that any property transferred to the
21 defendant at any time after the relevant day was obtained by him as a
22 result of his general criminal conduct, and at the earliest time he
23 appears to have held it.

24 (3) The second assumption is that any property transferred to the
25 defendant at any time after the date of conviction was obtained by him
26 as a result of his general criminal conduct, and at the earliest time he
27 appears to have held it.

28 (4) The third assumption is that any expenditure incurred by the
29 defendant at any time after the relevant day was met from property
30 obtained by him as a result of his general criminal conduct.



- 1 (5) The fourth assumption is that, for the purpose of valuing a
 2 property obtained (or assumed to have been obtained) by the
 3 defendant, he obtained it free of any other interests in it.
- 4 (6) The court or summary court shall not make a required
 5 assumption in relation to particular property or expenditure if the
 6 assumption is shown to be incorrect, or there would be a serious risk of
 7 injustice if the assumption were made.
- 8 (7) Where the court or summary court does not make one or more
 9 of the required assumptions it shall state its reasons.
- 10 (8) The relevant day is the first day of the period of six years
 11 ending with –
- 12 (a) the day when proceedings for the offence concerned
 13 were started against the defendant, or
- 14 (b) if there are two or more offences and proceedings for
 15 them were started on different days, the earliest of
 16 those days.
- 17 (9)
- 18 (a)
- 19 (b)
- 20 (10)
- 21 (a)
- 22 (b)"



24 17. For the purposes of this case the DPP relies on the first assumption which is set out
 25 in s.19(2) that the cash, which is the subject of this Confiscation application was
 26 transferred to the Defendant at any time after the relevant day, and was obtained by
 27 him as a result of his general criminal conduct.

28 18. DC Taylor's Statement of Information confirms that no civil proceedings had been
 29 commenced on behalf of any third party in relation to the cash seized from the
 30 Defendant, and no third party has come forward to claim an interest in the said cash.

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Accordingly the Crown submits that there is no prejudice to any family members or any children as a result of any Confiscation Order, should the Court be minded to make one.

19. In his Statement of Information DC Taylor confirms that on the 25th April 2013 the Defendant also pleaded guilty to supplying cocaine on the 9th November 2010 and, the Summary Court in Charge Number: 9972/10(2) sentenced the Defendant to six (6) years imprisonment to run concurrent with the eight (8) years for which he was sentenced on this offence.



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THE FACTS

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20. As set out in the paragraphs above, on the 24th November 2010 the Defendant, Naranjo, was arrested by the Royal Cayman Islands Police Service (RCIPS) following an undercover drug operation – “Operation Battery” – which began in August 2010. The Officers seized the following amounts of cash in the Defendant’s possession:

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Currency	Amount
CIS\$	4,200.77
US\$	784.00
GBP£	3,970.00
EU€	60.00
US\$	720.00
Total in CIS\$	10,262.13



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Accordingly, the Crown submits that the assumption under s.19(2) of POCL means that the money seized by the undercover officers “*was obtained by the Defendant as a result of his general criminal conduct*”.

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21. The burden is on the Defendant to show that the assumption is “incorrect”, or that there would be a “serious risk of injustice” if the assumption were made.

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22. DC Taylor confirms that no property was transferred at any time after the date of conviction. The Crown submits that, as the source of the above listed amounts of cash has not been identified then, in accordance with s.19(2) of the POCL the Court can make an assumption that the money was obtained by the Defendant as a result of his general criminal conduct unless the assumption is shown to be “incorrect”, or there would be a “serious risk of injustice” if the assumption were made.

1 23. The Crown correctly submits that the onus is on the Defendant to provide the Court
2 with full details of all his free property or any property in which he has an interest.
3 The only free property that has been identified is the cash referred to above.
4 Accordingly, the Crown submits that the recoverable amount is the sum of
5 CIS\$10,626.13 and asks that the Court do make a Confiscation Order in that sum.

6 24. The Crown is not making an application for the confiscation of CI\$39.50, which is
7 the value of the .789 grams of cocaine which the Defendant gave to the undercover
8 officers on the 9th November 2010.



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1 *DEFENCE SUBMISSIONS*

2 25. Initially the Defendant asserted that he has not benefitted from a general or a
3 particular criminal conduct and requested that the Court do not make a Confiscation
4 Order. The Defendant therefore asked the Court to discharge or dismiss this
5 application. Initially the Defendant submitted that he had worked from 2009 to 2010
6 and earned a living. In the Defendant's Response to the Crown's application he said
7 that, whilst working at EW Ebanks Water Sports, he had a potential to earn a salary
8 of CI\$20,800.00 per annum. The Defendant submitted that he had worked part-time
9 at Pappagallo. The Defendant also submitted that in September 2010 he had received
10 cash of US\$2,000.00 from his mother.

11 26. The Defendant gave evidence to the Court and accepted that he made the following
12 overseas three trips prior to his arrest, namely:

13 i. The Defendant flew to the UK on the 5th May 2010 and returned to the
14 Cayman Islands on the 14th May 2010 – remaining in the UK for only
15 nine (9) days.

16 ii. The Defendant flew to the UK on the 18th June 2010 and returned to the
17 Cayman Islands on the 30th June 2010 – remaining in the UK for twelve
18 (12) days.

19 iii. The Defendant flew to the UK on the 30th July 2010 and returned to the
20 Cayman Islands on the 10th September 2010 – remaining in the UK for
21 six (6) weeks.

22 iv. In addition, the Defendant said that while in the UK, he made a side
23 trip to Holland.



1 27. The Defendant gave evidence that he sold jewellery, but that the receipts had
2 mysteriously disappeared. The Defendant also said that he bought and sold game
3 consoles, iPads and a laptop computer – all of which were found in his apartment.

4 28. In addition, the Defendant rented an apartment at Treasure Island Resort Grand
5 Cayman (“Treasure Island”) for CI\$1,150.00 per month. His evidence is that in
6 September 2010 he paid Treasure Island two months’ rent and a deposit of \$575.00
7 – amounting to CI\$2,875.00 paid to Treasure Island. This amount provided him with
8 the apartment from the 17th September 2010 up to and including the 17th November
9 2010 – some 7 days before his arrest on the 24th November 2010.

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1 *ANALYSIS AND CONCLUSION*

2 29. The Defendant has not provided this Court with any evidence of his professed
3 income from the sale of jewellery. There is no evidence that he makes jewellery. There
4 is no evidence that he purchased jewelry wholesale. There is no evidence that he
5 sold jewellery. There are no invoices and no receipts. There is no evidence from any
6 third parties that they bought jewellery from the Defendant.

7 Similarly, there is no evidence that the Defendant bought or sold the other items
8 found in his apartment or bought or sold any such similar items.

9 30. There is evidence that the Defendant explained to the undercover police officers the
10 various methods he employed to conceal illicit drugs whilst travelling overseas.

11 31. The cash seized from the Defendant's apartment is a quite a large amount, but what
12 is also significant is that it was in four different currencies.

13 32. The evidence that he flew across the Atlantic to the UK and Holland for short trips
14 in May, June and July 2010, before he and his co-conspirator, Bonilla, started selling
15 cocaine to the undercover police officers, leads to the inescapable inference that he
16 was drug trafficking on a significant scale.

17 33. When one closely examines the letters submitted by the Defendant in support of his
18 request to dismiss the Crown's application for a Confiscation Order, they do not
19 bear close scrutiny.



1 34. The letter from Ebanks Water Sports, dated the 6th April 2013, stated that the
2 Defendant's last day with the company was the 16th January 2010. Accordingly, this
3 Court finds that that this letter is of no value and it does not assist the Defendant in
4 relation to the Crown's Application for the Confiscation of the cash.

5 35. The letter dated the 9th February 2013 from Pappagallo merely states that the
6 Defendant worked there on a part-time basis from 2009 to 2010 in the capacity of a
7 busboy, and also that he worked at Pappagallo when he was a student in High
8 School, which must have been some 10 years ago. This letter does not assist the
9 Defendant.

10 36. The letter which is purportedly from his mother, Olga Mayorquin Morris, dated the
11 13th March 2013, states that she gave the Defendant US\$2,000.00 in September 2010
12 to assist him with his personal expenses. It is the Court's conclusion that, *prima*
13 *facie*, with the Defendant being unemployed and having no other identifiable source
14 of income at the time, this US\$2,000.00 would have been used up to pay for the
15 Defendant's rent of CI\$2,875.00 for September, October and November 2010.

16 37. There is a complete absence of evidence to support the Defendant's claims being
17 made via the three letters. There are no affidavits or witness statements in support of
18 the explanations he seeks to give this Court for the funds in question. As DC Taylor
19 states, there is no evidence of any legitimate source of income.

20 38. In *Martin Walbrook and Malcolm Glasgow* [1994] 15 Crim. App R. (S) 783. Mr.
Justice Dyson (as he then was), at page 786, confirmed that the burden of satisfying
the Court that the amount that might be realised in respect of property is less than
the value of the proceeds of drug Trafficking is the Defendant's and added:



1 *“This must, in our view, mean that where a defendant has an asset in a form of*
2 *a debt, the onus is on him to satisfy the court that the realizable value of the*
3 *debt is less than its face value. In our view, this he must do by producing clear*
4 *and cogent evidence; vague and generalized assertions unsupported by*
5 *evidence will rarely if ever be sufficient to discharge the burden on the*
6 *defendant.”*

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8 This Court respectfully adopts Mr. Justice Dyson’s approach.

9 39. More recently, in another English Court of Appeal case of ***R v. Jhalman Singh***
10 (2008) 2 Cr. App. R. (S.) 69, Mr. Justice Royce, giving the judgment of the Court
11 stated at paragraph 26:

12 *“The judge carefully considered the respective arguments and was fully entitled*
13 *to conclude that the assumptions should remain in place and that no injustice*
14 *arose as a result of such conclusion. In relation to that he was entitled to expect*
15 *clear and cogent evidence on behalf of the appellant to displace these*
16 *assumptions. He did not have before him clear and cogent evidence so to do.”*

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18 40. In the case before this Court, the fact that the Defendant pleaded guilty to conspiracy
19 to supply cocaine, which is a Schedule 1 offence, along with the evidence before the
20 Court, do establish that the Defendant has a “criminal lifestyle” under s.68(1)(a) of
21 POCL 2008. I find that the assumption that property transferred to the Defendant
22 was as a result of his general criminal conduct has not been displaced. Furthermore,
23 I find that the assumption that the Defendant has benefitted from his general
24 criminal conduct in the amount of **CIS\$10,626.13** has not been displaced by the
25 Defendant’s evidence. The Defendant has failed to show that the assumptions are
26 “incorrect” or that there has been any “serious risk of injustice.”



1 41. Accordingly, I find that the sum of CI\$10,626.13, which is the CI equivalent of the
2 four currencies found in the Defendant's possession, is a recoverable amount and,
3 consequently, I order its confiscation.

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5 **Dated this the 18th June 2013**

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12 **Honourable Mr. Justice Charles Quin**
13 **Judge of the Grand Court**

