



October, 2019  
Volume 2, Issue 5

# Asset Recovery Times

## The COP vs EC\$41,390.00, CG and PZ

Saint Vincent and the Grenadines’ recorded its first successful appeal by the State of a Civil Cash Forfeiture matter stemming from a November 2015 seizure of Forty-One Thousand, Three Hundred and Ninety East-Caribbean Dollars (**EC\$41,390.00**).

The seizing officer (SO) conducted a search of the Second Defendant (SD) and discovered a container of Pringles. The SO realized that the Pringles can was heavier than usual. The SD after being questioned about the container stated that he was taking it to his daughter in Union Island. The SO searched the can and found a large quantity of cash. The can contained **XCD\$30,000.00** and the SD had **XCD\$11,390.00** on his person. The SD gave several inconsistent explanations for the cash, ranging from, it was “to buy a car”, to “I do not know about the money” and that his “*smaller boss*” asked him to take it to his “*bigger boss*”.

The cash was detained by a Court Order on the basis of the SO’s reasonable grounds to suspect that the cash was recoverable, that is, it was derived from or intended for use in unlawful conduct. Further investigations were conducted where the SD provided a statement noting that he was told to go to Union Island by Peng Zhang (the “Third Defendant” (TD)) to meet the TD’s uncle and he did not know how much money he was taking to Union Island. A forfeiture application was filed and the Magistrate determined that on a balance of probabilities, there were insufficient grounds to find that the cash was recoverable.

The Magistrate’s decision was appealed by way of Fixed Date Claim Form supported by Affidavit to the High Court. The Claimant/Appellant (the State) adduced evidence afresh before the court by way of rehearing, that is “a fresh hearing”. The Judge noted that the sole issue for the Court’s determination was whether on a balance of probabilities the sum of **EC\$41,390.00** represented recoverable cash.

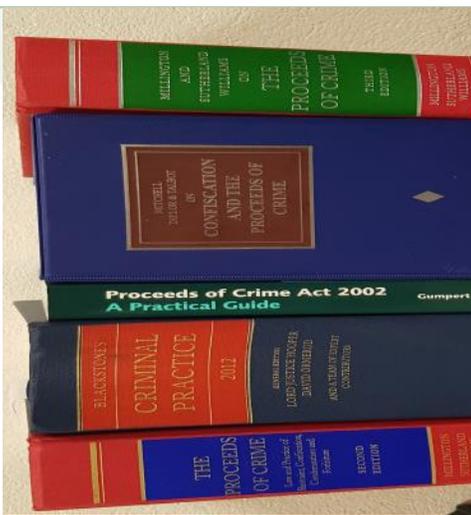
The State accepted that there was no direct evidence of unlawful activity on the part of the SD and TD. However, The State argued that there was overwhelming circumstantial evidence which supported the proposition that the cash seized was in fact recoverable cash. The circumstantial evidence which the State relied on included the fact that the bulk of the cash was packaged in a Pringles can concealed under pieces of chips. The State also relied on the lies told and inconsistent stories given by the SD when initially questioned. The Court noted that not only did the SD need to give an explanation, but it was imperative that he did.

The TD’s story was that the business (a retail store) is managed by him but owned by his uncle. He indicated that his uncle requested that he send \$100,000.00 for which he obtained no explanation. Consequently, he sent the SD with the monies without informing him of the amount of money.

The Court without a need to consider the Magistrate’s court decision found in the favor of the State having been satisfied that the inferences that could be drawn, led to the conclusion that the transaction fell within the parameters of the definition of recoverable cash under the Act.

The Court reasoned that upon consideration of all of the factors and the admission by the TD that his “*ghost like*” uncle was not in Union Island at the time that this movement of cash was to take place, it was abundantly clear that on a balance of probabilities, that even though the source of the cash may not be questionable, in that the business activities of the company operated by the TD supported access to large sums of money, that on the other hand, the intention or destination of these sums were meant for some unlawful conduct or transaction.

Please see article on “[Lee Anthony v Director of Financial Intelligence Unit, Attorney General of Dominica](#)” page 7



### The Core Functions of the RSS ARU

- A. Mentoring on Live Cases;**
- B. Capacity Building;**
- C. Training;**
- D. Advocating for Standardised Asset Recovery Legislation Across the Member States; and**
- E. Assisting in obtaining Asset Recovery Orders**

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## THE DIRECTOR'S MESSAGE



The Regional Security System's Member States (RSS MS) are impacted by the negative and deleterious effects of criminal conduct. All crimes including drug, firearm and human trafficking, murder and fraud, among other illegal activities, harm society. The harmful effects of crime may occur through the loss of life, damage to property and increase expenditure on law enforcement and health care. Tackling illegal activities consume valuable and scarce resources, limiting the RSS MS capacity to provide increased opportunities for education, improved social services, better health care and economic development.

Incidences of criminal conduct further damage society by creating a perception of instability and an unsafe environment which undermines confidence in law enforcement, the criminal justice system, the state machinery and the rule of law. Ultimately, criminal activities can threaten the well-being of the citizenry of the region and our democratic institutions.

In the RSS MS, illicit drugs, illegal guns, financial crimes and corruption, cyber-crime, organised crime and terrorism are identified as key areas of focus. Money is a key element for involvement in these activities and is seen as the lifeblood of criminals and criminal organisations. The traditional approach to tackling crime by undertaking investigations, gathering evidence, prosecuting and depriving individuals of their liberty through incarceration or imposing fines focus primarily on deterrence and rehabilitation. In this model, criminals are not deprived of the financial benefit obtained from their unlawful activities. This approach fails to remove the incentive for persons getting involved and engaging in criminal conduct. A failure to dispossess persons of the financial gain from crime gives a free pass to those who control and manage criminal enterprises, that is, those who obtain the most significant benefit from crime and are incentivised to engage in and encourage future criminality.

To effectively tackle crime, a paradigm shift is required. This shift in philosophy will incorporate financial investigations and asset recovery as an integral element of mainstream policing and the criminal justice system. These investigations can contribute to the efforts of law enforcement to manage and combat crime. A financial investigation can identify suspects, perpetrators of crime and members of criminal organisations, detect and trace assets obtained from or through criminal conduct and identify the nature and extent of criminality.

Law enforcement and criminal justice practitioners can effectively employ financial investigations, proceeds of crime and asset recovery legislation to deter, detect, disrupt and dismantle criminal organisations. A most efficacious means of achieving these aims is to strip criminals of any financial benefit obtained from their unlawful conduct. Removing the financial rewards of criminal conduct reduces the trophies and status symbols from the control of criminals, reduces their standing and status in society, thereby removing the incentives to engage in illegal activities and undermining the criminal organisations by depleting resources which can be reinvested in future criminal conduct. Asset recovery sends a clear message to society that 'crime does not pay'.

Recovered assets can be made available to law enforcement agencies and the criminal justice system to build their capacity and support a sustainable funding model. Further, assets taken away from criminals who have caused harm can be used to support social services such as drug rehabilitation centres, skills and youth development programmes.

The time is right for financial investigations and asset recovery mechanisms to become a critical element in our efforts to combat crime, bankrupt criminals and enhance the safety and stability of the region, thereby fostering citizen and national security.



The Financial Investigations and Asset Recovery Course delivered to Police Officers and Police Recruits of the Royal Saint Christopher and Nevis Police Force facilitated by the RSS ARU (Giovanni James Andrew Searles and Donald Shekelle) in August 2019.

# Legislative Provisions in the RSS Member States

The RSS Member States have passed Proceeds of Crime legislation to deal specifically with money laundering and asset recovery. Overtime, jurisdictions have sought to strengthen their asset recovery regime either through amendments or by repealing and replacing the entire legislations.

## Money Laundering

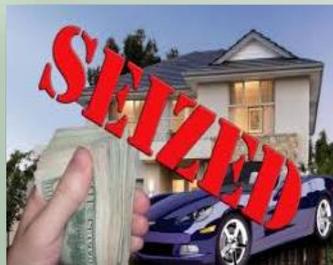
All Member States have made provisions for the criminalisation of money laundering though through differing approaches. The Member States have adopted either the all-offence (St. Vincent and the Grenadines, Saint Lucia and Dominica or threshold approach Barbados, Grenada and Saint Kitts whilst Antigua and Barbuda has adopted both approaches (respectively in the MLPA and POCA). The threshold approach requires the prosecution to prove ML by identifying the type/kind of predicate offence from which the property is generated. This is a further challenge for the prosecution where the type of criminality from which the benefits are being generated is unknown.



Additionally, in some legislations, there is the absence of provisions to adequately cover all the ways property can be laundered by a criminal, for example: the use, acquisition or conversion of proceeds from crime.

## Confiscation

Member States have the ability to make confiscation orders to deprive criminals of their benefits from crime. However, the extend of the mechanism for making an order effective varies.



## Restraint

Member States make provisions for restraining assets which can be made available for satisfying a confiscation order though with differing durations. A major concern in restraining assets is the lack of provisions and resources by some jurisdictions to facilitate asset management.

## Investigative Orders

All jurisdictions have the power to obtain investigative orders for the production of records or identifying property belonging or connected to the defendant.



(Production/ Disclosure/Monitoring/Customer information Orders). Barbados, is the only jurisdiction to include Unexplained Wealth orders (UWO). An UWO places a burden on an individual to explain his or her source of wealth in cases where the person's known legitimate wealth does not explain their ownership of property.

## Civil Recovery and Recovery of Cash in Summary Proceedings

With the exception of Saint Christopher and Nevis, all other jurisdictions have made provisions for the recovery of property before the High Court and cash before the Magistrate Court in civil proceedings. The property/cash must have been obtained through unlawful conduct or has been used in, or in connection with, or is intended to be used in unlawful conduct.



## Recovery of Listed Assets in Summary Proceedings

Barbados has made provisions for the recovery of "Listed Assets", which are properties which are used to move value both domestically and across international borders. Listed assets include precious metals, precious stones, watches and artistic works.



The table on page 7 provides a summary of various legislative frameworks which facilitate asset recovery within the RSS jurisdictions.

WARNING  
CONFISCATION IN PROGRESS

## RSS Member States Legislative Comparisons

	Antigua & Barbuda	Barbados	Dominica	Grenada	St. Kitts	Saint Lucia	Saint Vincent and the Grenadines
Legislation	<b><u>Money Laundering (Prevention) Act 1996</u></b>  <b><u>Proceeds of Crime Act 1993 &amp; Amendment) Act</u></b>	<b><u>Money Laundering and Financing of Terrorism Act 2011-23</u></b>  <b><u>Proceeds and Instrumentalities of Crime Act 2019</u></b>	<b><u>Money Laundering (Prevention) Act 2011</u></b>  <b><u>Proceeds of Crime Act 1993 &amp; Amendment Acts.</u></b>	<b><u>Proceeds of Crime Act 2012</u></b>	<b><u>Proceeds of Crime Act 4.28</u></b>	<b><u>Money Laundering (Prevention) Act 2010</u></b>  <b><u>Proceeds of Crime Act 3.04</u></b>	<b><u>Proceeds of Crime Act 2013</u></b>  <b><u>Proceeds of Crime &amp; Amendment Act.</u></b>
<b>Money Laundering</b>							
Money Laundering	Yes	Yes	Yes	Yes	Yes	Yes	Yes
All-offence Approach (A) or Threshold (T)	Both (MLPA) & (POCA)	Threshold	All-offence	Threshold	Threshold	All-offence	All-offence
<b>Confiscation</b>							
Confiscation	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Court Used Magistrates (MC) or High Court (HC)	HC and MC	HC	HC	HC and MC	HC	HC	HC and MC
<b>Restraint</b>							
Restraint	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Automatic Expiration	6 months if no extension	No automatic expiration	No automatic expiration	No automatic expiration	6 months	6 months if no extension	No automatic expiration
Management and Enforcement Receivers	Yes	Yes	Yes	Yes	No	Yes	Yes
<b>Civil Recovery</b>							
Civil Recovery	Yes	Yes	Yes	Yes	No	Yes	Yes
Property Freezing Orders	Yes	Yes	Yes	Yes	No	Yes	Yes
Receivers	Yes	Yes	Yes	Yes	No	Yes	Yes
Recovery of Cash	Yes	Yes	Yes	Yes	Restricted to borders	Yes	Yes
Recovery of Listed Assets	No	Yes	No	No	No	No	No
<b>Investigative Orders</b>							
Search and Seizure Warrants	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Account Monitoring Order	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Customer Information Order	No	Yes	No	No	No	No	Yes
Disclosure Order	Only for tax information.	Yes	No	Only for Gov. departments	No	No	Yes
Production Order	Yes	No	Yes	Yes	Yes	Yes	Yes
Unexplained Wealth Order	No	Yes	No	No	No	No	No

## CIVIL FORFEITURE OF CASH– THE DIRECTOR OF ONDCP V CM

On 21<sup>st</sup> August 2019 the Proceeds of Crime Unit of Antigua and Barbuda in the Magistrate Court, successfully forfeited US\$5,000.00 and EC\$320 in cash.

On Saturday 20<sup>th</sup> January 2018, members of the Royal Police Force of Antigua and Barbuda went on duty at Grays Farm when they saw a silver Lexus Motor Car driving on the street and stopped it. The driver was a manager of a local Supermarket and the passenger was a young Spanish woman. The Police Officers identified themselves explaining that they are carrying out traffic checks and looking for controlled drugs and illegal firearms. The police requested a search of the passengers' person to which they consented.

While searching the Respondent (local manager) US\$5,000.00 was found in a paper bag in his pocket and EC\$200.00 was found in his wallet in another pocket. He was cautioned and asked to whom the moneys belong and he replied "the E. C belongs to me and the United States Dollars belongs to my employer". He later explained that he was given XCD\$15,000.00 on the said morning by Mr. S. J to convert into United States Dollars for S. J's use in the West Union he operated.

The Officers searched the vehicle and a black 9mm Pistol with a magazine inserted and EC\$120.00 was discovered. When questioned about the ownership of the gun the Respondent initially explained that it was Mr. S.J's. The Police pried further and the respondent admitted that the firearm belonged to him. Both Respondent and passenger were arrested and the cash and firearm were seized as part of police investigations. The Respondent was provided with a record of cash seized.

A parallel investigation commenced between POCU and the CID, which led to the proffering of charges under the Firearms Act and an Application for Continued Detention of the cash was made on the grounds that it was either the proceeds of crime or was intended for use in unlawful activity. At trial the Respondent pleaded guilty to the firearm charge.

The Respondent during the financial investigations provided an explanation to the Police as to the origin and intended use of the cash, which was corroborated by Mr. S. J in a later written statement. An in-depth and thorough financial investigation followed which was able to establish that the Respondent had lied about the origin and or intended use of the United States Dollars found in his possession. He also lied about how he got the illegal firearm and ammunition and his reasons for being in the area he was found.

A detail presentation of the evidential findings of the investigation was given in a forfeiture hearing held on the 21<sup>st</sup> August 2019 and the Court concluded that the cash seized from the Respondent was the proceeds of crime or was intended for use by him in some unlawful activity.

Law enforcement officers empowered with cash seizure provisions are able to effectively disrupt criminal activity through taking the profit out of crime. Therefore, Police officers are encouraged to have a clear understanding of the law, citizens' right to property including cash, local norms and practices in

## Prosecuting the "LOW HANGING FRUIT"- Regina (of Saint Lucia) v DR & OJSO

Following an intelligence driven operation conducted on the 7th day of January, 2019, Law enforcement primarily the Drug Unit of Saint Lucia arrested and charged the Defendants Oliver Jose Sanchez , a Venezuelan national, and Denzel Rose, a Saint Lucian national. The two accused were intercepted by law enforcement in Esperance Beach, situated in the Quarter of Monchy, Saint Lucia. The accused were intercepted after disembarking a fishing vessel . They were found in possession of several crocus sacks and a 5-gallon bucket. The bucket was searched a found include a large quantity of European currency wrapped and packaged in clear plastic. The Officer escorted the Defendants to the custody suites where they were cautioned and interviewed. The monies found were counted which amount to €67,140.00 and USD\$4,750.00.

After the monies were counted , it was recorded on the cash count document and verified by the subjects. Thereafter, all the monies were packaged in clear exhibit bags, which were labelled, sealed and signed.

The cash exhibits after being examined were photographed. The photographic images of the cash exhibits were used to prepare a photographic album of the cash seized. Investigations led to the application for and execution of Orders on several financial institutions to recover certain documents.

The subjects were interviewed but provided no response to the questions asked including not responding to the question of ownership of the monies. The responses of the accused in relation to providing no responses to any interview questions were recorded and signed.

The accused were charged on the 9th for the offence of money laundering contrary to the Proceeds of Crime Act and was remanded into custody after the bail hearing. There was a parallel investigation conducted for cash forfeiture of the said amount of monies seized from the subjects.

The investigations involved a search of the Border Control System database held by the immigration Department to determine whether the Venezuelan accused had entered the country legally. The results showed that the accused had entered the country illegally as he could not be found in the system.

Checks conducted into the financial affairs of the accused showed that the subjects utilised financial institutions to transfer and receive monies. The results of the checks were obtained as evidence and exhibited in the case to show the financial conduct of the subjects.

Evidence was submitted to demonstrate to the court that the subjects had no legal means of obtaining the sums which were found in their possession and furthermore they had not conducted any legal transactions within the financial system of Saint Lucia to obtain the sum of euros with which they were found.

The subjects at the beginning of the trial pleaded guilty to the offence of having possession of property knowing or having reasonable grounds to believe that property is, in whole or in part, directly or indirectly, the proceeds of criminal conduct contrary to section 30 (1a).

## ARIN-CARIB ANNUAL GENERAL MEETING-JAMAICA

The ARIN-CARIB network, established in June 2017, is the seventh such network which has been established globally with the aim of facilitating the exchange of information and best practice while promoting useful cross border communication and cooperation among asset recovery specialists.

The network, while relatively new, to date has obtained a number of successes. At the recently concluded ARIN-CARIB Annual General Meeting held in Montego Bay, Jamaica, Crown Counsel Garcia Kelly shared Cayman Islands' most recent success story from Cayman Islands.

The case surrounds the smuggling of approximately USD \$4,000,000.00 of gold from Venezuela, as well as USD \$135,000.00 through the Dominican Republic and into the jurisdiction of the Cayman Islands.

The defendants arrived in Grand Cayman by private jet on May 30, 2019, declaring 169 pieces of gold worth USD \$3,999,491.38. This gold had not been declared to the authorities in the Dominican Republic. On arrival in Grand Cayman, the gold was transported to a company by the name of Byzantium, whose role was to test and package it for onward shipment to Switzerland. However, as this aircraft had previously visited the Cayman Islands on May 16<sup>th</sup>, at that time carrying a shipment of gold valued at approximately USD \$2M, and also conducting business with Byzantium, officers from the Financial Crimes Unit were moved to look into the circumstances surrounding these importations.

Several discrepancies in the accounts given to officers by the pilots and passengers of the aircraft pertaining to the origins of the gold emerged, along with the apparent falsification of documents pertaining to the origin and sale of the precious metal. These accounts were also at odds with the information provided to the police by the owner of Byzantium. Additionally, on conducting a meticulous search of the private jet, USD \$135,000 in cash was discovered to be concealed under paneling inside the aircraft.

Cayman authorities did not have sufficient basis to seize the gold during the time of their investigation. However, UK authorities were contacted and on the strength of the intelligence provided by the Cayman authorities, the gold was seized at London's Heathrow Airport by Border Force officers as part of an international investigation into a suspected South American drug cartel. The gold, weighing 104kg, was on its way to Switzerland from the Cayman Islands when it was seized.

Utilising the ARIN-CARIB network, investigators in the Cayman Islands were able to obtain invaluable support and information from the Dominican Republic and the United States as the investigation grew and in fact, found that the worth of the network cannot be overemphasized in the fight against crime.



### Case Law Corner

In ***Lee Anthony and Director of the Financial Intelligence Unit and the Attorney General of Dominica [2015 DOMHCV2014/0337]***, it was made clear that “ a right to appeal is entirely a creature of statute; and the nature and scope of the right to appeal must be determined by reference to the terms of the statute....” The case surrounded the procedure and nature of an appeal pursuant to 68B of (appeal by way of rehearing) of the Proceeds of Crime Act Cap 4:20 of the Laws of Dominica. The Appellant/Respondent appealed on the grounds that the Chief Magistrate adopted the wrong procedure in allowing a forfeiture application for forfeiture of cash to commence and proceed pursuant to CPR 30 instead of under the Magistrate Code of Procedure which provides for the use of summons to institute proceedings. The Learned Me Bernie Stephenson noted that an appeal de novo involves a fresh hearing with the parties entitled to begin again and adduce new evidence. The court concluded that at the stage where the documents are filed “ the high Court is required to hear the appeal and in the event that the court finds that the Magistrate erred in the procedure (the procedure being the basis of the Appellant's/ Respondent's claim) followed in the Magistrates court, as is being contended by the appellant, the court can then go to hearing the evidence in the matter de novo which would include hearing evidence from both sides and decide whether the cash should be forfeited or whether it should be returned to the appellant.”

In the ***Supervisory Authority v Creswell S. A Overseas et al (Antigua)*** “The Court of Appeal in The Supervisory Authority v Creswell Overseas S. A et al, considered whether the trial judge had jurisdiction to order the registration of a foreign criminal restraint order from a non-Commonwealth country and the procedure for the registration of such orders; namely a Brazilian foreign restraint order (“the Moro Order”). The Court examined the High Court's jurisdiction under four heads: (1) the Mutual Assistance in Criminal Matters Act 1993 (the “MACMA”); (2) the Money Laundering (Prevention) Act 1996 (the “MLPA”); (3) International treaties; and, (4) the principle in Black Swan Investment I.S.A v Harvest View Limited et al (the “Black Swan Principle”). The court after assessing each of the aforementioned found that the law that regulates the power of the court to register Restraint Orders is to be found in the MACMA, as the Black Swan principle did not apply, the international treaties were not ratified and finally the POCA powers subjected the registration of foreign orders to the laws of Antigua and Barbuda, that is, to sections 27 and 30 of MACMA. The MACMA however, only provided for the registration of orders of Commonwealth countries. Therefore, the court concluded it had no power under the current laws to register the restraint order of the non-commonwealth country.

**EXECUTIVE POLICY AND DEVELOPMENT SYMPOSIUM ON INTERNATIONAL FINANCIAL INVESTIGATIONS– THE EXPERIENCE OF FI ANSELM AUSTRIE**



**Wallets**



**Encrypted Messaging**



**Browsers Used**



**PGP Icons**



From July 29<sup>th</sup> 2019 to August 23<sup>rd</sup> 2019, I had the opportunity to participate in an **Executive Policy and Development Symposium on International Financial Enforcement Strategies** at the International Law Enforcement Academy (ILEA) in Roswell, New Mexico. My attendance on such a prestigious experience could not have been possible without the dedicated unwavering efforts of the RSS ARU staff.

This symposium was attended by twenty-eight (28) delegates from various countries to include; Panama, Bahamas, Dominican Republic, Jamaica, Grenada, St. Vincent and the Grenadines and the Commonwealth of Dominica which formed Session 72. Sessions were also held jointly with participants forming Session 71 from various nations in Africa to include the Democratic Republic of Congo, the Republic of Gabon and the Republic of Congo-Brazzaville. The facilitators comprised of experts from the United States Bureau for International Narcotics and Law Enforcement Affairs (INL), Drug Enforcement Administration (DEA), Federal Bureau of Investigations (FBI) and the United States Secret Service (USSS).

**The topics covered during this symposium are as follows:**

1. Understanding Leadership Concepts with group exercises;
2. Leadership in Crisis, Critical Thinking and Decision Making; Conflict Management;
3. Managing Organizational Change, Capacity Building and Country Presentations;
4. Money Laundering and Financial Investigations;
5. Cyber Support;
6. Policy for Legislation, Group Presentations;
7. Introduction to Diversion;
8. U.S. Criminal Justice System, Legal Updates, Criminal & Judicial Procedures.

My attendance and participation in this symposium has certainly expanded my knowledge in leadership concepts, cyber threats, money laundering and other areas involved in law enforcement. It is critical that every financial investigator, prosecutor and other law enforcement practitioner participate in such activities where you not only learn but also share best practices in your area of expertise. In so doing, I take this opportunity to share some of the critical information that I benefited from having attended this symposium.

**The New Killer Drugs!!!!**

FENTANYL AND CARFENTANIL



**Fentanyl** is a potent synthetic opioid drug approved by the Food and Drug Administration for use as an analgesic (pain relief) and anesthetic. It is approximately 100 times more potent than morphine and 50 times more potent than heroin as an analgesic. Fentanyl can be injected, snorted/sniffed, smoked, taken orally by pill or tablet, and spiked onto blotter paper. Fentanyl patches are abused by removing its gel contents and then injecting or ingesting these contents. Carfentanil is 100 times more potent than Fentanyl. 2mg of Fentanyl could be fatal and 0.02mg of Carfentanil could be fatal.

**Bitcoin Investigations: What to look for during a search**

**NOTE:**

**NEVER** overlook the traditional items (Notepads, flash drives, disks, etc.);

**ENSURE** that you are equipped with a Search Warrant to enter these devices, and **REMEMBER** to record/document each step of your work (Photographs, Screenshot, etc.).

**WEBSITES**

Project.org	Prepdotweb.com
Gp4usb.org	Reddit.com/r/DarkNetMarkets
GetI2p.net	Dnstats.net
etproject.org	Ahmia.fi
Tails.boum.org	Onion.link
Ricochet.im	Torlinks.info



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