



The Court of Appeal for Bermuda

CRIMINAL APPEAL Nos. 15 & 17 of 2008

Between:

GOODWIN DAVANO SPENCER

Appellant

-v-

THE QUEEN

Respondent

**Before: Zacca, President
Evans, J.A.
Auld, J.A.**

Appearances: Ms. Shade Subair for the Appellant
Ms Cindy E. Clarke and Ms Larissa R. Burgess for the Respondent

Judgement

Date of Hearing:

1 November 2010

Date of Judgment:

16 November 2010

AULD JA:

Introduction

1. On 4th November 2008 the appellant, Goodwin Davano Spencer was convicted before the Chief Justice and a jury on eleven counts of money laundering by many similar and small

[2010] CA (Bda) 12 Crim

payments, to a total of over US \$170,000.00 over a period of about nine months from November 2004 to July 2005, all contrary to section 44 of *The Proceeds of Crime Act 1997*.

2. Ten of the convictions, counts 1 – 5 and 7 -11, were of having been concerned in an arrangement for the removal from Bermuda or transfer to another of money knowing or suspecting that it facilitated the control of the proceeds of criminal conduct of a man named Wayne Jagoo, contrary section 44(1)(a) of the Act. The remaining conviction, count 6, was of using the proceeds of criminal conduct to place them at the direct disposal of Mr Jagoo knowing or suspecting that he was benefiting or engaging in, or had benefited and engaged in, criminal conduct, contrary to section 44(1)(b) (i) of the Act. The criminal conduct of Mr Jagoo alleged by the Crown, though not particularised in the indictment, was drug-trafficking.

3. On 19th December 2008 the Chief Justice sentenced Mr Spencer to seven years imprisonment on each count, the sentences to run concurrently.

4. Mr Spencer now appeals against all eleven convictions and, with leave, against sentence on the ground that it is excessive. And the Crown, with leave, also appeals against sentence, but on the ground that it is inadequate.

Appeal against conviction

5. There was much undisputed detailed oral and documentary Crown evidence before the jury of the facts of Mr Spencer's involvement, direct and/or through persons acting on his instructions, in many financial transactions and transmissions of money from Bermuda to Mr Jagoo through nominees and in one instance direct to Mr Jagoo. The main issues before the jury and on this appeal on each of the eleven counts were and are whether the Crown proved that: 1) Mr Jagoo had engaged in or benefited from, or was engaging in or benefiting from, criminal conduct in the form of drug-trafficking; and, if so, 2) whether, at the material times, Mr Spencer knew or suspected him of such criminal conduct.

6. At the close of the Crown case, Mr Spencer's trial counsel, Charles Richardson, submitted to the Chief Justice that there was no case to answer. Following the Chief Justice's rejection of that submission, Mr Spencer, on the advice of Mr Richardson, elected not to give or call any evidence. However, the substance and considerable detail of his case as indicated by him in a police interview under caution and canvassed by Mr Richardson in cross-examination of prosecution witnesses and in his closing address to the jury were that there was no proof of drug-trafficking by Mr Jagoo material to the indictment or of Mr Spencer's knowledge at any material time of such conduct.

7. Mr Spencer now seeks to challenge his conviction on two main grounds: first, that the Chief Justice unfairly prejudiced his case by wrongly permitting the Crown to put before the jury inadmissible evidence in support of its allegations of Mr Jagoo's involvement in drug-trafficking; and secondly that the Crown's evidence had not demonstrated a case for him to answer on either of the two main issues.

[2010] CA (Bda) 12 Crim

8. Miss Shade Subair, who appeared for Mr Spencer on the appeal, on his instructions withdrew two other grounds of appeal, namely that Mr Richardson in the course of the trial, had wrongly exercised undue pressure on him not to give evidence, and a complaint as to the irrelevance of evidence adduced by the Crown of a loan by Mr Spencer to Debbie Ragobar, who figures as an alleged nominee of Mr Jagoo in count 1 of the indictment.

9. We deal first with ground 2, whether the Crown had demonstrated a case for Mr Spencer to answer regardless of the evidence the subject of challenge to admissibility in ground 1

Ground 2 – Case to Answer

10. The Crown's case is that the proved and largely admitted transactions and transfers of money, the established relationships between Mr Spencer and Mr Jagoo and the others in the story, their various and related movements, the discoveries made on the arrest of Mr Jagoo in the UK in December 2004 and of Mr Spencer in Bermuda 11 months later in November 2005, and the lies and evasions of Mr Spencer in his ensuing interview on 1st December under caution, all taken together entitled the jury to infer a pattern of money-laundering by Mr Spencer of the proceeds of Mr Jagoo's drug-trafficking. In our view, the Crown's case as put to the jury is made out, as the following summary of the evidence on which it relied demonstrates – a summary for which we are particularly indebted to the submissions of Ms Cindy Clarke and Ms Larissa Burgess, for the Crown and to the Chief Justice for his well-structured and carefully considered summation.

11. The Crown's evidence, in the main unchallenged and/or admitted, on the 11 counts established that Mr Spencer had transferred at least \$177,329.28 over the nine months period from November 2004 to July 2005, through a series of 21 wire payments, 3 drafts and 137 withdrawals from ATM machines by the use of 5 debit cards found in his possession.

11. At all material times Mr Spencer had a store in Court Street in Hamilton, known as Tuff Shoes, from which he sold shoes and, under the label of *Mega Power*, car care products.

12. Counts 1 to 5 concern the removal of money by Mr Spencer from Bermuda to alleged nominees of Mr Jagoo included in wire transfers or drafts. Count 6 concerns the provision by Mr Spencer direct to Mr Jagoo of two money drafts. And counts 7 to 11 involve the transmission of monies by Mr Spencer to Mr Jagoo by Mr Spencer's nominees making deposits on Visa card accounts established by them for the purpose and withdrawing corresponding cash sums outside Bermuda.

13. The main common features of the arrangements established by the Crown evidence were:

- i) the use of intermediaries for **many** small payments by Mr Spencer to Mr Jagoo;
- ii) his close relationship with Mr Jagoo, including his involvement in October and November 2004 with Mr Jagoo in a boat called *Julie* and following the arrest of Mr Jagoo at London Gatwick on 27th December 2004;

[2010] CA (Bda) 12 Crim

iii) the close coincidence in dates of transactions and/or movements and locations of Mr Jagoo and/or his various nominees with dates of the transactions and payments covered by the indictment; and

iv) Mr Spencer's acknowledgment in police interview on 1st December 2005 that he had made or was responsible for many of the transmissions of funds destined for Mr Jagoo the subject of the indictment, albeit coupled with alleged lies or half-truths as to the source of and purpose of the transmissions and/or underlying transactions.

14. As the Chief Justice put it in his summation, the story began in late October/early November 2004 with the passage of the *Julie* from Antigua to Bermuda closely followed by a flight of Mr Jagoo' from Trinidad to Bermuda via London Gatwick, both arriving in Bermuda at about the same time. There is then a seeming transfer by Mr Jagoo of the boat to Mr Spencer, reflected in a bill of sale to an alleged nominee company of Mr Spencer for \$25,000. According to Mr Spencer in his police interview in December 2005, he bought the boat from Mr Jagoo and, on the latter's instruction, paid him \$30,000.00 for it in instalments over a period of time plus about \$20,000.00 towards the cost of its delivery and some repairs. He maintained that he had not otherwise known Mr Jagoo and had been introduced to him by a mutual friend whom he would not name. He said that he had paid those sums by a number of wires, each for about \$5,000.00, to bank accounts in Trinidad indicated by Mr Jagoo. He also spoke of having seen a lot of Mr Jagoo in Bermuda in November and December 2004 and of having discussed various business proposals with him over that period.

15. Over the same period Mr Jagoo and/or some of his associates travelled between Bermuda and the United Kingdom and there were over 20 transfers of money from Mr Spencer and/or on his business accounts to persons or accounts of which the transactions and nominees referred to in counts 1 to 5 are instances. In his interview he maintained that those transfers were instalments in respect of his purchase of the boat, but variously denied knowledge of, or was evasive or simply refused to comment on, the role played by those recipients in the onward passage of the money to Mr Jagoo.

16. Count 1 involved a number of transmissions of funds in November and December 2004, from Mr Spencer's business accounts to Mr Jagoo through Debbie Ragoobar, who, as the evidence plainly showed, and to Mr Spencer's knowledge at the material time, was closely associated with Mr Jagoo. He maintained in interview that some of these payments were for Mr. Jagoo for the purchase of the boat.

17. Count 2 involved five admitted wire transmissions of funds, some from Mr Spencer's business accounts and some from other parties on his behalf, to Mr Jagoo through Foreidha Jagoo/Ali, Mr Jagoo's wife, and others involved with him. These were also evidenced by entries of Mr Spencer in a record of transactions in a notebook found on his arrest in November 2005, and in a copy found on Mr Jagoo 11 months earlier on his arrest at London Gatwick in late December 2004, as we shall shortly mention - referred to in the trial as the *Meads Bright* notebook.

[2010] CA (Bda) 12 Crim

18. Count 3 involved four admitted wire transmissions of funds from Mr Spencer's business accounts to Mr Jagoo through Sarojani Ragoobar-Petrovic, the sister of Debbie Ragoobar, whose bank account number and/or bank featured in records of Mr Spencer, but which he maintained in interview were also payments for the boat.

19. Count 4 involved three transmissions of funds from Mr Spencer's business accounts to Mr Jagoo through Sherry Jaggernauth, one of which, a payment of \$5,000, Mr Spencer admitted, but said it was further payment for the boat that Mr Jagoo had directed him to make to her.

20. Count 5 involved three admitted wire transmissions of funds, each from a different business account of Mr Spencer, to Mr Jagoo through Audley Skyers, in respect of whom the Crown adduced various and strong proof of their association at material times. Mr Spencer, in his police interview in December 2005, after initially maintaining that he did not know Skyers, said that they were payments for a car that he had bought for a girl in England, whom he would not name, from a man running a car company in England called Skyers Cars.

21. Count 6 involved the provision by Mr Spencer of \$10,000.00 by two drafts made payable direct to Mr Jagoo both of which were found on Mr Jagoo on his arrest at London Gatwick on 27th December 2004. The complicated, but firm, evidence in relation to both of these drafts supported an inference that Mr Spencer had given them to Mr Jagoo during one of the latter's November or December 2004 visits to Bermuda.

22. There is a break in the story at this point marked by British customs officers' arrest of Mr Jagoo on his arrival at London Gatwick on 27th December 2004 from a flight from Bermuda. The evidence before the jury was that also travelling on the same flight were Debbie Ragoobar, the intermediary for the transfers alleged in count 1, and a man called Roberts, with whom the officers saw Mr Jagoo exchanging suitcases in the terminal. The officers found:

i) in the suitcase that Mr Jagoo had passed to Mr Roberts US \$170,000.00 in cash;

ii) in Mr Jagoo's possession, a written copy of what turned out to be a page from Mr Spencer's *Mead Brights* notebook containing entries, which, with other exhibits relating to Mr Jagoo's movements, strongly indicated that the transactions in counts 1 to 5 had been matters in which Mr Spencer and Mr Jagoo had had a common interest and that the payments recorded on both the original and the copy had been for the ultimate benefit of Mr Jagoo; and

iii) the two drafts made out to Mr Jagoo, the subject of count 6.

23. Following Mr Jagoo's arrest at London Gatwick on 27th December 2004, he remained in custody in the UK awaiting trial on a charge of being in possession of the US\$170,000.00 as criminal property. However, on Mr Spencer's later account in police interview in December 2005, Mr Jagoo soon managed to contact him to report what had happened to him.

24. On 24th January 2005, almost a month after Mr Jagoo's arrest, Mr Spencer also flew from Bermuda to London Gatwick, where customs officers also stopped and searched him. Among his

[2010] CA (Bda) 12 Crim

possessions were £5,000 in cash, which the officers impounded pending further investigation, and an unsigned piece of paper headed “Palm Rock Entertainment” with an address in Hamilton setting out, under the rubric “To whom it may concern”, that Palm Rock, a Reggae Promotions Newwork, had worked with and borrowed \$200,000 from Mr Jagoo for the purpose of its business, and had recently arranged to return that sum to him. Although the document was unsigned, it purported to that of “Mr Donovan McKoy, President” of Palm Rock.

25. The British customs officers did not detain him. He returned immediately to Bermuda, not continuing with his visit, as, he later explained in the December 2005 police interview, because he had had no other money or access to it in the form of credit cards or otherwise.

26. On 6th June 2005 Mr Jagoo was convicted at Lewes Crown Court in UK on his plea of guilty of possession of the US\$170,000 as criminal property

27. In later questioning by Bermuda police of Mr Spencer in December 2005 about the Palm Rock “letter”, his first response was that he had known nothing about it and had not even been aware of having it on him. He went on, however, to assert that he had had a financial interest in Palm Rock, and to admit that he had had “a causal business relationship” with Mr Jagoo. He then – slowly - admitted that he had spoken with Mr Jagoo following the latter’s arrest and that Mr Jagoo had asked him to obtain a letter from somebody to confirm the legitimacy of the source of the \$US170,000.00 and other funds found on him on his arrest. He said that he had approached Mr McKoy of Palm Rock, who had handed him the unsigned letter, but added that he had not intended to make use of it. All that was contradicted at the trial by unchallenged evidence from Mr McKoy, the founder of Palm Rock, who denied that he had had any part in creating the document or that there had been any such transaction with Mr Jagoo as that mentioned in it. In short, he said that the letter was bogus.

28. The possible inference, as the Chief Justice directed the jury, was not that Mr Spencer had been the source of the US\$170,000, but that his willingness to support Mr Jagoo in a dishonest attempt to legitimise the source of that money, indicated his complicity in Mr Jagoo’s criminal conduct and involvement in manipulation of the proceeds of his crime.

29. We return to the remaining counts in the indictment, counts 7 to 11, which span the period between January and July 2005. The Crown evidence showed that, from about the end of January 2005 there was a change in the mechanics of the movements of money from Mr Spencer to Mr Jagoo. They were now made by cash deposits credited to Bank of Bermuda Visa accounts in others’ names, followed by the use of the cards to make withdrawals variously in England, Trinidad and Jamaica. The cards were in the names of people some of whom had figured in evidence relating to one or more of transactions the subjects of counts 1 to 5. The total amount of money transferred in that way was spread between 137 withdrawals. That pattern of transactions, which Mr Spencer admitted, continued until about mid July 2005, and came to the attention of the Bermuda police on 29th November 2005 when, in their search of Mr Spencer’s desk in the office of his store in Hamilton, they found the Visa cards used in these transactions.

[2010] CA (Bda) 12 Crim

30. Mr Spencer, in his police interview under caution a day or two later, on 1st December 2005, told the officers that he conducted both his businesses mainly in cash, which he accumulated in his office safe rather than in a bank because he did not trust banks. He declined to tell them how much he earned from selling shoes and car care products or even how much rent he paid for his store, save that he paid it in cash. As to the wire transfers the subject of counts 1 to 5 and the drafts the subject of count 6, he attempted to justify many of them as instalment payments for the *Julie*, but his answers were often so feeble or inconsistent as to be risible. And even by inflating the total cost of that “acquisition” from US\$25,000 to US\$55,000/60,000 as the interview went on, he still fell far short of any or any tenuous explanation for the payments made. As to the Visa cards in others’ names found in his desk and the payments made by the use of them, the subject of counts 7 to 11, he denied knowledge of such use, maintaining that customers must have left the cards lying around the store. He refused to comment further.

31. Turning now to the Chief Justice’s ruling against Mr Richardson’s submission of no case, he expressly excluded any reliance on the 6th June 2005 UK conviction of Mr Jagoo of possession of criminal property: He said, at pages 30-31 of the Transcript:

“... I think it best at this stage if I approach the no-case submission on the basis that Mr Richardson is right, and that none of the convictions in this case can stand as evidence of the facts said to underlie them. Similarly I will proceed on the basis that the associated materials cannot stand as evidence of the truth of their contents.

I think that the pattern of financial and other activity in this case, when viewed as a whole, and taken with the Defendant’s answers in interview, are plainly capable of giving rise to the inferences, not only that the Defendant had reason to suspect that the monies concerned were the proceeds of criminal conduct, but also that they, in fact, were.

...

Does that inference have to point to drug trafficking as opposed to some other form of criminal conduct within the statutory definition? ... I am not entirely convinced that even on our statutory wording the prosecution has to prove that this was the proceeds of drug trafficking as opposed to some other indictable offence, but assuming they do – and the prosecution seems here to have accepted that burden – I think that there is enough in the circumstances surrounding the yacht “Julie” and its purchase, when taken with the evidence as to how the drug trade works, to point the jury in that direction, even without the previous US convictions of Skyers and Jagoo.”

32. In our view, the case for the Crown on the above evidence - and without regard to the evidence challenged as inadmissible under the first ground of appeal – was more than sufficient to constitute a case for Mr Spencer to answer. We go further and say that it was a strong case, involving as it did evidence of financial transactions, relationships and movements of Mr Spencer, Mr Jagoo and the other parties whose involvement was powerfully evidenced in the story, all

[2010] CA (Bda) 12 Crim

pointing to his close and knowing involvement in laundering the proceeds of criminal conduct by Mr Jagoo. The large number, pattern and complex mechanics of and coincidences of transactions with transfers of relatively small amounts of money, the relationships of those involved, coupled with Mr Spencer's variously evasive, lying accounts or refusals to explain are, in our view, such that the jury were, without more, and if properly directed, entitled to infer drug-trafficking by Mr Jagoo of which he knew or suspected when transferring the money to Mr Jagoo outside Bermuda in the way he did.

33. The exercise for the jury was comparable to that in the case of *Ferrell v Attorney-General* [2010] UKPC 20, in which the Board held that it had been open to the jury to infer, in the absence of a credible explanation, from evidence of cash deposits over a long period to a total of £70,000.00, that they were the proceeds of drug-trafficking. As Ms Subair has submitted, the system of money-laundering and evidence of it in *Ferrell* were different from those here. But, in the Court's view, the process of reasoning adopted by judge and jury and accepted as valid by the Board in that case was equally open to the Chief Justice and jury on the evidence here. The evidence consisted of largely admitted and/or uncontradicted evidence of connected people and activities engendering a string of unexplained or unsatisfactorily explained similarly small payments, for which there were little or no identifiably legitimate underlying transactions - including the claimed purchase by Mr Spencer of the *Julie*. In short, the factual picture established by the Crown had all the hall-marks of a sustained exercise in money-laundering by Mr Spencer of the proceeds of Mr Jagoo's drug-trafficking.

34. Accordingly, we reject this ground of appeal.

Ground 1- Inadmissible evidence challenge

35. Miss Subair submitted orally and in written submissions in reply to Ms Clarke's submissions for the Crown that the convictions are, in any event, unsafe on account of three pieces of Crown evidence that the Chief Justice ruled early in the prosecution case should be permitted to be put before the jury.

36. The Chief Justice admitted into evidence:

i) a certificate of Mr Jagoo's conviction at Lewes Crown Court in the United Kingdom on his plea of guilty on 6th June 2005 of having being in possession on his arrival in London Gatwick on 27th December 2004 of criminal property in the form of US\$170,000 in cash removed by him from Bermuda, money not the subject of any of the counts faced by Mr Spencer in this indictment and, if anything, pointing to Mr Jagoo's, not Mr Spencer's, money-laundering of the proceeds of his criminal conduct;

ii) an extract of the record of Mr Jagoo's answers in interview under caution on 27th December 2004 that did not, on their face, implicate Mr Spencer in any way, but which the Crown maintained were lies that he later sought to support by procuring

[2010] CA (Bda) 12 Crim

the bogus *Palm Rock* letter and taking it with him to the United Kingdom on 24th January 2005 – a mark of his close association with Mr Jagoo; and

iii) evidence of joint convictions in 1993 in the United States of Mr Jagoo and Audley Skyers of unlawful importation into the United States of cocaine; the purpose of the evidence being to establish a link between the two men in support of the Crown case under count 5 that Mr Spencer transmitted the proceeds of Mr Jagoo's alleged drug-trafficking to him through Skyers as the latter's nominee.

i) *Mr Jagoo's UK conviction of 6th June 2005*

37. The admissibility as evidence of Mr Jagoo's 6th June 2005 UK conviction was challenged by Mr Richardson early in the course of the Crown case. He maintained that it was not admissible as proof of any drug-trafficking by Mr Jagoo relevant to, or supportive of, any of the counts faced by Mr Spencer in this indictment. The Chief Justice initially ruled that the evidence of the conviction was admissible against Mr Spencer. He did so, notwithstanding that Mr Spencer did not face any charge of money laundering in respect of the offence to which Mr Jagoo had pleaded guilty, but because he considered it arguably supported an inference that other funds removed for Mr Jagoo's benefit from Bermuda at about the same time "would be of the same nature". He added, however, that the Crown could not rely on that evidence to show that conviction concerned the proceeds of drug-trafficking.

38. In a subsequent ruling following submissions as to how he should direct the jury on the matter - and thus after the UK conviction of Mr Jagoo had been put before the jury and he had ruled against the submission of no case to answer - the Chief Justice ruled that he had been wrong to admit the conviction into evidence. He did so after further consideration of the law, including the English authority of *Hollington v Hewthorn* [1943] KB 587, CA in its application to Bermuda and a reminder by Evans JA in *Gary Bowen* [...], at 6, that, absent Bermudian statutory intervention, evidence of convictions are not evidence of the truth of their contents. He added that he would so direct the jury.

39. The Chief Justice duly gave such a direction, clearly and firmly, in his summation to the jury (at pp 157-158 of the bundle of transcripts):

"So Jagoo's plea in the United Kingdom, not having been made before you, in this court, in this trial, is not something which can stand as evidence in this trial. At the highest, you have it as part of the picture to round out the story of Jagoo's arrest and prosecution in the UK, just finishes that off, but you can't use his plea against this Defendant, Mr Spencer."

In his reference in that direction "to the story of Jagoo's arrest and prosecution in the UK", the Chief Justice clearly had in mind the evidence before the jury of Mr Jagoo's arrest at London Gatwick on 24th December 2004 and the discovery of the US\$170,000 in his possession - and also the copy of the page from Mr Spencer's *Meads Bright* notebook and the two drafts the subject of count 6.

[2010] CA (Bda) 12 Crim

40. Mr Richardson did not challenge the admissibility of the evidence of the customs officers' finding of the US\$170,000 in Mr Jagoo's possession, and there is no such challenge in Mr Spencer's grounds of appeal. Yet Miss Subair submitted towards the end of her oral submissions - though not in her written submission in reply to the Crown's submission - that it should not have been put before the jury.

41. Once the Chief Justice had accepted, as he had in his second ruling on the matter, that the finding in Mr Jagoo's possession at Gatwick of the US\$170,000 - as distinct from the copy of the page from *Meads Bright* notebook and the two drafts the subject of count 6 - was not evidence of laundering of proceeds of drug-trafficking, still less any criminal proceeds with which Mr Spencer was alleged to have had any involvement, it could have only one possible relevance in the case. That was to the general thrust of the Crown case of his close association with Mr Jagoo, such that, following Mr Jagoo's arrest, Mr Spencer was prepared to secure, clearly for the benefit of Mr Jagoo, the bogus *Palm Rock* letter to help him legitimise the latter's possession of that sum. The Chief Justice clearly explained the significance and limited effect of all that evidence in an extended passage in his summation at pages 155 – 160.

42. In our view, the Chief Justice's direction to the jury of the irrelevance of the fact of Mr Jagoo's conviction was an adequate correction of his erroneous admission of it into evidence, given also his direction to them of the relevance of the copy *Meads Bright* extract, the two drafts and the US\$170,000, the last going to Mr Spencer's subsequent involvement in a projected cover-up for Mr Jagoo. It follows that we see no justification for Miss Subair's late suggestion that the finding of that money should not have been put before the jury. It was relevant for the limited purpose indicated by the Chief Justice, namely to show a close association between the two men, an association that Mr Spencer only reluctantly and partially acknowledged in interview.

ii) Jagoo's Statement Under Caution

43. This challenge overlaps that under i). The Chief Justice made plain in his early ruling on the challenge to admissibility of the interviewing officer's oral evidence of an extract from her interview of Mr Jagoo at Gatwick on 27th December 2004, that the Crown relied upon that evidence, not in proof that the US170,000.00 were the proceeds of drug-trafficking or of any involvement of Mr Spencer in the matter, but to show that it was a lie, and a lie that Mr Spencer later took steps falsely to support. To that extent and for that limited purpose – to bring home to the jury the close association between the two men - the Chief Justice indicated that the alleged lies could be put before them, a view to which he adhered in his ruling on 30th October 2008 against the submission of no case. He also pointed out to the jury that there was nothing in Mr Jagoo's statements in interview to implicate Mr Spencer. In our view, there is no substance to this complaint.

iii) Evidence of previous joint US convictions of Skyers and Jagoo of drug offences

44. The Chief Justice, in his rulings on challenges to admissibility of evidence and to his proposed directions to the jury, indicated correctly the relevance of this evidence. It supported

[2010] CA (Bda) 12 Crim

other evidence in the case of the link between Mr Jagoo and Mr Skyers, including whether Mr Skyers was a nominee for Mr Jagoo in the transaction the subject of count 5. He took some trouble in his direction to the jury, at pages 112 - 113 of the transcript of his summation, to identify and confine the significance of this evidence to that narrow issue. The evidence was put before them solely to support other evidence establishing a connection between Skyers and Jagoo, not by way of suggestion that, because they had those convictions, “they must be up to the same thing again”. As he added, “That’s a forbidden line of reasoning”. The fact that there was also Crown evidence of some coincidence of movement between that of Mr Skyers and Mr Jagoo and some of the latter’s associates during part of the period covered by the indictment did not render the US evidence inadmissible, as suggested by Ms Subair in her written reply to the Crown’s submissions.

45. Accordingly, we are of the view that none of the complaints of Miss Subair under Ground 1 of the appeal is made out, save only as to the evidence of the fact of the UK conviction of Mr Jagoo on 6th June 2006. That was an error cured by the Chief Justice by clear direction in his summation along with his directions as to the admissibility and relevance of Mr Jagoo’s possession of the US\$170,000.00 at Gatwick Airport, his statements in interview under caution about the money, and the involvement of Mr Spencer in creating a false cover-story for him. Even if there were any remaining inadmissible evidence of significance arising out of any of the three complaints, we are firmly of the view that they would not diminish the force of the other Crown evidence overall or amount to such unfair prejudice to Mr Spencer as to render any of the convictions unsafe.

46. Accordingly, we dismiss the appeal against conviction.

Signed

Auld, JA

Signed

Zacca, President

Signed

Evans, JA