

**WITNESS STATEMENT****Criminal Procedure Rules, r. 16.2; Criminal Justice Act 1967, s.9**

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Statement of: **Gina McConville**Age if under 18: **Over 18** (if over 18 insert 'over 18')Occupation: **Police Constable 642**

This statement (consisting of 8 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it, anything which I know to be false, or do not believe to be true.

Signature:

Date **17/12/20**Tick if witness evidence is visually recorded ☐ (supply witness details on rear)

I am Police Constable 642 with Lincolnshire Police and I work in the Licensing Department. As such I attended ZABKA, 111 PORTLAND STREET, LINCOLN in the company of 3 Trading Standards Officers at 1010hrs on Wednesday 9<sup>th</sup> December 2020 to conduct an inspection. I was dressed in full Police uniform with stab vest and utility belt. This was part of a multiple multi-agency visits in the area on that date, and included officers from City of Lincoln Council Licensing and Environmental Health teams, Home Office Immigration, Trading Standards, and various departments from Lincolnshire Police.

On entering the premises I established that there were 2 female workers on the shop floor and the Premises Licence Holder (PLH) and Designated Premises Supervisor (DPS) Mr Saman Osman ALI was in the stock room at the rear of the premises as a delivery was just arriving. I brought Mr ALI through to the front of the premises and introduced myself, the other officers present did the same. Mr ALI appeared to struggle to understand so asked if he could bring his daughter down from upstairs to translate. I agreed and followed him upstairs, I stood in the doorway of the upstairs flat whilst he asked his daughter to join us. Whilst walking up the stairs and onto the landing and before the door leading into the flat I saw boxes of spirits piled up. I noted that some of them were displaying foreign duty stamps over the caps of the bottles, I am aware that these are usually removed on legal entry into the UK, and replaced with a UK duty stamp. I looked at an individual bottle and noted there was no UK duty stamp, yet the size was such that it needed one (anything over 350ml and 30% ABV does). The bottle was Zubowka Biala Vodka. I asked Mr ALI about the vodka I had just seen and he was very quick to

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reply, somewhat defensively, that it was for his personal use, not for the shop, he wasn't going to sell it, he got it from a lorry driver. Indicating that he knew it was smuggled, which was why he wasn't going to sell it, but he thought it was fine to consume himself. I informed him that it was still smuggled goods as he hadn't bought it into the county for his own use and that it would be seized.

I then went down stairs with Mr ALI and his daughter and again explained who I was and why I was at ZABKA. I then looked at the display behind the counter. I immediately noted that there were medicines in a foreign language, I looked at the packaging and saw no English writing, I explained to Mr ALI that he was not allowed to sell medicines with no English writing on the packaging, as they wouldn't be licenced for sale in this county. I noted that Ketonal was on display. My experience with Ketonal from previous seizures is that it's a painkiller and the active ingredients would require a prescription in this country. I understand it used to require a prescription in Poland, however it has recently been made a non-prescription but pharmacist authorised product over there. I noted that next to the Ketonal was the product Duomax (amoxicillinum) 1g which I understand to be an antibiotic and again the active ingredient which would need a prescription in the UK. I noted that there was only 1 box of each of these products on display yet multiple boxes of all the other products, there was room behind the Ketonal and Duomax boxes to store more. I later found more boxes of Ketonal and Duomax under the counter, out of sight from public view, leading to the conclusion that it was known that these products were different from the others as there were no other types of medicines stored there. All the medicines without English writing on the labels were seized and passed to Dave Williams the controlled Drugs Officer for Lincolnshire Police, who will produce a statement with his conclusion as to what was seized.

I then looked at the spirits displayed; noting the same size bottle of Zubowka Biala Vodka was on display as I had seen on the stairs. The first bottle of this spirit that I looked at contained a separate UK duty stamp (as opposed to one incorporated within the label) and the residue of were a foreign duty stamp would be which is explainable but less usual for a mainstream brand. The second bottle contained what at first glance appeared to be a duty stamp incorporated within the label, yet the foreign duty stamp over

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the cap of the bottle. On closer inspection I could see the duty stamp wasn't incorporated within the bottles label, but was in a separate label, yet aligned with the bottles label. The duty stamp contained the letter A, which is the letter you see when it's an incorporated duty stamp, followed by the numbers which are attributable to the individual producer (in this case Smirnoff) granted that number by HMRC to produce duty stamps incorporated in their labels. At the bottom of the duty stamp was the text smirnoff.com. The conclusion being that that duty stamp had been cut out from an incorporated label from a bottle of Smirnoff Vodka and stuck on a bottle of Zubowka Biala Vodka in an attempt to deceive and make it look like duty had been paid on that bottle. The failure to remove the foreign duty stamp was another indicator of the product being smuggled. I therefore concluded that duty hadn't been paid and the goods were smuggled, the item was seized.

I then went through each spirit on the shelf and seized the following:-

5 x 500ml 37.5% ABV Alexandrion Brandy – foreign duty stamp in place, no UK duty stamp present – conclusion - non-duty paid therefore smuggled goods.

1 x 700ml 37/5% ABV Zubrowka Bison Grass Vodka - foreign duty stamp in place, no UK duty stamp present – conclusion - non-duty paid therefore smuggled goods.

1 x 700ml 40% ABV Soplica Vodka – had residue from where a foreign duty stamp would be and displayed a separate incorporated Smirnoff duty stamp cut from a Smirnoff bottle of vodka – conclusion - a deliberate attempt to deceive, non-duty paid and therefore smuggled goods.

1 x 700ml 40% ABV Zoladkowa Vodka - foreign duty stamp in place and displayed a separate incorporated Glens Vodka duty stamp, very poorly cut from a Glens bottle of vodka, with Bookers producer number on the duty stamp, it is understood Bookers are the producers of Glens – conclusion - a deliberate attempt to deceive, non-duty paid and therefore smuggled goods.

3 x 500ml 30% ABV Soplica flavoured, 2 x apricot 1 x lemon and raspberry, all had glue residue from a foreign duty stamp, yet there was no UK duty stamp – conclusion – no duty paid and therefore smuggled goods..

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5 x 700ml 40% ABV Zubowka Biala Vodka in a tatty Grants whiskey box at the bottom of the shelving unit at the rear of the counter. All bottles were displaying a foreign duty label and none were displaying a UK duty stamp – conclusion non-duty paid, smuggled goods.

When Mr ALI saw me looking at the bottles in the Grants box he said they were not for sale in the shop, they were for his personal use, he was just storing them there, he got them from a lorry driver. I countered this with therefore we have smuggled goods on licenced premises, no matter what the intention; the offence is made out, Section 144 Licensing Act 2003. I asked why are personal items being stored in the shop? Shouldn't they be in your residence? You're not storing other personal items in the shop from what I can see. Why are there UK duty stamped sprits being stored on the stairs and not here? Some of your personal use alcohol is stored furthest away from your residence downstairs, and the items your going to need in the shop are stored upstairs further away?. Mr ALI was unable to explain this and reiterated it was just storage and for his personal use. Having had a good look round the whole premises I can confirm that the lower value, lower ABV, large quantity product like beer and wine is all stored on the ground floor, in the store room, a rear shed and on a pallet in the enclosed yard. This pallet was not on the delivery which arrived whilst I was in attendance, 4 boxes of bottled beer arrived with that order. All high value, high ABV spirits is only stored on the stairs and landing and along with this was a pack containing multiple pouches of tobacco. When asked why the tobacco was there, as it was the only tobacco product, Mr ALI stated that there was no room for it in the shop tobacco unit so he stored it there. He then demonstrated that it was intended for the shop by picking the tobacco up, breaking open the cellophane from the multi pack and placed the tobacco in the shop tobacco unit. Leading me to believe that Mr ALI stored the high value stock destined for the shop near his flat door so it's accessible to the shop, yet less likely to be stolen and within this stock a great percentage of it was non duty paid and therefore smuggled.

When going through the alcohol on the shelves I observed a number of more bespoke spirits and wines on lower shelves that are unusual to see in a shop catering for foreign national clientele, and they were

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singular in number or of a very small quantity, for example Dam Raiders gin (1), Plymouth gin (3) price marked at £24.99 yet costing £26 in Sainsbury's and £25.50 in Tesco for the equivalent size, Lambs Navy Rum (3), 19 Crimes The Uprising red wine (1), Campo Viejo Rioja Tempranillo red wine (1), Sorigin – French Gin (2) (one with UK Duty stamp and one where you could see the stamp removed - internet search shows it's a small batch gin and sauvignon blend at 43% ABV, and was available through mainstream channel Aldi at the end of 2018, other than that it doesn't appear to be available mainstream, bespoke sellers only, with 1 importer), The Balvenie Doublewood 12 years Whiskey (2) priced at £39 in Tesco and Amazon, with a price marked as £34.99 on the bottle.

Having seen this before in shops where they are take in stolen goods shoplifted from other shops in lieu of other goods or cash I seized the items and I have requested invoices for them. Mr ALI's business is VAT registered and would have claim VAT back on this alcohol if purchased legitimately. I understand records in relation to VAT claims have to be kept for 6 years, Mr ALI registered the company Zabka Polski Lincoln Ltd in October 2017 and became VAT registered the same month, he became premises licence holder in May 2018, he should have the invoices to prove legitimacy.

I asked Mr ALI why he had a standalone bottle of Plymouth Gin (as I had only found 1 at that time and I thought it suspicious as it was on a shelf with other random bottles), he said it was old stock he had for years and he'd struggled to sell it, I asked how many years and he said 2. I asked the Trading Standards officer to look for a manufacturing dates, she read out 7/11/19, which casts doubt on Mr ALI's explanation. I can confirm that the manufacture dates as printed on the bottles of Plymouth Gin are 2019/11/07, 2019/11/07 and 2020/04/15. Again casting doubt on Mr ALI explanation as they are not from the same batch, the bottles haven't been with him for years, why would he buy more if he struggled to sell the first, why were there not more bottles of the later batch, assuming it would be bought as a box of bottles, and why were they not all on the same shelf lined up behind each other as to other products further up his shelf display were, which would be normal for effective stock taking and turnover.

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I also seized wine which contained foreign duty stamp stamps yet was too low and ABV to require a UK duty stamp, and some spirits which contained either foreign duty stamps, partial foreign duty stamp or foreign duty stamp residue and a non-incorporated UK duty stamp, and although this can happen it's unusual to have most of the mainstream foreign stock being products not destined for the UK market from manufacturing. Meaning when the product is produced and they know it's destined for the UK, duty isn't paid for the county it's in as it's known to be leaving that county, it pays duty on arrival at the end destination either by being incorporated in the label or by the stand alone sticker duty stamp. Those that have a foreign duty stamp were expected to stay in the county and on removal the duty can be claimed back, but that means much more work and generally I see it on non-mainstream foreign products. I have asked Mr ALI to provide invoices for all of these products to evidence that the duty has been paid.

I also seized 5 bottles of 700ml 40% ABV Krackoff Vodka from the display shelf. Although it was bearing an incorporated duty stamp I was suspicious as it was a brand I hadn't seen before, yet it was on shelf of mainstream foreign brands. When lining the bottles up I could see the fill levels were all different, which is an indicator the bottle was hand filled as opposed to machine and is therefore more likely from to come from less legitimate sources when not a quality bespoke product. The labels were also not straight and there were visible particles in the liquid within. An internet search produced no hits for buying the product from common suppliers, the barcode is not recognised, which it should be for a UK bound product as shown by the incorporated duty stamp. There was a news article on Dublinlive stating that 13,500 litres of smuggled Krackoff vodka was seized at Dublin Port on 12 May 2020. The website on the bottle doesn't exist; there is no batch code or production data on the bottle. There were only Facebook adverts from similar small retailers selling the product for £9.99, and £10 respectively, when the duty plus VAT is £9.66. Mr ALI had it on sale for £14.99. A bottle has been sent for testing by Trading Standards, and further enquiries are ongoing with Trading Standards, Food Standards Agency, HMRC and Irish Tax and Customs. Mr ALI has been asked to provide invoices for this vodka.

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In the chiller cabinet I noticed that certain beers were not priced. I'm aware that all products need to be priced by law, either individual or collectively by a shelf label; you shouldn't have to ask for the price of a product from a shop worker. The beers that weren't priced in ZABKA are the mainstream brands that are imported to cater for foreign national clientele. Sadly this is common to see and there are various reason for it. Often the beer is smuggled and to advertise the price so low would be an indicator of this. Sometimes the price changes depending of the nationality of the purchaser as test purchases have proved elsewhere. Sometimes the product can be scanned at the till to give a high price yet staff put in a discount code to bring the price down. All are attempts at ways to get an illicit product to a specific customer whilst trying to look legitimate and all are ways Lincolnshire Police have previously evidence smuggled goods at licensing hearings. Beer above 7.5% ABV has a much higher duty rate, so it should be priced considerably higher than those below that ABV yet it's often the same price, and indicator that no duty has been paid. For example the tax (mandatory price duty plus VAT) on a can of 500ml 7.6% ABV Perla Mocna is £1.13, that's not considering any of the costs to make, house, or transport the product, or for any of the parties involved to take a profit. Yet in Zabka a can scans at £1.49, the cans of lower ABV and therefore a lower tax bracket next to it are also this price and signage near it says special offer beer for £5.00, with other signs saying 4 for £5.00 for other beers, leading customers to believe they could purchase the Perla for what would be £1.25 a can. I noted there was a very large amount of beer stored at the rear of the premise, with a pallet load waiting to be unpacked, yet a relatively small amount on display. Mr ALI told me beer was not a good seller, but his stock indicates otherwise if he is getting more delivered whilst still having a shed and storage area well stocked. I have requested invoices for Mr ALI's beer stock, in particular the Perla Mocna as the onus is on the owner to prove duty paid rather for authorities to prove duty hasn't been paid.

I finally conducted a compliance check in accordance with Annex 2 of the premises licence.

Condition 1a) there was not a camera positioned to obtained a good facial shot on a person entering the premises.

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Condition 1i) the CCTV system was not housed securely.

Condition 3) there was no written policy to prevent the sale or supply of alcohol to persons under 18 years of age.

Condition 5) there was no evidence of staff training and no staff training record available to view.

Condition 6) Alcohol above ABV 5.5%, including the 7.6% ABV Perla Mocna, was found in the chiller cabinet where the public had direct access and not behind the counter or in any other location where members of the public do not have direct access.

Failure to comply with premises licence conditions means unauthorised licensable activity every time alcohol is sold, which is an offence under Section 136 Licensing Act 2003, and undermines the very licensing objectives those conditions were put in place to promote.

I left the premises with assurances from Mr ALI that he would email me invoices for the products requested. I have no doubt that I have seized non-duty paid, smuggled items and I have considerable concerns that one of the products may be unsafe and smuggled. All of which would have been bought for a price that would have been so low it should have aroused suspicions and very likely from a supplier without an Alcohol Whole Registration Scheme (AWRS) number which is an offence in itself. It should have been seen as an indicator to strongly suspect that the products weren't legitimate and checks should have been made, as part of being a responsible retailer protecting and promoting the licensing objectives. From 1<sup>st</sup> April 2017 it's an offence for any retailer to buy or otherwise receive alcohol from any source which is not registered on the AWRS. There is a duty to firstly check that the supplier's invoice carries an AWRS unique reference number, and secondly to verify that the registration is genuine on the HMRC website, and proof of these checks can be requested as evidence of due diligence activities.

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