IN THE COURT OF APPEAL OF BELIZE, AD 2014
CRIMINAL APPEAL NO 19 of 2012

MELONIE COYE
MICHAEL COYE
MONEY EXCHANGE INTERNATIONAL LIMITED Appellants

v

THE QUEEN Respondent

BEFORE
The Hon Mr. Justice Dennis Morrison Justice of Appeal
The Hon Mr Justice Douglas Mendes Justice of Appeal
The Hon Mr Justice Sam Awich Justice of Appeal

A Saldivar for the appellant.
Mrs T Pitts-Anderson for the respondent.

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4 March 2014, 27 June 2014.

MENDES JA

[1] On 3 August 2012, the appellants were each convicted of the offence of money laundering, contrary to section 3 of the Money Laundering Act. On 8 August 2012, they were each ordered to pay a fine of $25,000.00 and, in relation to the first and second appellants, to serve a term of imprisonment of three years in default of

payment. The court ordered further that the sum of $1,557,789.00 seized by the police be forfeited to the State. We heard this appeal against conviction and sentence on 4 March 2014. By this time, the second appellant had passed away not long after having been admitted to bail pending this appeal. We allowed the appeal, quashed the convictions, ordered that judgments and verdicts of acquittal be entered and ordered further that the sum forfeited be returned within 60 days. These are our reasons for so ordering.

[2] In summary, the prosecution's case was that the appellants were part of a joint enterprise to bring large sums of money into Belize by way of MoneyGram transactions. Deposits would be made abroad to MoneyGram agents with instructions to pay certain named recipients in Belize. The signatures of the proposed recipients would then be forged on receipts in Belize which were then presented to the MoneyGram agents abroad, on the pretence that the monies were paid out to the recipients named on the receipts. The foreign MoneyGram agents would then pay the sums deposited with them to the MoneyGram agents in Belize. The appellants would then pocket the monies.

[3] The offence of money laundering is committed where a person receives, possesses, conceals or brings into Belize any property, which includes cash, that is the proceeds of crime, knowing or having reasonable grounds for believing the property to be the proceeds of crime. ‘Proceeds of crime’ is defined as any property derived or obtained, directly or indirectly, through the commission of a prescribed offence, whether committed in Belize or elsewhere. The prescribed offences are listed in the Second Schedule to the Act. The offence of forgery is one of the prescribed offences in respect of which the offence of money laundering may be committed. The prosecution’s case was that the monies which were brought into Belize by way of the scheme described above were derived from or obtained through the forgery of the receipts which were submitted to the foreign MoneyGram agents who, on the faith of those receipts, then paid the monies to the appellants in Belize,

believing no doubt that the money had in fact been paid out to the recipients named on the forged receipts.

[4] Mr Saldivar submitted that the prosecution had not discharged the burden of establishing that the offence of forgery, from which the cash was said to have been derived or obtained, had in fact been committed. The offence of forgery in its many manifestations under sections 175 to 179 of the Criminal Code, he submitted, is committed when a document of one type or the other is forged by someone with a specific intent, typically, to defraud, but also, as Ms. Pitts-Anderson submitted was the case here, to evade the requirements of the law. An intention to defraud is established by adducing evidence of an intention to cause "any gain capable of being measured in money, or the possibility of any such gain, to any person at the expense or to the loss of any other person" - section 13 of the Criminal Code.

[5] It was ultimately common ground between Mr. Saldivar and Ms. Pitts-Anderson that there was sufficient evidence that the receipts had been forged, but that there was no evidence that any gain which had been derived from the forgery was at the expense or to the loss of anyone. And although Ms Pitts-Anderson retreated to the position that the forgeries were contrary to Central Bank Regulations governing such transactions, she was not able to point to the particular regulation which was breached. More significantly, however, she informed the court, with commendable frankness, that in his summation, the trial judge did not direct the jury that they must find that the forgery of the receipts was accompanied by a specific intent, whether to defraud, or as Ms Pitts-Anderson submitted was more to the point, to evade the requirements of the law.

[6] Implicit in Mr. Saldivar's submission was the presumption that in order to establish the offence of money laundering, the prosecution must establish that a predicate offence has been committed by someone and that the property which is alleged to have been laundered was derived or obtained from the commission of that offence. Although Ms. Pitts-Anderson conceded that, if that were in fact a

requirement, the prosecution failed to discharge that burden and the trial judge failed to direct the jury properly on the elements of the offence, her position was that proof of a predicate offence was unnecessary. Provided that it is shown from the circumstances of the case that the accused knew or had reasonable grounds for believing that the property is the proceeds of crime, a prima facie case of money laundering is made out and accordingly proof of the mental element of the predicate offence (in this case forgery) does not arise. For this proposition, she relied on the decision of the Privy Council in ***Director of Public Prosecutions v Bholah*** [2011] UKPC 44.

[7] In ***Bhola***, the respondent was charged with the offence of money laundering contrary to sections 17(1)(b) of the Economic Crime and Anti-Money Laundering Act 2000 (ECAMLA). It is necessary to set out the relevant provisions in full.

> "(1) Any person who …
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> (b) receives, possesses, conceals, disguises, transfers, converts, disposes of, removes from or brings into Mauritius any property which is, or in whole or in part directly or indirectly represents, ***the proceeds of any crime***, where he suspects or has reasonable grounds for suspecting that the property is derived or realized, in whole or in part, directly or indirectly ***from any crime***, shall commit an offence...
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> (7) In any proceedings against a person for an offence under this section, it shall be sufficient to aver in the information that the property is, in whole or in part, directly or indirectly the proceeds of a crime, ***without specifying any particular crime***, and the Court, having regard to all the evidence, may reasonably infer that the proceeds were, in whole or in part, directly or indirectly, the proceeds of a crime" (emphasis added)

[8] Bhola was convicted of the section 17 offence. The magistrate found that he had transferred money, which he had reasonable grounds to suspect was the proceeds of crime, from his company bank account to bank accounts outside Mauritius. In the course of the trial, the magistrate ruled that, by virtue of section 17(7) of ECAMLA, the prosecution was not required to specify or to prove the particular

crime of which it was alleged the money was the proceeds. The magistrate held that she was able to infer from the evidence that the monies were the proceeds of criminal activity.

[9] Bhola appealed his conviction to the Supreme Court of Mauritius which held that section 17(7) of ECAMLA was repugnant to the fair trial provisions of section 10(2)(b) of the Constitution. Section 10(2)(b) requires that every person charged with a criminal offence "shall be informed as soon as reasonably practicable, in a language that he understands, and in detail, of the nature of the offence." In the Court's view, this required the prosecution to particularise and prove the precise offence said to have generated the proceeds of crime. The Court held further that, since Bhola had been deprived of the right to be informed "as soon as reasonably practicable ... and, in detail, of the nature of the offence", and that therefore he had not had adequate time to prepare his defence, his trial had been unfair. The Court accordingly quashed the conviction.

[10] In overturning this, the Privy Council noted first of all (at para 17) that dispensing with the requirement to identify and prove a predicate offence is not "an unusual approach to the problems of proof that money laundering offences can present." In fact, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime provides that parties to the Convention "… shall ensure that a conviction for money laundering under this Article is possible where it is proved that the property … originated from a predicate offence, without it being necessary to establish precisely which offence." It was clear that the Mauritian legislation was consistent with this approach which is reflected in similar provisions in Australia and New Zealand expressly dispensing with the need to prove a predicate offence.

[11] Furthermore, although the comparable English provisions did not contain a similar express dispensation, their Lordships noted (at para 28) that the English Court of Appeal had interpreted their provisions as not requiring proof of a specific offence.

In England it is an offence under section 329(1)(c) of the Proceeds of Crime Act ("POCA") to be in possession of criminal property. Property is criminal property, in accordance with section 340(3), "if - (a) it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and (b) the alleged offender knows or suspects that it constitutes or represents such a benefit." And 'criminal conduct' is defined by section 340(2) as "conduct which- (a) constitutes an offence in any part of the United Kingdom, or (b) would constitute an offence in any part of the United Kingdom if it occurred there." In ***R v Anwoir*** [2009] 1 WLR 980, the Court of Appeal held that under the POCA the Crown could prove that the property derives from crime in one of two ways, "(a) by showing that it derives from conduct of a specific kind or kinds and that conduct of that kind or those kinds is unlawful, or (b) by evidence of the circumstances in which the property is handled which are such as to give rise to the irresistible inference that it can only be derived from crime."

[12] According to their Lordships, key to the conclusion which the English courts have drawn that proof of a specific predicate offence is not required is the non-specific nature of the criminal activity from which the property is to be derived. As their Lordships noted (at para 30):

> "None of the decisions as to the requirements of POCA suggested that the fact that criminal activity had generated the property was an "element" which demanded identification and proof of a specific crime or crimes. "Criminal conduct" in section 340(3)(a) of POCA may reasonably be equated in this context with "any crime" in section 17(1) of ECAMLA. Both are non-specific descriptions of criminal activity. As Gage LJ put it in *Craig* at para 27, "the statutory definition of criminal property is non-specific as to the way in which it became criminal property". Likewise, the way in which property is derived or realised from any crime is non-specific. It does not need to be shown that a particular offence or offences generated the property said to be the proceeds of crime."

Against this backdrop, their Lordships concluded (at para 33) that the Mauritian provisions should be interpreted in similar fashion.

> "The Board has therefore concluded that proof of a specific offence was not required in order to establish guilt under section 17(1) of ECAMLA. It is sufficient for the purposes of that subsection that it be shown that the property possessed, concealed, disguised, or transferred etc represented the proceeds of any crime – in other words any criminal activity – and that it is not required of the prosecution to establish that it was the result of a particular crime or crimes."

It therefore followed that, since section 10(2)(b) of the Constitution required only that the nature of the offence of which the accused person must be informed is that with which he is charged, there was no violation committed by failing to identify and prove a specific predicate offence since proof of a particular predicate crime is not an essential element of the offence of money laundering in Mauritius.

[13] In so far as is relevant to this case, under the Belize Money Laundering Act, the offence of money laundering is committed where an accused

i) either receives, possesses or conceals,
ii) property (which includes cash),
iii) that is the proceeds of crime, that is to say, is derived or obtained, directly or indirectly, through the commission of a prescribed offence,
iv) knowing or having reasonable grounds for believing the same to be such property.

It is accordingly an essential element of the offence that the property is derived or obtained through the commission of a prescribed offence.

[14] It is readily apparent that the elements of the Belizean offence of money laundering are fundamentally different from the corresponding provisions in both the Mauritian and English counterparts. For one, there is no provision in Belize which expressly exempts the prosecution from proving the commission of a specific predicate offence, as section 17(7) of ECAMLA in Mauritius provides. And, unlike the

provisions in Mauritius and England where criminal property can be derived from the commission of ***any*** offence, under the Money Laundering Act in Belize the property must be derived or obtained from the commission of one or other of the specific offences listed in the Second Schedule to the Act, the offence of forgery being one of them. It is accordingly not enough for the prosecution to prove simply that the property was derived from some criminal activity. It must be shown that it was derived or obtained from one or other of the listed offences.

[15] As conceded by Ms. Pitts-Anderson, it is not enough to establish the offence of forgery to prove that someone's signature was forged and that the forger derived some benefit from the forgery. It must also be proved, for example, that the benefit was derived "at the expense or to the loss" of some other person or that the forgery was carried out to evade the requirements of the law. Neither of these had been established on the evidence and the trial judge did not direct the jury that such a finding had to be made.

[16] It is for the reasons that we made the orders set out earlier in this judgment.

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MORRISON JA

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MENDES JA

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AWICH JA