[1980–87 Gib LR 162]

R. v. GILABERT and GONZALEZ

SUPREME COURT (Davis, C.J.): June 3rd, 1983

Sentencing—forfeiture of property—jurisdiction—forfeiture ordered under Misuse of Drugs Ordinance, s.20(1) of anything shown "to relate to the offence"—not part of sentence passed for offence and rules for variation of sentence therefore inapplicable—court has discretion to balance unfairness to accused against public interest in forfeiture

The two defendant/respondents and nine others were charged with conspiracy to contravene the Misuse of Drugs Ordinance 1973 and possession of a controlled drug.

All the defendants were arrested in the course of an elaborate attempt to import cannabis into Gibraltar. The cannabis was seized (and the majority of it was ultimately forfeited without dispute), as were a boat, a van, and quantities of communications equipment which had admittedly been used in the attempted importation. None of this property was owned by the first two defendant/respondents (otherwise known as "Borrero" and "Hernandez"), who nevertheless pleaded guilty and were convicted and sentenced to 4 years' and 2½ years' imprisonment respectively. They were sentenced separately from the other defendants (on November 16th, 1982) and the court agreed to deal with the forfeiture of the seized property at the end of the trial of the remaining nine defendants. Their trial began within a few days and all were acquitted. On May 19th, 1983, the Crown applied for forfeiture of the property. Duo and Olivero, two of the acquitted defendants, claimed to have an interest in some of the property to be forfeited, and were represented at the hearing of the application.

The Crown submitted that (a) the court had jurisdiction to order forfeiture by virtue of the powers conferred on it by the Misuse of Drugs Ordinance, s.20(1), under which forfeiture could be ordered of items proved "to relate to the offence"; (b) since Duo's property (his van and communications equipment) had been used in the commission of the offence, it "related" to the offence and the fact that he had personally been acquitted of the charges against him was irrelevant; and (c) since it had not been shown that Olivero had any interest in the property to be forfeited, he had no standing in the matter or right to be heard.

The respondents submitted in reply that (a) the court had no jurisdiction to order forfeiture as part of the trials of Borrero and Hernandez, which had been severed from those of their co-accused by their earlier convictions and sentences, which could no longer be re-opened; and,

alternatively, (b) if the trials of Borrero and Hernandez had not been severed from those of the remaining co-accused, the court could only make a forfeiture order (as a variation of the "sentence") within 56 days of the date of the sentences (Supreme Court Act 1981, s.47(3)(b)), which had already elapsed.

Held, granting the application for forfeiture:

(1) Forfeiture would be ordered under s.20(1) of the Misuse of Drugs Ordinance 1973 on the basis that the property had been shown to "relate to the offence." The power would be exercised as part of the court's separate forfeiture jurisdiction and it did not therefore form part of the "sentence" being passed in the proceedings (paras. 24–25).

(2) The separate convictions and sentences of the two respondents had not severed their trials from the joint trial of their co-accused. However, since the forfeiture order had not been made as part of the "sentence" passed for the offences (and could not have been because neither of the two respondents had any interest in the property forfeited), it followed that their "sentences" were not being varied, and the time limits for variation of sentence prescribed by s.47 of the Supreme Court Act 1981 did not apply (paras. 23–25).

(3) Since the forfeiture fell within the separate forfeiture jurisdiction of the court, it had a discretion to consider the fairness of making the order. It would not be unfair in this case to order the forfeiture of Duo's van and the communications equipment in it, since it had been used indiscriminately by him and his co-accused with his full knowledge and consent and in particular in the commission of the present offences. Duo's acquittal (and that of eight of his co-accused) notwithstanding, any possible unfairness to him could not outweigh the public interest in the forfeiture of articles related to the offences to which two of the co-accused had pleaded guilty (paras. 29–35).

Case cited:

(1) *R.* v. *Menocal*, [1980] A.C. 598; [1979] 2 W.L.R. 876; [1979] 2 All E.R. 510, considered.

Legislation construed:

Misuse of Drugs Ordinance 1973, s.20(1): The relevant terms of this sub-section are set out in para. 20.

Supreme Court Act 1981 (c.54), s.47(2): The relevant terms of this sub-section are set out at para. 17.

s.47(3): The relevant terms of this sub-section are set out at para. 17.

D. Hull, *Attorney-General*, for the Crown;

P. Triay, *R. Vasquez*, *P.R. Caruana* and *J. Azopardi* for the respondents.

1 **DAVIS, C.J.:** This is an application by way of notice of motion made under s.20(1) of the Misuse of Drugs Ordinance 1973, for an order of forfeiture in respect of certain items of property and two quantities of cannabis resin.

2 Items 2, 3 and 4 in the application comprise a blue dory, a white dinghy and a Mercury outboard engine, respectively. The Attorney-General has withdrawn the application for forfeiture in respect of these three items, and no order is therefore made in respect of them, other than that they be formally returned to the Police in whose custody they are.

3 The remaining items—the subject of this application are:

> "1. The motor vessel *Solveig of Arendal* together with the appliances and/or equipment ancillary therein, namely, the Sony 1CB–2010 Transceiver Receiver, the Sony 170 hand-held transmitter receiver, the National Panasonic RJ 160 hand-held transmitter receiver and two ignition keys"; and
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> "5. The white Honda van registration number G39241 together with the appliances and/or equipment ancillary therein, namely, the Royce R 693 transceiver, the Sony hand-held transmitter receiver, the CTE power modulator, the white aerial and the pair of binoculars."

4 The facts leading up to this application are as follows: On October 18th, 1982, Juan Borrero Gilabert ("Borrero") and Lazaro Hernandez Gonzalez ("Hernandez") together with Charles Olivero, Alfonso Duo and seven others were arraigned on an indictment comprising, in Count 1, a charge against all the defendants jointly of conspiracy to contravene the provisions of the Misuse of Drugs Ordinance 1973, contrary to ss. 214A(1) and 214C of the Criminal Offences Ordinance; in Count 2, a charge against all the defendants jointly that in Gibraltar on August 6th, 1981 they were in possession of a controlled drug, namely, 108 kg. of cannabis resin, with intent to supply it to another, contrary to ss. 6(1) and 7(3) of the Misuse of Drugs Ordinance 1973, and, in Count 3, a charge against Charles Olivero, Alfonso Duo, Hernandez and five other persons (excluding Borrero) that on August 6th, 1981 they imported into Gibraltar a prohibited import, namely 108 kg. of cannabis resin, contrary to s.10(1) of the Imports and Exports Ordinance as read with ss. 5(1)(a) and 24 of the Misuse of Drugs Ordinance 1973. To Counts 1 and 2, Borrero and Hernandez pleaded guilty; the other nine defendants pleaded not guilty. To Count 3 all the eight defendants originally pleaded not guilty.

5 Borrero was then remanded in custody for sentencing on a later date, and a jury was empanelled. After the luncheon adjournment, in the absence of the jury, Hernandez, through his counsel, applied to change his plea to Count 3. This application was granted; he was arraigned again on Count 3 of the indictment; he pleaded guilty to that count and a plea of

guilty was entered accordingly. Counsel for Borrero and Hernandez then applied to be sentenced forthwith.

6 This application, though initially refused on its being first made on October 18th, was subsequently granted after further discussion, on November 8th, 1982.

7 Meanwhile, on October 20th, 1982 and before the trial of the remaining nine defendants had started, the foreman of the jury reported that one of the jurors was incapable of following the proceedings and he was discharged. The jury of the remaining eight was then directed to enter a verdict of guilty in respect of Hernandez. It did so; it was then discharged, and a new jury of nine was empanelled on November 8th, 1982 for the trial of the nine defendants who had pleaded not guilty, the hearing of which was expected to take in the region of six months.

8 On November 11th and 12th, 1982, the court heard the Attorney-General and Mr. Peter Triay, counsel for Borrero and Hernandez, in relation to their sentencing. In the case of both Borrero and Hernandez, the Attorney-General stated in closing that there was the question of forfeiture of items relating to the offences under the Misuse of Drugs Act 1973, but he suggested that this matter might best be dealt with at the conclusion of the trial of the remaining nine defendants. Mr. Triay did not oppose this suggestion but he stated that he would resist any application for forfeiture of the launch used by Borrero and Hernandez in coming to Gibraltar.

9 On November 16th, 1982, Borrero was sentenced on Count 2 to 4 years' imprisonment and Hernandez to 2½ years' imprisonment. On Count 3, Hernandez was sentenced to 2½ years' imprisonment, to run concurrently with his sentence on Count 2. On the question of forfeiture, which it was agreed should be postponed until the conclusion of the trial of the remaining nine defendants, I informed counsel that I would be prepared to deal with this matter before the conclusion of the trial in the event of Borrero and Hernandez (both of whom had by then served a considerable portion of their sentence) being released on licence before the conclusion of the trial and wishing to leave the jurisdiction. In the event, Borrero was still in custody at the conclusion of the trial on May 16th, 1983.

10 On November 22nd, 1982, the trial started of the nine defendants who had pleaded not guilty. On April 11th, 1983, the Attorney-General closed the case for the prosecution after calling 81 witnesses. On April 25th, I found that there was no case to answer against two of the defendants charged only in Count 2. The jury was directed to find them not guilty; it did so and they were acquitted and, on May 16th, 1983, the jury returned a verdict of not guilty in respect of the remaining seven

defendants. On May 19th, 1983, the present application for forfeiture was filed by way of notice of motion.

11 At the opening of the hearing of this application on May 27th, 1983, Mr. Robert Vasquez stated that he appeared on behalf of Mr. Alfonso Duo, who was present in court, and Mr. John Azopardi stated that he appeared on behalf of Mr. Charles Olivero. Mr. Olivero was not present.

12 The Attorney-General, who appeared for the Crown, stated that there was no dispute as to the making of an order of forfeiture and destruction of the quantities of cannabis resin specified in the application. Accordingly, I ordered that the quantity of 108 kg. of cannabis resin be forfeited and destroyed, but I made no order as to the quantity of 132g. of cannabis resin as this bore no relation to the counts in the indictment preferred against Borrero and Hernandez.

13 Mr. Vasquez then challenged the court's jurisdiction to order forfeiture of the articles listed in Items 1 to 5 of the application. He based his submission on two grounds: that by sentencing the defendants Borrero and Hernandez before starting the trial of the remaining nine defendants, there had been both in fact and law a severance of the trials of those two defendants and the remaining nine, and that it was no longer open to the court to make a forfeiture order in respect of the trial of Borrero and Hernandez which had ended on November 16th, 1982.

14 In support of this submission, Mr. Vasquez referred me to s.135 of the Criminal Administration Ordinance, s.11 of the Courts Act 1971 (now replaced by s.47 of the Supreme Court Act 1981), s.65A(1) of the Criminal Administration Ordinance and the case of *R.* v. *Menocal* (1).

15 Section 135 of the Criminal Administration Ordinance provides as follows:

> "Subject to the provisions of this and any other Ordinance, the criminal jurisdiction of the Supreme Court with respect to trials on indictment shall be exercised, as regards practice, procedure and powers, in conformity with the law and practice for the time being observed in the Crown Court of England."

16 By virtue of this section, the provisions of the Supreme Court Act 1981 of the United Kingdom relating to Crown Courts apply to trials on indictment in the Supreme Court of Gibraltar. Section 47(1) of the Supreme Court Act 1981 is, however, replaced by the corresponding provision in the Criminal Administration Ordinance, namely s.65A(1), which provides as follows:

> "(1) A sentence imposed by the Supreme Court shall take effect from the beginning of the day on which it is imposed, unless the court otherwise directs."

17 Sections 47(2) and (3) of the Supreme Court Act 1981 provide as follows:

> "(2) Subject to the following provisions of this section, a sentence imposed, or other order made, by the Crown Court when dealing with an offender may be varied or rescinded by the Crown Court within the period of twenty-eight days beginning with the day on which the sentence or other order was imposed or made or, where subsection (3) applies, within the time allowed by that subsection.
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> (3) Where two or more persons are jointly tried on indictment, then, subject to the following provisions of this section, a sentence imposed, or other order made, by the Crown Court on conviction of any of those persons on the indictment may be varied or rescinded by the Crown Court not later than the expiration of whichever is the shorter of the following periods, that is—
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> (a) the period of twenty-eight days beginning with the date of conclusion of the joint trial;
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> (b) the period of fifty-six days beginning with the day on which the sentence or other order imposed or made.
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> For the purposes of this subsection the joint trial is concluded on the latest of the following dates, that is any date on which any of the persons jointly tried is sentenced, or is acquitted, or on which a special verdict is brought in."

18 In *R.* v. *Menocal* (1), the appellant was arrested at Heathrow Airport on meeting two women from Colombia, in whose luggage was found a quantity of cocaine. The appellant had money in her handbag amounting to £4,371. The appellant admitted that she was involved in a drug ring to import cocaine, that she had provided the suitcase for its importation and that her role was to take over the cocaine when it arrived in England and to await instructions. In the Crown Court in January 1977 she pleaded guilty to "being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug, contrary to s.304 of the Customs and Excise Act 1952 as amended by s.26 of the Misuse of Drugs Act 1971." She was sentenced to five years' imprisonment.

19 In May 1977, over three months later, the appellant was brought back before the same judge in the Crown Court on an application by H.M. Commissioners of Customs and Excise for forfeiture of the money found in her possession. She elected not to give evidence, and the judge held that the whole of the money "was intended to be used for the purpose of the offence" and ordered that it be forfeited under s.27 of the Misuse of Drugs Act 1971 or, alternatively, under s.43 of the Powers of Criminal Courts Act 1973. It was held that a forfeiture order, including (Lord Wilberforce *dubitante*) an order made under s.27 of the Misuse of Drugs Act 1971,

being in the nature of a penalty, was a sentence for the purposes of s.11(2) of the Courts Act 1971 (now s.47(2) of the Supreme Court Act 1981) if made against an offender who was being sentenced for other offences, and therefore, to be valid, any variation made to an offender's sentence by adding a forfeiture order had to be made within the 28 days of passing sentence prescribed by s.11(2). Because the forfeiture order made against the appellant had not been made within 28 days of her original sentence, it was therefore invalid and her appeal was allowed.

20 Section 20 of the Misuse of Drugs Ordinance 1973 of Gibraltar follows s.27 of the United Kingdom Misuse of Drugs Act 1971 (referred to above) and provides as follows:

> "(1) Subject to subsection (2) of this section, the court by or before which a person is convicted of an offence under this Ordinance may order anything shown to the satisfaction of the court to relate to the offence, to be forfeited and either destroyed or dealt with in such other manner as the court may order.
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> (2) The court shall not order anything to be forfeited under this section, where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made."

21 It should also be noted that the House of Lords in *R.* v. *Menocal* (1) confirmed the conclusion reached by the Court of Appeal that since the offence with which the appellant had been charged arose from a combination of the Customs and Excise Act 1952 and the Misuse of Drugs Act 1971, it could be charged under both Acts or either Act and that the power of forfeiture conferred by s.27 of the Misuse of Drugs Act 1971 applied ([1980] A.C. at 606, *per* Lord Salmon). In my view (and no contrary view has been put forward at this hearing) the same applies to a charge such as that in Count 3 of the indictment in the present case, in which Hernandez and seven others were charged with importing a prohibited import (namely cannabis resin), contrary to s.10(1) of the Imports and Exports Ordinance, as read with ss. 5(1)(a) and 24 of the Misuse of Drugs Ordinance 1973.

22 Mr. Vasquez cited no authority for his contention that the sentencing of Borrero and Hernandez before proceeding to the trial of the nine defendants jointly indicted with them constituted a severance of the indictment and two separate trials, and in my view the sentencing of two of the eleven joint defendants before the trial of the remaining nine did not have any such effect. The wording of s.47(3) of the Supreme Court Act 1981 would appear to lend support to this view.

23 In anticipation of my coming to this conclusion, Mr. Vasquez further submitted that notwithstanding my coming to the conclusion that the proceedings relating to Borrero and Hernandez formed a part of the one joint trial of all eleven defendants, a forfeiture order was *ultra vires* in view of the decision in *R.* v. *Menocal* (1) and the fact that the period of 56 days from the date of sentencing of Borrero and Hernandez prescribed by s.47(3) of the Supreme Court Act 1981 had long since expired.

24 In my view, however, this argument cannot be sustained by reason of the fact that an order of forfeiture of the articles listed in Items 1 and 5 of the application cannot possibly be held to be part of the sentence of Borrero or Hernandez, neither of whom, it has ever been suggested, has any interest in any of those articles. It would have been a different matter had the Crown applied for an order of forfeiture of the launch which, I understand, belongs to the defendant Borrero, but no such application had been made. There is, therefore, no question of a variation of the sentence passed on Borrero and Hernandez outside the statutory period prescribed in s.47 of the Supreme Court Act 1981, as was found by the House of Lords to have occurred in *R.* v. *Menocal*. A forfeiture order made under s.27(1) of the Misuse of Drugs Act 1971 (or s.20(1) of the Ordinance), is in no way part of the sentence of the offender but is made simply on the ground prescribed in the sub-section that the article or articles in respect of which the application is made "relate to the offence" or offences charged. In my view it is on this basis that the court's jurisdiction to deal with the present application stems, and I refer in this connection to Lord Salmon's speech in *R.* v. *Menocal* in which he said ([1980] A.C. at 606):

> "The fact that section 27(1) (of the Misuse of Drugs Act 1971) is wide enough to empower the Crown Court (subject to the conditions set out in section 27(2)) to order persons other than the offender to forfeit anything relating to the offence and that such an order could not, in the nature of things, be regarded as a sentence or order against the offender is entirely irrelevant in the present case."

25 In my view, it is exactly the sort of order of forfeiture which Lord Salmon in the passage quoted excluded from falling within the definition of "sentence" that the court is being asked to make in this application. Accordingly, I find that I have jurisdiction to deal with this application.

26 Turning now to the merits of the application, the Attorney-General submitted that Borrero and Hernandez had pleaded guilty to the counts against them in the indictment and that apart from the Crown's contention that Hernandez had gone out in the blue dory (Item 2 in the application) to meet *The Solveig* on the night of August 5th, 1981, they had not disputed the Crown's version of the facts of the case. Soon after 8 p.m. on August 5th, *The Solveig* left Gibraltar; Borrero and Hernandez and others amongst the defendants had been present when she sailed, and subsequently *The*

Solveig returned to Gibraltar with 108 kg. of cannabis resin. In their confessions to the Police, and through their counsel in addressing the court in mitigation, the two defendants referred to *The Solveig* being used on the nights of August 5th and 6th, 1981 to collect cannabis from Morocco in order to take it to Spain, to *The Solveig's* having had engine trouble on the way back from Morocco and in consequence having had to return to Gibraltar with her cargo of cannabis. Reference was made by the defendants and their counsel to radio contact to *The Solveig* from Gibraltar throughout the night of August 5th, 1981 by means of a radio installed in the white Honda van.

27 This appears in Borrero's answers to Insp. Payas on being questioned after his arrest on August 6th, 1981, as given by the Attorney-General reading from Insp. Paya's statement of September 21st, 1981, and at the end of Borrero's statement to Det. Sgt. Rodriguez of August 7th, 1981. It also appears, rather more sketchily, in Hernandez's answers to Insp. Paya's statement, and at the end of Hernandez's statement to Sgt. Santos of August 6th, 1981 and at the end of his statement to Det. Sgt. Gomez of August 15th, 1981.

28 Dealing first with the articles listed in Item 5 of the application: Mr. Vasquez stated that he appeared for Mr. Alfonso Duo as owner of the articles listed in Item 5, other than the hand-held transmitter receiver (Exhibit 42) and the binoculars (Exhibit 127). It is not disputed that Mr. Duo is the owner of the articles listed in Item 5 other than Exhibits 42 and 127.

29 Mr. Vasquez submitted that the Honda van G39241 and its radio equipment should not be forfeited because in view of Mr. Duo's acquittal on all three counts against him in which Hernandez was charged jointly with him, and in view of the paucity of the evidence against Mr. Duo at his trial, the court could not be satisfied that the Honda van was the van referred to by Borrero and Hernandez or their counsel as having been used in relation to Counts 2 and 3 of the indictment; furthermore there was no direct evidence that the van had been used in communicating by radio with *The Solveig* on the night of August 5th, 1981, or had been used at all that night.

30 There was also no evidence to show that Mr. Duo had any knowledge of his van and its equipment having been used that night; that such lack of knowledge was supported by the fact that he had been acquitted, and that it was unfair to order the forfeiture of the property of a person who had been acquitted of the offences to which it was alleged his property related.

31 Insofar as Mr. Duo's acquittal on Counts 2 and 3 is concerned, I agree with the Attorney-General that this is largely immaterial. I find that I am satisfied that the Honda van and its equipment relate to these two

counts, unless I find that in all the circumstances it would be unfair to order forfeiture.

32 I am perfectly satisfied on the evidence before me that the white Honda van G39241 was the van referred to by Borrero at the end of his statement to Det. Sgt. Rodriguez and to which Mr. Triay referred in his address, as having been used in making radio contact with *The Solveig* on the night of August 5th, 1981. At the trial of the nine defendants who pleaded not guilty there was evidence that was not challenged that the van was seen near Jews' Gate at about 8.30 p.m. on the night of August 5th, 1981 shortly after *The Solveig* had sailed from the Waterport enclosure with Mr. Duo and Mr. Fox in it; that it was subsequently seen at the enclosure at 2 a.m. on August 6th, 1981, driven by Mr. Fox when *The Solveig* returned to the enclosure, and Mr. Duo admitted to the police on August 6th, 1981 that he had not taken his van home that evening but had gone home instead "in Charlie Olivero's jeep." In cross-examination by Mr. Vasquez of the police officers who had carried out observations of the defendants at Waterport in relation to the charge of conspiracy contained in Count 1 of the indictment during the period between October 29th, 1980 and August 6th, 1981, evidence was given that Mr. Duo's Honda van was frequently driven by others amongst the nine defendants besides Mr. Duo and that the van had been seen being so used even when Mr. Duo was away from Gibraltar.

33 I am satisfied that the van and its radio equipment were used on the night of August 5th, 1981 to communicate with *The Solveig* when she returned to Gibraltar with a cargo of 108 kg. of cannabis resin, and I am therefore satisfied that all the articles listed in Item 5 of the application relate to the offences set out in Counts 2 and 3 of the indictment to which Borrero and Hernandez have pleaded guilty.

34 In my view, Mr. Vasquez, on Mr. Duo's behalf, has not shown sufficient cause for my refusing the application to order forfeiture of the articles listed in Item 5 of the application, including those belonging to Mr. Duo. There is ample evidence that Mr. Duo was well acquainted with the other defendants who made use of his van, and it does not appear to me in all the circumstances, the acquittal of Mr. Duo and the other eight defendants notwithstanding, that any possible unfairness to Mr. Duo outweighs the public interest that articles related to the offences to which two of his co-defendants have pleaded guilty should be forfeited.

35 Accordingly, I order that the articles listed in Item 5 of the application be forfeited and disposed of as the Attorney-General may think fit.

36 Turning now to the articles listed in Item 1 of the application, these comprise the launch *The Solveig of Arendal*, three pieces of radio equipment and two ignition keys, all of which were found on board *The Solveig*. As I have said, at the start of these proceedings Mr. John Azopardi

appeared on behalf of Mr. Charles Olivero. On the conclusion of submissions on the question as to whether the court had jurisdiction to entertain this application and my indicating that in my view it had, Mr. Azopardi applied for an adjournment on the grounds that he had only just been instructed by Mr. Olivero and that his instructions were insufficient for him to proceed. In view of the fact that Mr. Olivero, though apparently in Gibraltar, had not even appeared at the hearing of the application, I refused Mr. Azopardi's application for an adjournment. Subsequently, having taken the opportunity to contact Mr. Olivero when Mr. Vasquez addressed me on the application insofar as it related to the articles listed in Item 5, Mr. Azopardi told me that he was instructed by Mr. Olivero to oppose the Crown's application but that as these instructions conflicted with instructions given to him by a third party, whose name he said he was instructed not to disclose, he found himself unable by reason of conflict of interests to continue to represent Mr. Olivero and asked for the court's leave to withdraw. This application was also refused pending Mr. Azopardi's making other arrangements during the luncheon adjournment for the representation of Mr. Olivero.

37 On resumption in the afternoon, Mr. Caruana appeared. He stated that he represented Mr. Olivero and that he understood Mr. Olivero had withdrawn his brief from Mr. Azopardi. Mr. Olivero himself did not appear.

38 Mr. Caruana stated that he was instructed by Mr. Olivero to oppose the application for a forfeiture order in respect of the articles listed in Items 1 to 4 of the application of which, he was instructed, Mr. Olivero claimed to be a part owner.

39 As I have already stated, the Attorney-General subsequently withdrew his application for the forfeiture of the articles listed in Items 2, 3 and 4 of the application as there was insufficient or no evidence in the proceedings relating to Borrero and Hernandez that these articles related to the offences specified in Counts 2 and 3 to which they had pleaded guilty. As I have said, I therefore make no order in relation to these items.

40 Insofar as the articles listed in Item 1 of the application are concerned, I do not find it necessary to deal with the submissions made by Mr. Caruana (which were in fact substantially the same as those already made by Mr. Vasquez) as I have come to the conclusion that Mr. Olivero and subsequently his counsel have no *locus standi* in this matter. Mr. Olivero has not given evidence as to what interest, if any, he has in any of the articles listed in Item 1. Insofar as *The Solveig* is concerned, there was evidence by Mr. Hammond at the trial of Mr. Olivero and his eight co-defendants that he (Mr. Hammond) had been approached by four men, one of whom was Mr. Olivero, with a view to the purchase of *The Solveig*. He said that he had received payments for the launch from a Mr. Romero

and Mr. Victory, and possibly Mr. Olivero, but that the agreement for the sale of the launch had been made between him and Mr. Romero, and he produced this agreement in evidence. I am not satisfied on this evidence alone that Mr. Olivero has in fact any interest in the articles listed in Item 1, and accordingly I find that neither he nor his counsel have any right to be heard in this matter.

41 I find that I am entirely satisfied from the confession statements to the police made by Borrero and Hernandez, their acceptance of the facts of the Crown case as given by the Attorney-General and the statements made on their behalf in mitigation by Mr. Triay in accepting the facts as stated, that *The Solveig* was used in the commission of the offences specified in Counts 2 and 3 of the indictment to which Borrero and Hernandez have pleaded guilty. I am satisfied that all the articles listed in Item 1 of the application relate to these offences, and in exercise of the powers conferred by s.20(1) of the Misuse of Drugs Ordinance 1973, I order that they be forfeited and dealt with as the Attorney-General may think fit.

Order accordingly.
