IN THE COURT OF APPEAL OF BELIZE, AD 2011

CRIMINAL APPEAL NO. 16 OF 2010

BETWEEN:

THE QUEEN **Appellant**

AND

MELANIE COYE
MARLENE COYE
MICHAEL COYE
JUDE COYE
JAMES GEROU
ATLEE MATUTE
DIETRICK KINGSTON
MONEY EXCHANGE INTERNATIONAL LIMITED **Respondents**

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BEFORE:

The Hon Mr Justice Alleyne	**-**	**Justice of Appeal**
The Hon Mr Justice Mendes	**-**	**Justice of Appeal**
The Hon Mr Justice Carey	**-**	**Justice of Appeal**

Ms Antoinette Moore SC, Mrs Tricia Pitts-Anderson and Mr Mikhail Arguelles for the Crown.

Mr. Arthur Saldivar for first, second and third respondents.

Mr. Dickie Bradley for the fourth to eighth respondents.

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20 & 21 June 2011, and 23 March 2012.

MENDES JA

[1] The respondents were charged with the offence of money laundering contrary to section 3 of the Money Laundering Act, Chapter 104. Specifically, it

was alleged that during the period 9 October 2007 to 31 December 2008 they were "engaged, directly or indirectly, in a series of transactions involving property or receiving, or possessing, or concealing property to wit BZE $1,557,789.00 or thereabouts that is the proceeds of crime, namely fraud and forgery, knowing or having reasonable cause to believe the same to be the proceeds of crime". The trial of the offence commenced before Lucas J on 16 September 2010 when a jury was empanelled and continued thereafter over the period 20 September 2010 to 14 October 2010 when, at the close of the prosecution's case, the learned trial judge upheld a no case submission and directed the jury to return a verdict of not guilty in favour of all of the Respondents.

[2] The Crown's appeal against the learned trial judge's ruling came up before us on 20 and 21 June 2011. Ms Antoinette Moore SC argued for the Crown that there was sufficient evidence to establish a prima facie case against the 1st, 3rd, 6th, 7th and 8th respondents. She conceded during argument that the case against the 2nd, 4th and 5th respondents could not be supported. At the conclusion of arguments, we upheld the Crown's appeal in relation to the 1st, 3rd, 6th, 7th and 8th respondents but only in relation to the charges of receiving, possessing, or concealing the proceeds of crime. We promised to give our reasons in writing. We do so now. We very much regret the delay in delivery.

The Crown's Case

[3] Melanie Coye and Michael Coye (the 1st and 3rd Respondents) are listed as directors and shareholders of Money Exchange International Limited (MEIL) (the 8th respondent). MEIL is the local agent for Money Gram International. A company named Omni was licensed by the Central Bank of Belize to conduct money transfer services under the name 'Money Gram' and MEIL was permitted by the Central Bank under OMNI's license to conduct Money Gram money transfers.

[4] On 31 December 2008 a search warrant was executed at MEIL's premises situate at the corner of Central American Boulevard and Mahogany Street, Belize City. The police officers were greeted at the door by James Gerou and Melanie Coye. A number of boxes containing money gram transactions were seized. On the same day, a search warrant was executed at the home of Marlene and Michael Coye at No. 12 Johnston Street, Belize City. The warrant authorised the officers to search for money gram documents and US and Belize cash. Upon reading the warrant, Michael Coye volunteered that he had some money inside his bedroom. He produced a Manila envelope containing cash. The search continued and additional cash was discovered inside plastic bags in a closet, under a television stand, in a plastic container at the foot of the bed, and in suitcases under the bed. Mrs Coye said that the money represented her sales from her flower business. In all, the cash seized totaled BZE$1,557,789.00. One of the suitcases in which money was found had a tag on it on which the name 'Melanie Coye' appeared. Inside one of the plastic bags was an envelope which had written on it the words "$100,000.00 cheque from Jude for Melanie." In one of the suitcases was a brown manila envelope addressed to Melanie Coye.

[5] On 2 January 2009 police officers searched a white Ford Escort registered in the name of Melanie Coye. In the trunk they found various Money Gram receipts, some loose and some in garbage bags. Some of the receipts had only drivers license numbers on them.

[6] On March 6th 2008, another search was carried out at MEIL's offices and four computers and a CD marked "Drivers License" were seized. MEIL bank statements were also seized.

[7] Mr. Dean Joseph, who worked with MEIL, testified as to the procedure which was followed when money was sent to a customer in Belize from someone abroad. The customer would produce an eight digit number which is used to verify that the money was in fact in the system, that is to say, that it was received by a money gram agent abroad. Once that was done, the customer was required

to produce a valid photo ID and the receipt form is signed by the customer and the agent. The money is then paid out to customer.

[8] A number of persons whose names appeared as recipients on the money gram receipts seized from MEIL testified that they did not in fact receive any such money, did not know the persons named as senders on the receipt and did not sign the money gram receipts as having received the money. They nevertheless identified the drivers license numbers appearing on the receipt as their own.

[9] The Crown's case was that a comparison of the signatures of Atlee Matute and Dietrick Kingston (the 6th and 7th Respondents) with the signatures on some of the money gram receipts revealed that Messrs Matute and Kingston had signed the receipts as MEIL's agents.

[10] There was evidence that MEIL earned commissions on these transactions.

The Offence

[11] Section 3 of the Money Laundering Act provides that "A person who, after the commencement of this Act, engages in money laundering is guilty of an offence." 'Money laundering' is defined as

> (a) engaging, directly or indirectly, in a transaction that involves property that is the proceeds of crime, knowing or having reasonable grounds for believing the same to be the proceeds of crime; or
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> (b) receiving, possessing, managing, investing, concealing, disguising, disposing of or bringing into Belize any property that is the proceeds of crime, knowing or having reasonable grounds for believing the same 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; and shall include any property which is knowingly mingled with property that is so derived or obtained.

The 'prescribed offences' include forgery and fraud and 'property' includes money.

[12] Ms Moore informed us that the prosecution did not intend to pursue the charge of engaging, directly or indirectly, in a transaction that involves property that is the proceeds of crime. Accordingly, the burden on the prosecution was to prove that there was evidence establishing to the required degree that the Respondents

i) either received, possessed or concealed,
ii) property (which includes cash),
iii) that is derived or obtained, directly or indirectly through the commission of a prescribed offence (in this case fraud or forgery),
iv) knowing or having reasonable grounds for believing the same to be such property.

The Trial Judge's Ruling

[13] The learned trial judge was satisfied that a prescribed offence, namely forgery, had been committed. He was satisfied that the money gram transaction forms which were admitted into evidence had been forged. He was also satisfied that the discovery of these forged documents at the premises of MEIL was prima facie evidence that those persons in whose possession they were found either forged them or knew who forged them or kept them in their possession. He did not reject the Crown's submission that the offence of obtaining property by deception was committed when MEIL presented the forged money gram receipts to the Central Bank for the purpose of obtaining commission and he accepted

that this would amount to the prescribed offence of fraud. However, he was not satisfied that there was any evidence establishing that the money found at the Coye's residence was the proceeds of the offences of forgery or fraud. Indeed, he went so far as to conclude that there was no evidence that "those frauds itself produce money." To be sure, he was satisfied that the circumstances under which the money was found at the Coye's residence was evidence of knowledge that the money originated from some illegal activity. But he held that the burden was on the Crown to establish what that illegal activity was and that it constituted a prescribed offence. The forgeries which were uncovered, he concluded, were carried out to wash or launder money which had been derived from some illegal activity, but that the forgeries were not the source of the money itself. He held that the Crown had therefore failed to establish an essential element of the offence, namely that the money had been derived or obtained through the commission of a prescribed offence. Accordingly, he upheld the no case submission.

The Applicable Test

[14] Ms Moore criticised the learned trial judge for saying that "the burden is upon the Crown to prove the elements that I've just said beyond a reasonable doubt." She argued that this was an indication that he failed to apply the Galbraith test (referring to ***R v Galbraith*** [1981] 1 WLR 1039) in determining whether to uphold the Respondents' no case submission. While this may be a valid observation, as Carey JA pointed out in argument, that by itself would not result in the appeal being allowed and would not relieve this court of the task of determining for ourselves whether the ***Galbraith*** test had in fact been satisfied.

[15] The guidance given by the English Court of Appeal in ***Galbraith*** is too well-known and has been so often accepted and applied in this jurisdiction (see for example ***DPP v Blease –*** Crim App. 10 of 2002, 17 October 2002) as to foreswear burdening this judgment with an unnecessary quotation of its relevant

passages. In any event, the court in ***Galbraith*** was concerned with the weight which could be attached to the evidence of two witnesses which tended to show that the accused had taken an active part in the affray with which he was charged. More appropriate to a case such as this where the Crown's case is built upon circumstantial evidence are the following passages from the judgment of King CJ in ***Question of Law Reserved on Acquittal (No.2 of 1993)*** (1993) 61 SASR 1, 5 which were accepted by the Privy Council in ***DPP v Varlack*** [2008] UKPC 56, at para 22, as an accurate statement of the law:

> It follows from the principles as formulated in *Bilick* (supra) in connection with circumstantial cases, that it is not the function of the judge in considering a submission of no case to choose between inferences which are reasonably open to the jury. He must decide upon the basis that the jury will draw such of the inferences which are reasonably open, as are most favourable to the prosecution. It is not his concern that any verdict of guilty might be set aside by the Court of Criminal Appeal as unsafe. Neither is it any part of his function to decide whether any possible hypotheses consistent with innocence arc reasonably open on the evidence … He is concerned only with whether a reasonable mind *could* reach a conclusion of guilty beyond reasonable doubt and therefore exclude any competing hypothesis as not reasonably open on the evidence…
>
> I would re-state the principles, in summary form, as follows. If there is direct evidence which is capable of proving the charge, there is a case to answer no matter how weak or tenuous the judge might consider such evidence to be. If the case depends upon circumstantial evidence, and that evidence, if accepted, is *capable* of producing in a reasonable mind a conclusion of guilt beyond reasonable doubt and thus is *capable* of causing a reasonable mind to exclude any competing hypotheses as unreasonable, there is a case to answer. There is no case to answer only if the evidence is not capable in law of supporting a conviction. In a circumstantial case that implies that even if all the evidence for the prosecution were accepted and all inferences most favourable to the prosecution which are reasonably open were drawn, a reasonable mind could not reach a conclusion of guilt beyond reasonable doubt, or to put it another way,

> could not exclude all hypotheses consistent with innocence, as not reasonably open on the evidence.

[16] It is important to stress that even if, on one view of the evidence, it is possible to conclude that a reasonable jury might return a verdict of not guilty, that in itself would not justify withdrawing the case from the jury, if a reasonable jury properly directed might, on another view of the evidence, convict – see ***Varlack*** para 24. This emphasises two points. The first is that the question is not what inferences the Court itself thinks can or cannot be drawn. The question in all cases is what inferences a reasonable jury properly directed might draw. The second is that where a reasonable jury could draw two inferences from the evidence, one consistent with guilt and the other with innocence, it is not for the trial judge to decide which inference is to be preferred. In such a situation, the no case submission must be rejected and the case put before the jury.

Discussion

[17] It is useful to begin by asking what a reasonable jury could infer from the discovery of such a large amount of cash stashed away in different parts of Mr. and Mrs Coye's bedroom. Undoubtedly, they would think it highly unusual and suspicious that the Coyes would risk the loss of such a substantial sum of money in the event they became one of the many Belizeans who are the victims of invasion of their homes. Why would someone keep large sums of money at home, a reasonable jury would ask, and not tuck it away safely in a bank, other than because the money was obtained as a result of some illegal activity and they feared detection by the authorities to which even a deposit of the funds in a bank might expose them? Conceivably, there may be other innocent reasons why someone would choose not to make use of a bank account, for example, fear of a collapse in the banking system or such like, but it nevertheless cannot be gainsaid that a reasonable jury could infer that the cash was obtained from some illegal activity. The conduct of Mr. and Mrs. Coye during the course of the

search no doubt would have contributed to that inference. Mr Coye first voluntarily produced an envelope containing cash, no doubt in the hope of throwing the police off track. Then Mrs. Coye voluntarily produced two bags of money from her closet telling the police that that was all there was. Mr Bradley, who appeared for the respondents, suggested that one inference was that Mrs. Coye did not know that there were other stashes of money in the room but it is more likely that a reasonable jury would infer that she must have known that there were other bags of money in the closet, bags of money in the space savers at the foot of the bed and suitcases of money under the bed on which presumably she slept, and under which she presumably swept from time to time and would infer that her pretence that there was no other money in the room stemmed from her understanding that the money represented ill-gotten gains.

[18] The learned trial judge himself accepted that an inference could be drawn that the money found at the Coye's house originated from some illegal activity. And he was right in thinking that that was not sufficient, that the Crown was obligated to go on to prove that the illegal activity from which the money was obtained or derived was a prescribed offence. It was accordingly crucial to examine the criminal conduct on which the Crown relied in order to determine firstly, whether they constituted prescribed offences and secondly, whether any money was obtained or derived, either directly or indirectly, through the commission of those offences.

[19] We pause here to note the 'proceeds of crime' is defined as including any property which is knowingly mingled with property which is derived or obtained from the commission of a prescribed offence. The upshot of this is that even if, as Mrs Coye is reported to have suggested, some of the money found in her bedroom was derived legitimately from her flower business, it would nevertheless be part of the proceeds of crime if it could be established that any of the other monies found in the bedroom, with which it was mingled, was obtained or derived from the commission of a prescribed offence.

[20] The Crown produced in evidence a number of Money Gram receipts which were found on the premises of the eighth respondent. On each of these receipts is entered a reference number, the name and address of the purported recipient, the name of the sender, the amount sent, the city and state from which the money was sent, the amount paid out, the Government Issued ID# of the recipient, which in each case was his or her driver's permit number, the recipient's signature and the date on which the receipt was signed, and finally an authorisation number and in many cases the signature or initial of an Agent Employee. Some of the receipts were proved by a handwriting expert to have been signed by the 6th and 7th respondents as Agent Employee of MEIL. Most of the receipts also had a stamp in the bottom right hand corner where the authorisation number and agent employee signature appeared which reads "Money International Exchange Int' Ltd. 2528 C.A. Blvd. & Mahogany Street, Belize City, Belize, CA". All of the persons whose names appeared on the receipts put into evidence disavowed any knowledge of the transaction, and denied ever having received the money and more particularly signing the receipts.

[21] It was not in dispute on the appeal that the receipts had been forged. There was also not much resistance to the suggestion from the Court that the forged receipts could have been put to two uses, both on the basis that the receipts could support a claim that the 8th Respondent had paid out the sums stated on the receipts to the named recipients. The first was to claim from the Money Gram agent which received the money abroad for onward transmission to Belize, the sum which the 8th respondent claimed to have paid out. The second was to claim from the Central Bank the commission on the transaction. Ordinarily, the only benefit which the 8th Respondent could derive from a money gram transaction would be the commission for its facilitation of the transfer of the money. But since in these instances, a reasonable jury could infer that the 8th Respondent did not in fact pay out the money represented by the receipts, the jury could infer as well that the 8th respondent benefitted also by the receipt from

the Money Gram agent which received the money abroad of the full amounts recorded on the money gram receipts. In both ways, therefore, the 8th Respondent was potentially able to obtain the money sent from abroad and the commission payable on the transactions, directly from the commission of the prescribed offences of forgery and obtaining by deception, respectively. A reasonable jury could infer all this from the evidence.

[22] It is important to appreciate as well the sheer enormity of the scheme which the evidence revealed. It is apparent that the preferred method of authentication of the receipts was the use of actual drivers license numbers as proof that the person named as recipient turned up in person to collect the money. There was found on the 8th respondent's premises a CD which upon examination by the Court was seen to contain the addresses and drivers license numbers of a significantly large number of persons. The 8th Respondent, a reasonable jury could infer, therefore had the wherewithal to forge an equally large number of money gram receipts. It is also significant that the persons whose names appeared on the money gram receipts and whose signatures were forged included the Assistant Commissioner of Police, the Managing Director of Scotia Bank, a Television Host and News Anchor, the Bishop of the Anglican Diocese, an Attorney at Law, the Research Manager and the Internal Auditor of the Central Bank, the Director of Tourism of the Belize Tourism Board, the Western Union Manager Belize, a Dental Surgeon and a Judge of the Court of Appeal. One would think that in carrying out its scheme, the 8th Respondent would shy away from high profile persons who might attract the attention of the authorities. But the fact that such persons were nevertheless chosen, a reasonable jury could infer, suggests that the names were chosen at random and that there was a large number of such other probably less high profile persons chosen from the list on the CD. A reasonable jury could accordingly infer that this scheme was operated for quite a long time (the receipts are dated between January and December 2008) and in sufficiently large numbers to effect the transfer of large amounts of money from abroad.

[23] All this of course demonstrates only the capacity of the 8th respondent to carry out this unlawful scheme. There was no actual evidence that any of the money was actually received by the 8th respondent. However, a reasonable jury could also infer that the 8th respondent would not simply have laid the ground work for the transfer of the funds over such a long period of time in respect of what appeared to be on its face normal transactions, without actually carrying the scheme into effect. A reasonable jury could accordingly infer as well that the 8th Respondent actually received and possessed at some point the sums deposited for transmission to Belize with the Money Gram agents abroad.

[24] What emerges from the evidence therefore, on one view, is the existence of a large sum of money abroad which the 8th Respondent wished to have transferred to Belize. That money may or may not have been obtained from the commission of an offence and there was no evidence adduced in this regard. The method which MEIL devised to have this money repatriated was to deposit money with Money Gram agents abroad with instructions to send it to certain named persons whose drivers license numbers had been obtained in advance and to pretend that the money had been paid out to them in Belize. A claim was then made on the foreign Money Gram agents for the payment of the moneys purported to have been paid out and on the Central Bank for the commission on the transactions. Contrary to the view held by the learned trial judge, therefore, in our judgment a reasonable jury could infer that the forgery and the fraud proved to have been committed were the sources of substantial sums of money and it was irrelevant that there was no evidence of the provenance of the money sent from abroad. That money became the proceeds of prescribed offence once received by MEIL in Belize. A reasonable jury could accordingly infer that MEIL received and possessed the proceeds of crime and was accordingly guilty of money laundering as charged.

[25] Further, given that a reasonable jury could infer that the money which was stashed away at the premises of one of MEIL's directors was obtained illegally,

they could as well infer that that money, or at least a part of it, was the money which MEIL had obtained or derived from the forgery and/or the fraud and was now having it concealed at its director's premises. It is crucial in this regard that the name of one of its other directors, Melanie Coye, was found on a parcel and a suitcase containing the money seized.

[26] All of the above would implicate the 6th and 7th respondents who participated in some of the forgeries by signing as the 8th respondent's agents, and the 3rd respondent, the director of the 8th respondent, in whose bedroom the money was found. But, in addition, the 1st and 3rd respondents would also be liable to be found guilty along with the 8th respondent by virtue of their directorships in the 8th respondent. This is the effect of section 4 of the Act which provides that:

> Where an offence under the provisions of section 3 is committed by a body of persons, whether corporate or unincorporated, every person who, at the time of the commission of the offence, acted in an official capacity for or on behalf of such body of persons, whether as director, manager, secretary or other similar officer, or was purporting to act in such capacity, shall be guilty of that offence, unless he adduces evidence to show that the offence was committed without his knowledge, consent or connivance.

[27] For these reasons, we allowed the Crown's appeal in respect of the 1st, 3rd, 6th, 7th and 8th respondents in relation to the charges of receiving, possessing and concealing the proceeds of crime.

[28] Justice of Appeal Brian Alleyne, who recently demitted office, has asked us to record his agreement with these reasons.

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ALLEYNE JA

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MENDES JA

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CAREY JA