JCPC/2026/0031 & JCPC/2026/0031A

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL FROM THE EASTERN CARIBBEAN COURT OF APPEAL (MONTSERRAT)

BETWEEN:-

THE KING **Appellant**

V

WARREN CASSELL **Respondent**

APPELLANT'S WRITTEN CASE

Summary of Appellant's submissions

1. The Eastern Caribbean Court of Appeal ('the Court of Appeal') erred in finding that there was a material irregularity in the course of the trial in the manner in which the Appellant sought to admit documents into evidence.

2. The Court of Appeal erred in finding that without the documentary evidence the case against the Respondent was *'tenuous'*, such that there was no case to answer.

3. The Court of Appeal erred in failing to identify and/or consider the prejudice to the Respondent (or lack thereof) when ruling there had been a *'miscarriage of justice'* and declining to engage the statutory proviso (which allows the jury's finding to stand in the absence of identifiable prejudice having been suffered).

4. In response to the matter raised by way of cross-appeal, the Court of Appeal did err in law by not directing that a verdict of acquittal be entered. Such an error does not affect the strength of the arguments in favour of allowing the appeal nor does it affect the Appellant's right to appeal.

Appellant's submissions regarding particular Grounds

5. **Ground 1: The Court of Appeal erred in finding that there was a material irregularity in the course of the trial in the manner in which documents were admitted into evidence**.

6. The appeal was allowed on an unreasonably inflexible interpretation of how documents can be admitted into evidence. There was in fact nothing unusual or irregular in the procedure adopted in this case, which followed normal practice, certainly as to how documents are presented in a criminal trial in England and Wales. The Court of Appeal's ruling has the effect that no case can ever be opened to a jury with reference to a file of non-contentious, admissible documents, or a 'Jury Bundle', and is contrary to how criminal cases are routinely conducted, with the use of Jury Bundles in opening a case, the documents within them being spoken to and produced during the trial process.

7. Left as it is, the ruling would make it virtually impossible to try any document heavy case, and herein lies in this appeal a point of great public and legal importance. In this regard, the Court of Appeal's view that to refer to a Jury Bundle of documents to be produced in opening the case was *"unprecedented and unorthodox"* [repeating and adopting the Respondent's basis for objection in the trial, CA Judgment para 71, **Record 1039**] is wrong, and contrary to everyday practice in England and Wales and elsewhere in the Common Law world. **[EB/1137]**

8. In this appeal, the Appellant asks the Judicial Committee of the Privy Council (the "**Board**") to consider the following:

    a. *'whether there was a procedural flaw in the manner in which the documentary evidence was admitted'; and*

b. *'if so, whether the Court of Appeal was correct in ruling that this amounted to a "material irregularity" in the conduct of the trial'; and*

c. *'whether the Court of Appeal was correct in ruling that the learned trial judge ought to have acceded to the submission of no case to answer as a result.'*

9. We respectfully submit that there was no procedural flaw in the Appellant's approach, there was no material irregularity and that, in light of the overwhelming evidence against the Respondent, the trial judge should not have acceded to the submission of no case.

10. It is of particular importance to note that this was a document-heavy case of some complexity. There were hundreds of pages of documentary exhibits relied upon at trial. Much of the detail of those exhibits required careful consideration, containing as it did details of property and financial transactions and correspondence.

11. Advance notice of this proposed approach was given in pre-trial hearings when the matter was listed for case management. At those hearings the Respondent was legally represented, indeed he was so represented right up until trial when he chose to represent himself.

12. A decision was taken at an early stage in proceedings by the Appellant that the only practical way to present the case to a jury was to produce jury bundles containing copies of all of the relevant exhibits.

13. This proposed approach was conveyed in pre-trial hearings, when the Respondent was legally represented, orally and in written notes, so well before trial **(see e.g. Note for Hearing dated 18 March 2020 at Annex 1)**. Those written notes, provided to all parties prior to the first listing of the trial of this matter in 2020, included witnesses it was proposed to be called, and an Opening Note (see Annex 2) referring to the relevant documents. It is clear by reading this note **[EB/1064]**

that the intention was to refer to these documents in the course of opening the case to the jury.

14. Among other things the Appellant invited any objections on points of law and admissibility to be raised then and in advance of trial to ensure efficient case progression at trial. No objections or points were taken regarding the proposed approach then, and therefore the point was not argued.

15. The production of exhibits within a bundle was made explicitly clear at first instance with the filing of the Indictment at the Registrar's Office, date stamped and timed at 2.24pm on 19 May 2020, and the full list of witnesses and exhibits provided *'Per the exhibits bundles served'* **[Record 131-132]**. The full Jury Bundles were not copied to the Court of Appeal, as it was not deemed necessary to address the points raised, although the detailed Index for each bundle was **[Record 130]**. As can be seen from the Jury Bundle Indexes [**Annex 3**][1], there is no doubt that each document in the Jury Bundles was produced as a separate numbered item, with the original exhibit reference, and sequential page numbers within the Jury Bundles and a description of the exhibit. **[EB/136]** **[EB/135]** **[EB/1087]**

16. Having invited further directions, and pursuant to a legal direction of Morley J at the subsequent hearing, the Appellant served a detailed Opening Note dated 25 June 2020 which made thorough and explicit reference to these exhibits within the Jury Bundle **[Annex 2]**. It is obvious from reading that note that the proposal was to refer to those exhibits in Opening. **[EB/1075]**

17. No objections to the proposed course were made or indicated prior to the eventual trial in June 2022. All of the documents in the Jury Bundles were served in advance, and were the same as had been provided to the Respondent and used in the first criminal trial he faced ten years earlier in 2012. The fully

[1] The Index to the Court of Appeal Record [Record 130] refers to "Exhibits Index Bundle 1" and Exhibit Bundle 2. These are the Jury Bundles. The Appellant cannot explain why there is no page reference next to these documents nor why they do not appear in the Certified Record. However, a copy of the Indexes is at Annex 3.

referenced Opening referring to documents in the Jury Bundle was provided to the Defence two years in advance of the trial.

18. It was only at trial and during the Opening that objection was raised. The jury were provided with the two volumes of the Jury Bundles to follow the case in Opening. It was also clear that the Respondent had access to all the documents in advance, but had chosen to make a challenge on day one of the trial rather than in any pre-trial preparation hearings.

19. The following excerpts from the exchange at this time are relevant:

> Pros: *'This is a case of money laundering where the documents have been with the defence for well over two years and the prosecution have invited comments, objections, correspondence, legal challenge at every stage…'* **[Record 144, 22-25 and following]** **[EB/149]**
>
> Def: *'We were never given an opportunity to address, if he would go outside of the normal practice and show the jury at this stage we would have objected. It is not permitted by law. We are not objecting to the documents themselves'* **[Record 145, 27-30]**…*'again our objection is not to the documents themselves it is simply to them being shown to the jury at this time; unorthodox, unprecedented'* **[Record 146, 7-8]**. **[EB/150]** **[EB/151]**
>
> Judge: *'Over a period of time there have been hearings I personally indicated that all legal objections ought to be addressed prior to the date of hearing and I am aware also that my brother Justice Morley sat and addressed some of the matters before the court.'* **[Record 146, 11-14]** **[EB/151]**

20. It was then clarified between all parties that the objection was confined to the documents being distributed at that stage, with the judge ruling that the documents could be handed out as requested by the Appellant **[Record 146, 14 – 147, 10]**. **[EB/151]**

21. The detailed Opening continued, with a narrative and reference to some of the documents, as explicitly set out in the Opening drafted in 2020 and served on all parties **[Record 147-178]**. **[EB/152 - 183]**

22. The primary prosecution witness was Owen Rooney **[Record 221-296]**. Due to health issues, the Appellant made written and oral applications for him to give evidence remotely, which he did via video link from Los Angeles. In order to do so, the prosecution arranged for relevant documents to be sent to him in advance, including copies of his statement, a plan of the area, and the Jury Bundle documents as provided to the jury. His documents, marked OMR/1-80, appeared in Jury Bundle 1 **[see Annex 3].** **[EB/226 - 301]** **[EB/1087]**

23. The Appellant's intention regarding the production and use of exhibits was again made clear, not least from the following exchange when prosecution counsel asked Mr Rooney to look at one of the many exhibits and stated:

> *'…and all these exhibits just to be clear you produced and My Lord just so there is clarity on this because we put it together as a bundle the officer in the case will exhibit all these items as officer in the case in due course but it's your exhibit is it not?'* The witness agreed. **[Record 264, 11-15]**. **[EB/269]**

24. The majority of the documentary evidence was produced by the Royal Bank of Canada or the Bank of Montserrat in the form of bank statements, and documents (being government records) produced from the Montserrat Land Registry.

25. Each individual documentary exhibit was properly exhibited in a witness statement and produced by the individual providing the document, as can be seen from the analysis below. Each exhibit was marked in the usual way with the initials of the producing witness, followed by a number (again, as can be seen on the face of the Index).

26. All of the originals, or certified copies of the originals, were kept by the officer in the case, Jessica Sweeney. Copies of these documents were then ordered and put into a jury bundle, with its own separate pagination.

27. Each witness in turn then gave evidence under oath and in front of the jury. Each witness referred to their exhibits, marked by their initials and the relevant number, and the jury followed in their Jury Bundles. The originals were available at court. This approach reflects the usual practice for the production of exhibits and documents in a criminal trial.

28. The adoption of this practice can be seen from a brief consideration of the evidence of the witnesses. Shelley Isles gave evidence as Registrar of Lands. All of her documents were copied and comprised Jury Bundle 2. Regarding production of those documents she confirmed during her evidence that she was asked to produce certified copies of documents held in the files at the Land Registry **[Record 310, 13-15, original exhibit reference SI/1-34].** She was then asked about these documents in turn, commenting on what each document meant **[Record 310-322]**. **[EB/315]** **[EB/315 - 327]**

29. Bernadette Matthew was a compliance officer at the Bank of Montserrat [**Record 333-348**]. She was asked about the financial transactions regarding accounts connected to the Respondent from documents held by the bank **[exhibits BM/1].** Each document was stamped as being a certified true copy of the original. **[EB/338 - 353]**

30. Lucille Irish was a bank clerk at the Bank of Canada [**Record 339-348]**. She gave evidence about checking the system within the bank and being asked to print out documentation. She was then taken to copies of these documents within the Jury Bundle and asked to consider some of the transactions **[exhibits LI/01, LI/02]** concerning the Cassell & Lewis account. She confirmed that the Respondent was the signatory **[Record 345/26-27].** **[EB/344 - 353]** **[EB/350]**

31. The statement of Hogarth Sargeant was read, which spoke to producing documents.

32. The Respondent had the opportunity to cross-examine on each document, with the originals and certified copies being available for inspection if required. He cross-examined on many of them.

33. Witnesses gave evidence of having provided the exhibits and the officer in the case Jessica Sweeney gave evidence that she had collected and seen all the exhibits in the case and placed them into the Jury Bundles [**Record 351, 15-18].** **[EB/356]** She also confirmed that she had gathered all of the relevant exhibits in the case and placed them in the Jury Bundles **[Record 351/15-18]**: **[EB/356]**

> *'Pros: You've had a look at all the exhibits in this case?*
>
> *A: Yes*
>
> *Pros: You formulated the items in both of the files in front of the jury?*
>
> *A: Yes'*

34. She confirmed that she had met Shelley Isles and received all of her exhibits and numbered them SI/1-34 and these were what appeared in the Jury Bundle **[Record 356/22-30]**. **[EB/361]**

35. As reflected in the transcript, the trial judge plainly and understandably considered that the documents had been properly tendered in evidence. The practice adopted and foreshadowed reflects the usual practice for exhibiting and presenting evidence in a criminal case involving the presentation of multiple documents.

36. In this way, all of the documentary exhibits *were* exhibited in evidence at trial, and properly admitted into evidence. The Court of Appeal's observation that "*such exhibits must be marked and formally admitted into evidence before they can be considered by the judge and jury"* [Judgment para 67, **Record 1038**] is **[EB/1136]** not understood, nor accepted. The Appellant is not aware of any prescribed local practice regarding the manner in which documents must be admitted. The Respondent has provided no authority for this proposition either in common law

or statute. In any case, practice is not equivalent to law or even procedural rules, and deference to practice above all else opens up the risk of practice being preferred even where it has evolved so that it is contrary to principles of fairness and justice. Whilst it is not asserted that adherence to such a practice would have undermined those principles in the present case, it is submitted that if the local practice regarding the formal admission of documents into evidence is as the Respondent avers, it would in this case be contrary to the principles of common sense and efficiency. It would also have potentially inhibited the jury's understanding of the case. In any event such a procedure if adopted cannot be determinative of the admissibility of exhibits. The trial court had ruled prior to Opening that the Jury Bundle could be referred to in Opening.

37. The Appellant has found nothing by way of guidance that in fact dictates how exhibits might be produced and formally admitted into evidence. The procedure adopted by the Appellant and approved by the Judge in this case was consistent with that set out in *R v Schwartz* [1988] 2 SCR [58-60] and the comments and observations of Dickson CJ on how exhibits must be spoken to by a witness. This is precisely what happened.

38. Further research has indicated there is nothing within the Constitution of Montserrat or elsewhere which dictates or indicates how documents should be produced in evidence in a criminal trial in a manner that is different from that adopted in this case. There is nothing in the Criminal Procedure Code 2010 which expressly or implicitly restricts the use of Jury Bundles or documentary exhibits, or indicates when they might be made available to a jury during a trial.

39. The Court of Appeal's finding that the judge erred in allowing the documents to be shown to the jury in Opening, erred in allowing the jury to mark their copies, and erred in permitting the jury to retire with them in their deliberations, does not make the documents inadmissible or the procedure adopted inappropriate [Judgment paras 77, 79-80, **Record 1040-1041**]. **[EB/1138 - 1139]**

40. The Court of Appeal's further finding that the procedure adopted amounted to a miscarriage of justice is illogical and a triumph of form over substance, with the appeal allowed on a purely technical point that rests on an inflexible interpretation and understanding of how items might be exhibited that has no bearing on the safety of the Respondent's conviction. Were it to stand, it would make it virtually impossible to prosecute any case of complexity involving more than a mere handful of documentary exhibits. This is so because the prosecution would be unable to refer to any documents in opening – even documents to which there is no objection regarding admissibility – and would be unable to provide an adequate overview of the case they were to be asked to consider. As such, the Court of Appeal's judgment in this matter represents dangerous precedent for the administration of criminal justice.

41. The Respondent did not challenge the provenance or admissibility of any of the documents. On the contrary, the Respondent explicitly stated that he did <u>not</u> challenge the admissibility of the documents. Further, as set out above, the documents were admitted into evidence by each witness speaking to the documents, identifying their exhibits, and copies being placed into the Jury Bundle.

42. Furthermore, the Court of Appeal's Judgment was, in fact, inconsistent in respect of the question of whether a material irregularity arose. By its own logic the procedure adopted at trial was not irregular at all and is consistent with the approach the Court of Appeal itself endorsed in the same Judgment [para 77, **Record 1040**]: **[EB/1138]**

> *'This procedure is highly irregular and unusual in either civil or criminal matters. In the absence of agreement of the parties that documents were not being challenged, the documents ought not to be shown to the jury unless and until they have been properly tendered and marked as exhibits. Only where there is such advanced agreement should documents be deployed before they have been formally tendered, marked and exhibited.'*

43. This paragraph from the Court of Appeal's Judgment supports the Appellant's submission that the procedure adopted with regard to the documents in this case was not irregular at all, as the Record makes it plain that there was agreement between the parties that the documents themselves, and their admissibility, was not being challenged.

44. **<u>Ground 2:</u> The Court of Appeal erred in finding that without the documentary evidence the case against the Respondent was *'tenuous'*, such that there was no case to answer**.

45. Even in the absence of the documentary evidence, there was a case to answer regarding the Respondent's behaviour. The Court of Appeal erred in failing to properly appreciate the importance of the Prosecution witnesses' oral evidence.

46. On this ground the Board will need to determine:

> *'whether the Court of Appeal was correct in its view that, aside from the documentary evidence, the evidence against the Respondent was "tenuous" such that the learned trial judge ought to have acceded to the submission of no case to answer in respect of it.'*

47. The Court of Appeal judgment fails to consider the extent of the oral evidence given at trial by the main witness in the case, Owen Rooney, as well as by other witnesses [**Judgment paras 84-85**]. Mr Rooney's detailed and lengthy testimony **[Record 221-296]** went to the heart of the Respondent's criminality, and even without the documentary evidence it could never be said that the Appellant's case against the Respondent was tenuous. **[EB/1140]** **[EB/226 - 301]**

48. Mr Rooney's sworn account was clear and compelling. Among other things, he spoke at great length of:

    a. how he and Wood were the only directors of PEL (going directly to the first disjunctive particular of the Indictment) **[Record 245];** **[EB/250]**

b. he should have been consulted and given first refusal on the sale of any land at Providence Estate, but he was never consulted about purported sales of lots of land (going to the second particular) **[Record 244-247];** **[EB/249 - 252]**

c. he became aware that lots of land were being advertised for sale **[Record 246]**; **[EB/251]**

d. as a result he notified his lawyers **[Record 248]**; **[EB/253]**

e. the Respondent engaged in correspondence with him to extort money **[Record 248-251]**; **[EB/253 - 256]**

f. he wanted nothing to do with the Respondent **[Record 253]**; **[EB/258]**

g. he did not authorise or know of any payments for lots of land when sales commenced and the Respondent sold lots of land belonging rightly to him **[Record 254]**; **[EB/259]**

h. the Respondent had not been authorised to act on behalf of PEL, and the Respondent had no *locus standi* **[Record 256]**; **[EB/261]**

i. the Respondent was never a director of PEL **[Record 256-7]**; **[EB/261 - 262]**

j. he subsequently took legal action to void the purported agreement regarding change of directors, and the court declared the transfer to the Respondent null and void **[Record 257]**; **[EB/262]**

k. he was taken through each transaction of land in the Providence Estate and said he did not authorise any sales of land and did not receive any proceeds from the sales **[Record 261-276]**. **[EB/266 - 281]**

49. When it was put to Owen Rooney in cross-examination that the Respondent did not need permission to transfer any of the properties the witness responded *'Oh my goodness. Yes you did need my permission. Absolutely you needed my permission'*. The witness clearly asserted that the Respondent was not a lawful director **[Record 291, 12-15, 21-22]**. **[EB/296]**

50. Prosecution witnesses who had purchased parcels of land illegally sold by the Respondent (Dion Weekes **[Record 181-193]**, John Ryan **[Record 193-207]**, Kenneth Allen **[Record 207-221]**, Joel Osborne **[Record 303-308]**) gave evidence of their transactions with, and payments to, the Respondent, and were cross-examined by the Respondent. **[EB/186 - 198] [EB/198 - 212] [EB/212 - 226] [EB/308 - 313]**

51. Shelley Isles **[Record 309-326]** gave evidence as Registrar of Lands. Among other things she was asked about procedure and about particular documents and their meaning. **[EB/314 - 331]**

52. Paul Morris, former Deputy Commissioner of Police, gave evidence of the Respondent's arrest **[Record 326-333].** He stated that Rooney was never the registered owner of the land **[Record 329/15].** **[EB/331 - 338] [EB/334]**

53. Bernadette Matthew was a compliance officer at the Bank of Montserrat **[Record 333-348].** **[EB/338 - 353]**

54. Lucille Irish was a bank clerk at the Bank of Canada [**Record 339-348**]. She gave evidence about checking the system within the bank. **[EB/344 - 353]**

55. The statement of Hogarth Sargeant spoke of the correspondence with Rooney and the Respondent **[Record 349-350].** **[EB/354 - 355]**

56. Jessica Sweeney was the officer in the case and gave evidence **[Record 350-359]**. She produced a single sheet, with the explicit consent of the Respondent, providing a financial breakdown of the funds received in the relevant transactions and amounting to the Indictment figure of EC$855,380.54 **[Record 351/8-13]**. **[EB/355 - 364] [EB/356]**

57. She went on to explain how she had considered all of the available financial material and confirmed the Indictment figure of EC$855,380.54, being the total amount transferred into the Cassell & Lewis account for the relevant property transactions **[Record 351/19-356/21]**. **[EB/356]**

58. The Appellant submits that this summary and reference to the Record show how oral and documentary evidence was adduced with care and in a fair and proper

manner. The Appellant avers that even if the documentary evidence were excised, which we say could not properly or fairly be done in the circumstances, the summary analysis of Sweeney of the transactions – explicitly said not to be the subject of objection – together with the extensive oral evidence of how the Respondent conducted himself with Rooney and the other witnesses shows that there was a clear case to answer.

59. **<u>Ground 3:</u> The Court of Appeal erred in failing to identify and/or consider the prejudice to the Respondent (or lack thereof) when ruling there had been a *'miscarriage of justice'* and declining to engage the statutory proviso (which allows the jury's finding to stand in the absence of identifiable prejudice having been suffered)**.

60. Even if the Court of Appeal found the Appellant to have erred in the manner in which it sought to admit documents into evidence, in the absence of identifiable prejudice having been caused to the Respondent the proviso should have been engaged to uphold the jury's verdict. Given the Court of Appeal itself did not identify any prejudice, nor indeed the Respondent, the Court erred in finding that this amounted to a miscarriage of justice. Moreover, the Court of Appeal's failure to address properly or adequately the application of the proviso is a fundamental and fatal error.

61. For the reasons summarised here and expanded upon below the Court of Appeal was wrong to conclude that (i) the Crown could not open the case to the jury with reference to documents, (ii) the documents were not properly admitted into evidence, (iii) the documents should not have gone before the jury, (iv) without the documents there was insufficient evidence of the Respondent's guilt, and (v) there had been a miscarriage of justice.

62. The importance of this matter is measured properly by considering the impact of the judgment, which restricts the ability of a Director of Public Prosecutions, or any prosecuting agency, to carry out its duty in prosecuting cases of complexity and/or involving significant documentation. The Court of Appeal's judgment has

created a severe risk of injustice. It has already had an impact on the manner in which the equally document-heavy case prosecuted by the DPP against the President and Treasurer of the Montserrat Football Association was prepared for trial (although ultimately in that case guilty pleas entered to substantive Counts on day 1 of the trial, on 14 April 2026, meant that the trial did not have to proceed with a jury).

63. The Court of Appeal's Judgment did not address adequately the terms of the statutory proviso.

64. On this ground the Board will need to determine:

> *'whether the Court of Appeal was right to quash the Respondent's conviction and to not engage the statutory proviso, notwithstanding no prejudice to the Respondent was identified as rendering his conviction unsafe.'*

65. Section 39(1) of the Supreme Court Act, Cap 2.01, contains the following statutory proviso: **[EB/2147]**

> *"Provided that the court may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no miscarriage of justice has actually occurred."*

66. The responsibility for applying or rejecting the proviso is laid squarely on the Appellate court (as held in *Cassell & Anor v The Queen* [2016] UKPC 19 at para 28). **[EB/2336]**

67. No prejudice has ever been identified that might possibly indicate that these proceedings amounted to a miscarriage of justice. Characterising these proceedings in these terms is both inaccurate and unjustifiable. The documentary exhibits were all admissible in evidence, they were spoken to by the relevant producing witnesses, the Respondent was afforded unlimited opportunity to cross-examine the witnesses on them, and any procedural oversight with the

manner in which they were admitted into evidence (if there was one) had no bearing whatsoever on the fairness of the trial or the safety of the Respondent's conviction. The Respondent had multiple occasions and opportunities pre-trial to object to the admission of any documents; he did not object to the admissibility of documents at trial; he did not identify any prejudice or unfairness before they were put to the jury. Even after trial and before the Court of Appeal he failed to identify any prejudice or unfairness.

68. The Respondent himself relied upon the documents produced by the Appellant to seek to advance his case. He was afforded unlimited opportunity to cross-examine each witness on their documents and did so, and relied on the documents within the Jury Bundle himself to seek to establish points in his favour.

69. Examples of this can be found in his questioning and use of the documents in the Jury Bundle in relation to the main Prosecution witness Owen Rooney **[Record 276-292]** by reference to the landholding licence, property transfer documents, the official land register, and affidavit of Walter Wood. Shelley Isles was cross-examined on documents within the Jury Bundle and their meaning **[Record 323].** During cross-examination of Dion Weekes the Respondent sought to establish points in his favour by reference to the Jury Bundle **[Record 292]**. During cross-examination of Kenneth Allen the Respondent sought to establish points in his favour by reference to the Jury Bundle **[Record 216]**. **[EB/281 - 297]** **[EB/328]** **[EB/297]** **[EB/221]**

70. The Appellant submits that the principles governing the practice of tendering of evidence were not compromised in any way during the Respondent's trial on account of the procedure adopted. It is submitted that the timing of when evidence is presented to a jury, without being formally tendered first, is only relevant to the issue of fairness if the admissibility of the evidence itself is successfully challenged at a later point in the trial. This scenario did not apply in the present case.

71. At no point during the trial (either in cross-examination or in submissions) or in subsequent submissions regarding the fairness of the trial, did the Respondent

choose to challenge the authenticity of any of the documents or the chain of evidence in respect of any of the documents relied on by the Prosecution at trial, which is not surprising given that all of the exhibits had been marked with the initials and sequential numbering of the producing witness, as per normal procedure, prior to being given a Jury Bundle item and page number, as can be seen on the face of the index.

72. Because these exhibits had already been labelled and given exhibit reference numbers prior to trial, the Respondent had ample opportunity to consider any challenge to admissibility or continuity if he had so wished, but chose not to. The Appellant submits there was no need for the documents to be given further exhibit references at the point of tendering, if that is what is suggested, as their provenance was already established, and not challenged, and further numbering of the documents beyond itemising them in the Index would have only served to confuse the Court, the jury and the witnesses. In this sense, the observation of the Court of Appeal that there was an irregularity in the production of the documents, and that the procedure adopted was contrary to trite law, is not well founded. We do not accept that the use of jury bundles, and reference to them in Opening, is either unusual or contrary to any local practice.

73. There were no grounds on which the Respondent could have challenged the admissibility of the documentary evidence adduced against him at trial, including the ground of fairness. The documentary evidence to which the jury had access in opening and in retirement and throughout the trial was evidence which was properly admitted during the trial process. The Appellant submits therefore that there can be no prejudice or unfairness in the procedure adopted in this case, and as such no prejudice was suffered by the Respondent.

74. When considering the proviso, the task of any Court of Appeal (that has identified something capable of affecting the result of the trial) is to then consider whether that potentially adverse effect on the result may actually, in reality, have occurred (applying *Lundy v The Queen* [2013] UKPC 28 – at para 160 et seq. – as **[EB/2404]** mentioned within *Cassell & Anor v The Queen* [2016] UKPC 19 – para 27 et seq

[Record 885-889]). The Court of Appeal failed to do this. In the instant case, the only reasonably possible verdict of the jury was one of guilty and, if the alleged flaws in the formal tendering of the documentary evidence had not occurred, any jury acting properly must inevitably have convicted the Respondent. **[EB/890 - 894]**

75. Indeed, when the Court of Appeal heard the Respondent's appeal in 2013 following his conviction in 2012 (*Warren Cassell & Anor v R* (2013)) unreported, it ruled as follows (at para 4, *emphasis added*): **[EB/2530]**

> *"We agree with learned Queens Counsel therefore that in view of the overwhelming evidence had the trial judge properly directed the jury on the issue of mens rea, the jury would have inevitably have convicted of the offences as charged."*

76. That conviction, albeit on a different charge, was based on the same documentary evidence.

77. Further, this is plainly not a case in which the trial process was so perverted that there would be a miscarriage of justice even if any jury must inevitably have convicted. Accordingly, the Court of Appeal should have engaged the proviso and dismissed the Respondent's appeal.

Appellant's submissions regarding other Grounds of appeal

78. Without wishing to repeat submissions already contained within the Record, the Appellant merely points to the matters addressed regarding the Respondent's points in the following documents:

a. Submissions to Court of Appeal **[Record 512-526]** **[EB/517 - 531]**

b. Submissions opposing bail **[Record 73-78]** **[EB/78 - 83]**

c. Submissions regarding Indictment **[Record 86-89]** **[EB/91 - 94]**

d. Response to submission of no case to answer **[Record 90-95]** **[EB/95 - 100]**

Appellant's observations regarding the Cross-Appeal

79. The Appellant takes no issue with the singular Ground raised in the Cross-Appeal. The Respondent's interpretation of section 39(2) of the Supreme Court Act must be correct in that as the Court of Appeal quashed the Respondent's conviction it should have directed a verdict or judgment of acquittal or else ordered a retrial, and erred in failing to do so.

80. The Appellant submits that this has no bearing on the determination of the Appeal itself. If, after consideration of the Appeal, the Board rejects the Appeal and finds that the Court of Appeal was right to quash the Respondent's conviction on the grounds against which the Appellant appeals or other grounds then the Appellant would invite the Board to remit the case to the Court of Appeal to consider which of the two orders open to it under section 39 it should make (as in DPP v White (1977) 26 WIR 482, PC). **[EB/2340]**

SUMMARY OF THE REASONS

81. The Appellant respectfully submits that the Appeal should be allowed for the following reasons:

    a. The Court of Appeal erred in finding a material irregularity in the admission of documents. The documents relied upon by the prosecution were disclosed in advance, catalogued in Jury Bundles with individual exhibit references, identified and spoken to by their producing witnesses under oath, and treated throughout trial as exhibits admitted into evidence. In her evidence the officer in the case exhibited the documents collectively as the Jury Bundle of documents in the case. Moreover, this approach was foreshadowed well in advance of trial, and without objection until day 1 of the trial.

    b. The procedure adopted at trial did not render the documentary evidence inadmissible. The Court of Appeal's criticism was directed to the manner and timing of how the documents were shown to the jury, not to their

admissibility, provenance or authenticity, none of which was challenged. The jury would have retired with the same documents had the procedure suggested by the Court of Appeal been adopted.

c. There is no recognised, prescribed or agreed local practice governing the manner or timing by which documentary exhibits must be admitted into evidence in a criminal trial in Montserrat. Neither the Respondent nor the Court of Appeal identified any statute, procedural rule or binding authority said to regulate the admission of documentary evidence. The procedure adopted at trial accords with established practice in England and Wales, where jury bundles are routinely deployed in document-heavy trials and documents are commonly referred to in Opening. The Court of Appeal therefore erred in treating non-adherence to an unarticulated local practice as capable of constituting a material irregularity or a miscarriage of justice.

d. The Court of Appeal's conclusion that the case without documents was 'tenuous' was wrong. The Court of Appeal failed to give sufficient weight to the extensive oral evidence at trial, including the detailed testimony of Owen Rooney, and other prosecution witnesses, which was capable of sustaining a case to answer even absent documents.

e. While the Court of Appeal characterised the procedure adopted at trial as irregular and expressed that it was 'left in doubt' as to the safety of the conviction, it did not identify any concrete prejudice suffered by the Respondent, nor any respect in which the fairness of the trial was in fact compromised. The documents were agreed as admissible, known to the Respondent well in advance, and the intention to use jury bundles was made clear before trial, with express invitations to object. The Respondent did not do so before trial, cross-examined witnesses on the documents, and relied on them himself to establish points in his favour. The Respondent has not identified any prejudice or unfairness. Moreover, even on the procedural approach favoured by the Court of

Appeal, the jury would inevitably have retired with the same documents. Therefore, the Court of Appeal erred in treating procedural criticism as sufficient to found a miscarriage of justice, and in declining to engage the statutory proviso notwithstanding the absence of any identified prejudice.

Richard Jory KC

Madeleine Pinto

5 May 2026

IN THE MONTSERRAT HIGH COURT

Re: Warren Cassell

Note for Hearing on 27th March 2020

Introduction

1. This note is designed to assist the Court in preparing for the trial of the defendant at a date some time later this year. In preparing this note, and drafting the proposed Indictment, the Crown very much have in mind the observations of the Court of Appeal, the Privy Council and the Judgment of Morley J dated 25th October 2020.

The Indictment

2. After hearing legal argument before determining that a further trial of the defendant was appropriate, Morley J rightly observed that it is imperative that the defendant is aware of the precise nature of the case that he faces. His remarks included the observation that:

> *'…if there is to be a second trial, Cassell is entitled to know what precisely is the criminal conduct which lays the foundation for the new '1999 concealing' count, as he needs to be able to mount his defence he has not engaged in such criminal conduct. It cannot be left so vague'*[1].

3. We respectfully agree. It can never be appropriate for a defendant, and his legal advisors, to be unaware of the true nature of the allegation faced. We believe however that this issue is best addressed not by adding a further, predicate Count but by expanding the particulars in the existing Count.

[1] Para 13 Judgment, 25th October 2019

Background and the development of the law

4. In this case the defendant was successful in appealing other substantive convictions concerning a number of Counts of procuring the execution of a valuable security by deception in the Privy Council. Those previous Counts had set out in terms the transactions that gave rise to the money laundering Count. It is agreed on all sides that the defendant cannot be retried on those matters and the Crown do not seek to do so. In stating that the Court of Appeal had wrongly quashed the money laundering conviction as the Count was laid under the wrong statutory legislation, Lord Hughes observed that

> *'…the Crown is free to charge a Count laid under the 1999 Act without the necessity for an order for retrial.'*

5. We note that in making this observation, the Privy Council did not make mention of such a Count being coupled with a predicate or foundation Count. Whilst of course the Crown needs to prove that the money laundered is of criminal origin, and that there may often be clear and obvious evidence of the criminal origin of proceeds, there is no requirement to prove the precise criminal origin of what is alleged by the Crown to amount to criminal proceeds.
6. Prior to the introduction of the Proceeds of Crime Act 2002 ['POCA 2002'] in England and Wales – the relevant provision in force in England and Wales at the time of the 2007 offending by Cassell – the Crown often had difficulty in proving allegations of money laundering as it was incumbent upon them to elect to proceed either on the basis that the source of the proceeds was drug related, and so fell under the Drug Trafficking Act 1994, or was derived from another criminal source, under one of the provisions of section 93E-H of the Criminal Justice Act 1988. The most relevant provision here is perhaps Section 93C CJA 1988 concerned '*concealing or transferring proceeds of criminal conduct'*, which came into force in February 1994.
7. Issues regarding the difficulty in identifying the precise criminal source of laundered funds as either drug or non-drug related led to an unintended *lacuna*, with cases falling between two stools where the Crown could prove, directly or by inference, that the source of the proceeds was criminal, but unable to state whether they were drug or non-drug related. Even if a Court could be sure that

proceeds derived from criminal activity of some description the failure to be precise was often fatal to securing a conviction.

8. The simplification of money laundering legislation, in an era when such offending was becoming much more prevalent, came with the introduction of POCA 2002, and in particular sections 327-329 which addressed the main money laundering offences of *'concealing, disguising, converting, transferring or removing criminal property'* [s327], *'becoming concerned in a money laundering arrangement'* [s328], or *'acquiring, using or possessing criminal property'* [s329].

9. '*Criminal property*' was helpfully defined in section 340[2] of the Act:

> …
>
> (3) Property is criminal property 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.
>
> (4) It is immaterial—
> (a) who carried out the conduct;
> (b) who benefited from it;
> (c) whether the conduct occurred before or after the passing of this Act.
>
> (5) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.
>
> (6) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.
>
> (7) References to property or a pecuniary advantage obtained in connection with conduct include references to property or a pecuniary advantage obtained in both that connection and some other.
>
> (8) If a person benefits from conduct his benefit is the property obtained as a result of or in connection with the conduct.
>
> (9) Property is all property wherever situated and includes—
> (a) money;
> (b) all forms of property, real or personal, heritable or moveable;
> (c) things in action and other intangible or incorporeal property.
>
> (10) The following rules apply in relation to property—
> (a) property is obtained by a person if he obtains an interest in it;
> (b) references to an interest, in relation to land in England and Wales or Northern Ireland, are to any legal estate or equitable interest or power;

[2] Section 340 Proceeds of Crime Act 2002

(c) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude or other heritable right in or over land, including a heritable security;

(d) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

(11) Money laundering is an act which—

(a) constitutes an offence under section 327, 328 or 329,

(b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),

(c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or

(d) would constitute an offence specified in paragraph (a), (b) or (c) if done in the United Kingdom.

10. Subsections 3 and 4 are of particular relevance, from which the following propositions can be derived:

    i. the criminal property may constitute a person's benefit from criminal conduct, or represents such a benefit, the benefit being to *'a person'* and therefore not necessarily confined to being the defendant;
    ii. the benefit may be in whole or in part, and derive directly or indirectly from the original criminal conduct;
    iii. proceeds may not come directly from the original criminal conduct, but may be indirect;
    iv. proving the criminal origin of the property involves consideration of an objective and subjective element[3].

11. There are significant similarities between the wording of sections 327-329 of POCA 2002 and sections 32-33 of the Proceeds of Crime Act 1999, Chapter 4.04 in Montserrat. Indeed the allegation of concealing the proceeds of criminal conduct contrary to section 33(1)(a) POCA 1999 cap 4.04 mirrors section 329 POCA 2002, aswell as the preceding legislation in section 93C CJA 1988. There is no material distinction between the statutes that would justify distinguishing interpretation of the money laundering legislation within the above cases from the instant case, or to otherwise assert that the principles advanced within them should not be adhered to.

[3] Section 340, ss3(a) and (b) ibid

Proving 'criminal property'

12. Those who drafted this legislation clearly intended it to be broad and all-encompassing, capturing those situations where there may be a lack of evidence or clarity as to the source of the proceeds notwithstanding that they could categorically be said to derive from criminal conduct. This is evident from consideration of how the case law has interpreted the legislation.
13. In *Da Silva*[4] the Court of Appeal considered the necessary *mens rea* and the concept of *'suspicion'* under section 93A CJA 1988:

> '*the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice. But the statute does not require the suspicion to be 'clear' or 'firmly grounded and targeted on specific facts' or based upon 'reasonable grounds'*

14. The commentary in Blackstone's indicates such interpretation '*may be considered applicable to offences under POCA 2002*[5]*'*.
15. In *Anwoir and others*[6], a case where a number of money laundering convictions resulted from offences under section 328 POCA 2002 ['becoming concerned in a money laundering arrangement'], the Appellants argued that although the Crown need not establish the precise offending which generated the criminal proceeds, they argued that the Crown had to establish at least the class or type of criminal conduct from which the criminal benefit was derived. The Court determined that the Crown could prove property was derived from criminal activity in two ways, namely by proving that it derived from conduct or a specific kind, or by evidence which indicated how the property was handled which could give rise to the *'irresistible inference'* that it could only be derived from crime.
16. In *F&B*[7] the Court provided helpful assistance in an interlocutory appeal from the first instance Judge's ruling that there was no case to answer. The Appellants were discovered to be travelling from London to Tehran with a checked-in suitcase containing in excess of £1m in cash. In interview they denied knowing

[4] 4 All ER 900
[5] Blackstone's [2020 edition], B21.5
[6] [2009] 4 All ER 582
[7] [2008] EWCA Crim 1868

the existence or the source of the money. In sending the matter back for retrial, the Court found that

> *'We can see no procedural unfairness arising out of the fact that the prosecution at this stage is unable to point to any particular criminality'.*[8]

17. In the 2011 case of ***Bholah***[9]**,** an appeal from the DPP in Mauritius concerning a ruling regarding a single offence of concealing – akin to the instant allegation – the Privy Council categorically indicated that requiring proof of a predicate offence was not a prerequisite to proving an allegation of money laundering. In their judgment the Privy Council indicated that proof of a specific offence was not required, and criminal property as defined in s.340 could relate to any crime. The Respondent's claim that there was unfairness in not being informed of the specifics of the alleged criminal source of the proceeds was rejected in a detailed judgment summarising the development of the law.[10] The Court set out thereafter how the Respondent could have been in no doubt about the Crown's case as to the criminal source of the funds, and there was therefore no unfairness to the Respondent.
18. More recently in ***Otegbola and Baje***[11] the Appellants appealed against a single offence contrary to section 327 of converting almost £40k by transferring funds between accounts connected to the Appellants. A schedule before the jury at first instance showed the relevant transactions. The prosecution simply relied upon the assertion that there was no legitimate explanation for the movements of the funds, and in particular from Mrs Otegbola to Mr Otegbola via an account in the name of Baje. The Crown asserted that there was an irresistible inference that the funds derived from criminal conduct. In refusing the appeal the Court relied upon section 340 POCA 2002, and the Court's observations in ***Anwoir***, that '*the circumstances may be such as to give rise to an irresistible inference that the funds could only have been derived from crime'.*
19. The Crown submit therefore that a further Count is neither required, nor justified. Indeed, it would wrongly elevate the burden and statutory requirement placed

[8] Judgment para 8; and see R v K [2007] 1 WLR 2262, another case where a large amount of cash was found in a suitcase
[9] [2011] UKPC 44
[10] See para 17-34
[11] [2017] EWCA Crim 1147

upon the Crown, and be contrary to the intention of the draftsmen, and contrary to the case law interpreting the statutory provisions as set out above. It is common practice that stand-alone money laundering allegations are prosecuted without an accompanying Count setting out offending which seeks to establish the criminality leading to the generation of the criminal proceeds.

20. It may also, quite wrongly, create a situation where the Crown were compelled to prove the underlying criminality in the predicate offence before they could prove the money laundering. This contravenes the interpretation at POCA 2002 section 340(4) above, the basis for a finding of guilt, undermines the relevant statutory provisions, and places a burden on the Crown which is not justified.

21. The Crown submit that the concern of the Court may be allayed by consideration of the detail of the new proposed Count of money laundering, which sets out in terms how the Crown say that the funds transferred became criminal property[12]. We have set out what dishonest and criminal activity led to the transfers being made, and they are set out, and will be presented, disjunctively. The Crown's view is that by doing this, the Court's fear concerning vagueness and lack of clarity in the Count is satisfied, and it avoids consideration of a second Count. This Count sets out unambiguously the Crown's case as to how the property is criminal property, and avoids prejudice to the defence in meeting the allegation.

The point at which property becomes 'criminal property'

22. In *R v GH*[13], a case involving entering into a money laundering arrangement under section 328 but dealing generally of when money transfers became criminal property, the UK Supreme Court considered the question of when money transferred into a defendant's account became criminal property. The Court determined that

> *'It was lawful property in the hands of the victims at the moment when they paid it into the respondent's accounts. It became criminal property in the hands of B, not by reason of the arrangement made between B and the*

[12] See s.340(9) ibid, and Indictment at the end of this document
[13] [2015] UKSC 24

respondent but by reason of the fact that it was obtained through fraud perpetrated on the victims'[14]*.*

23. The Court went on to find that this principle would apply equally to sections 327 and 329 and observed

'A thief is not guilty of acquiring criminal property by his act of stealing it from its lawful owner, but that does not prevent him from being guilty thereafter of one or other, or both, of those sections by possessing, using, concealing, transferring it and so on'[15]*.*

Summary regarding redrafted Count

24. In the instant case, the Crown aver that the funds transferred to Mr Cassell's account were criminal as they were obtained by his fraudulent and dishonest actions. The funds became criminal once they were transferred. We have now particularised this within the single existing Count, setting out disjunctively the dishonest and criminal activity that the Crown rely upon[16]. By particularising matters in this way there can be no ambiguity or unfairness to the defendant. The Court's concern regarding vagueness and lack of clarity in the Count is satisfied, and it avoids consideration of a second Count.
25. This approach is also in accordance with the Editor's commentary in Archbold where consideration was given to how money laundering may be pleaded in the alternative, as distinct from the position here, but where a single Count is drafted

'…thus permitting the different methods of commission to be alleged in a single Count in the alternative. This, however, should not be taken to be a licence to allege different methods of commission without discrimination. ***The prosecution should identify the possible methods of commission and should specify those methods and only those methods'***[17] ***[bold added]****.'*

[14] Ibid para 47
[15] Ibid para 48
[16] See s.340(9) ibid, and Indictment at the end of this document
[17] 2020 Edition, para 26-13

Jury bundle

26. The Crown propose to rely on those documents served within the Exhibit bundles 1 and 2, but we will seek to reduce the documentation further to what is considered essential or important for trial. Some of the documentation is poorly copied and will be copied so that the content is legible. Other documents are simply inadmissible. It is proposed that a large detailed plan, showing the layout of, and plots within, the Providence Estate will be provided at trial to assist the Court and jury. An updated schedule, setting out the financial transactions making up the figure in the Count, will also be served in due course

Batting Order

27. The proposed order of witnesses is as follows:

1. Owen Rooney
2. Peter Rooney [brother]
3. Vivienne Rooney [sister in law]
4. Shelley Isles-Hillocks [Montserrat Land Registry]
5. Hogarth Sergeant [attorney]
6. Susan Edgecombe [Tradewinds Estate Montserrat]
7. John Ryan [Ryan Investments Ltd, purchaser lots 37&38]
8. Joel Osborne [purchaser plot 35&40]
9. Kenneth Allen [QC, purchaser of neighbouring land for $1.75/ft]
10. Dion Weekes [plot 13/5/36]
11. Bernadette Matthew [Bank of Montserrat]
12. Lucille Irish [Royal Bank of Canada]
13. Paul Morris [Deputy Commissioner of Police]
14. Jessica Sweeney [OIC]

Time estimate and trial matters

28. We estimate that the Crown's case may take approximately seven days. If the defendant does not give evidence, as in the first trial, the trial may take two weeks to conclude.
29. It would be appropriate in this case to have a fixed trial date, as there are witnesses, and counsel, who will be travelling from abroad. If given a choice in the matter the prosecution would respectfully request the Court to consider whether a date in early November might be appropriate.

Jury Questionnaire

30. Whilst recognising that it is inevitable that jurors will know of this case and indeed many of the witnesses, it may be helpful to ask the pool of jurors at the outset whether any of them have had business or financial dealings with any prosecution or defence witness, or with Warren Cassell himself. This may help to avoid a conflict of interest or other embarrassment at trial.

Further directions

31. We recognise that it would assist the Court to have a detailed note setting out the Crown's case well in advance of the trial. Such a note can be provided by 24th April [4 weeks from the 27th March hearing]. We would ask that a similar date be set for the Crown to provide a definitive jury bundle.
32. It would assist to have notice of any points of law that may be advanced prior to trial. We suggest that all parties have until 22nd May [4 weeks after 24th April] to set these out in writing.
33. As things stand, the Crown do not propose to make any mention of the previous proceedings. We do not see how it can assist either party. A preliminary view on this from the bench would assist in the further preparation of this case.

Richard Jory QC

Henry Gordon

18th March 2020

Proposed Indictment

STATEMENT OF OFFENCE

CONCEALING THE PROCEEDS OF CRIMINAL CONDUCT, contrary to Section 33(1)(a) of the Proceeds of Crime Act 1999, Cap 4.04

PARTICULARS OF OFFENCE

WARREN CASSELL between the 1st day of January 2007 and the 4th day of November 2008, in the British Overseas Territory of Montserrat, concealed or disguised property, namely Eight Hundred and Fifty Five Thousand Three Hundred and Eighty Eastern Caribbean Dollars and Fifty Four Cents [EC$855,380.54] transferred from investors into the bank account of Cassell & Lewis Incorporated for the sale of land at Providence Estate, St Peters, which was, in whole or in part, directly or indirectly, the proceeds of criminal conduct, namely the fraudulent conduct of Warren Cassell in dishonestly

i. representing that he was a legitimate Director of Providence Estates Limited, and/or
ii. representing that he was legally entitled to sell land at Providence Estate, and/or
iii. filing a Change of Directors application with the Companies Registry regarding Provide Estates Limited, and/or
iv. receiving funds into the bank account of Cassell & Lewis Incorporated for the sale of land at Providence Estate,

for the purpose of avoiding prosecution for an offence or the making or enforcement of a confiscation order, contrary to Section 33(1)(a) of the Proceeds of Crime Act 1999, Cap 4.04

IN THE HIGH COURT OF MONTSERRAT
CASE NO: MNIHCR2020/0008

BETWEEN:-

REGINA

-v-

WARREN CASSELL

OPENING NOTE

This document is provided at the direction of Mr Justice Morley QC at the virtual Mention hearing held in Antigua on 26th May 2020. It is designed to provide a detailed outline of the essential facts to assist the Court and the Defence to understand the Prosecution case. It is not, and does not purport to be, an exhaustive analysis of all the evidence served in this case. The Crown relies upon all of the served evidence, including any evidence served up to the start of the trial. References to exhibits are references to original exhibit pages

Introductions

Summary

1. This case concerns the dishonest actions and representations by this defendant, Warren Cassell ['WC'], in his dealings with lots of land within the Providence Estate ['the property'] in St Peters. The defendant made a number of false representations regarding the ownership of land within the property which were designed to indicate that he could lawfully sell the property. In reality he wasn't legally entitled to sell the lots of land, and he knew he wasn't legally entitled to sell it. But he completed formal legal documents which were false and he knew to be false, so that he could then make decisions regarding the property himself. Once he had successfully carried out this deception, he then went on to advertise the property for sale. He agreed the sale of lots of land, and received payments into his company bank account for these sales. He had received these funds as a result of his fraudulent and dishonest misrepresentations.

2. In total the defendant received over $855,000 EC into his company bank account from sales of land within the property, money that he received from a number of

different buyers who believed that he was the legitimate owner. In fact this money was received by him as a result of his dishonest actions in dealing with the property as his own.

3. This was a well-organised and dishonest plan, motivated by greed. The Indictment mentions the amount of EC$855,000 and that it was criminal property. In law, the funds transferred into his account became criminal property as soon as they were credited to his account because of the fact that he had made the dishonest representations beforehand which led to those transfers. His dishonesty and deception were critical in leading to the ultimate transfer of funds.

4. It may be there is little issue regarding the documents he completed, the facts of the sales or the facts of the transfers of money. What may be more in dispute is the question of dishonesty and deception by the defendant. These are matters for you to decide having heard all of the evidence in the case.

Indictment

5. You have seen a copy of the Indictment. This sets out the prosecution's case against the defendant. There is a single Count containing a single allegation against the defendant but it has many parts to it. In due course my Lord the judge will direct you on matters of law and you must take directions from him, but let me just point out the essential elements of the Count:

Dates

EC$855,000

Transferred from investors into bank account of Cassell & Lewis

For the sale of land

$ was in whole or in part, directly or indirectly

Proceeds of criminal conduct

Namely the fraudulent conduct of this defendant

Dishonestly

Did four separate things, as set out

Disjunctive: proof of any one is sufficient

6. In due course you will be asked to consider the facts and come to a decision as to whether the defendant is guilty or not guilty.

Providence Estate

7. [see map of Montserrat, St Peters, Providence Estate, lots within]

8. Providence Estate is an area of about 53 acres of land within the St Peters area between Brades and Salem in Montserrat. In 1989 two American men, Owen Rooney and his business partner, Walter Wood, set up a company, which they called Providence Estate Limited ['PEL'], which was used to purchase this land [Memorandum and Articles of Association, x63-82]. Minutes of the first company meeting on 8 September 1989 show how PEL was jointly owned by Rooney and Wood, and they were both appointed directors of the company, with Rooney holding a 40% share and Wood 60%. Wood was appointed Chairman and Chief Executive of PEL, and Rooney became secretary and treasurer [x1-2].

9. A Montserrat landholding licence dated 5 November 1989 shows that a licence was granted to develop Providence Estate. The 53 acres of land was formally described by the land registry as *'Block 13/10, parcel 11'* [x5], and was formally registered as being transferred to PEL for EC$360,487.62 on 17 November 1989 [X503-504].

10. Records show that on 8 May 1990 PEL requested that the land be subdivided, so that the original single parcel that was Providence Estate became 14 separate parcels [x507].

11. The parcels were further split into 40 lots by PEL for the purpose of developing and selling it. These parcels were numbered 1 to 40. At the second PEL board meeting on 20 July 1990 Rooney and Wood allocated some of these 40 lots to themselves, for their own personal use [x7-10; plans x29-44]. Rooney was allocated lots 1-9, 26 and 27, and Wood took lot 38. There was a formal transfer of certain lots, with lots 1-3 and 9 being transferred into Rooney's name. Rooney's remaining lots, namely 4-8, 26 and 27, and Wood's lot 38, were not formally transferred but it was agreed at the meeting that they would be passed to the

respective men ‘on demand’, or when they asked for them. Importantly, it was stated and agreed that any of these lots were available *‘upon demand’* to Rooney and Wood by Providence Estate, enforceable *‘in any court of competent jurisdiction’* [x9]. This meant that if any lots became available for whatever reason, either Wood or Rooney had the right to transfer the lots into their own names.

12. An inspection of the property on 29 October 1991 led to a total development valuation being assessed as US$5.22m [EC$14.094m] [x23-26].

13. Rooney from the outset was to take an active role in promoting lots within the property to sell. He was paid a salary for this [x15]. He kept account of his expenditure in dealing with the property, which by 10 October 1991 was EC$1.177m [x17].

14. On 23 October 1991 Rooney had gained approval for the development of residential houses on the land [x18].

15. Having done much of the initial work preparing the property for the sale of lots, relations between the business partners seem to have soured. Rooney remained keen but Wood, who had contributed the majority of the initial investment, was reluctant to pump in more capital. From this time he effectively abandoned his interest in the property, abandoned his commitment to the terms of development under the Alien Landholding Licence for non-Montserratians, and refused to pay property taxes or file business returns for PEL. The volcanic eruption in 1995, the destruction caused, and the fall in tourism certainly didn’t help.

16. The years passed with little activity at the property. In January 2007 Rooney visited Ireland. Rooney had developed some medical conditions by this time and was not in the best of health. It was at about this time that WC tried to contact Rooney. WC called Rooney’s brother, Peter Rooney, in the USA asking for Rooney to get in touch with him, it seems, as WC was interested in the purchase of the property. On his return to the USA Rooney made efforts to contact WC, contacting his lawyer in Montserrat, Hogarth Sergeant, and asking him to try to contact WC, which Hogarth Sergeant did on 29 January 2007. After that time however there was no further contact from WC.

Cassell & Lewis Incorporated

17. In fact, on 24 July 2007, just a few months after Rooney had tried to communicate with WC, WC formed his own company, Cassell & Lewis Incorporated ['C&L']. WC was the sole director. A bank account for C&L Inc had in fact already been set up at the RBC Bank on 4 December 2006, several months earlier. On 30 July 2007 WC and Wood met in Virginia, USA, when Wood purported to transfer his shares in PEL to C&L for US$300,000 [x59-60]. It is clear that WC and Wood had met some time before the meeting to discuss the property at Providence Estate.

18. Rooney had not been told about these events, despite PEL's Memorandum and Articles of Association setting out that in the event of the sale of any shares he would have first refusal [x61-83]. Wood was not entitled to transfer his shares without consultation with Rooney. In due course, in a legal case in the USA, this transfer was ruled to be illegitimate, and null and void [x248-250].

19. WC thus purported to acquire Wood's 60% share in PEL, even though WC never became a Director of PEL. Rooney had not been informed as he should have been as the other shareholder.

20. Having sought to take control of Wood's 60% WC set about advertising lots of land within PEL [eg x84-85]. He did this through a cousin's real estate business, Tropical Island Estates Limited, and through other advertising. What's more, he advertised not only the lots that were designated to belong to Wood, but included those specifically belonging to Rooney, namely lots 1-3 and 9, and other lots that were to be transferred to Rooney on demand [x9], as well as the lots still held by PEL.

21. Shortly after these events, in August 2007, Rooney was alerted to the fact that WC was advertising PEL land for sale [x87]. Rooney made contact with Wood and with WC, and told both to contact his lawyer in Montserrat, Hogarth Sergeant. The reaction of Wood and WC was telling: Wood made a financial claim against Rooney of EC$400,000, and WC threatened legal action against Rooney on 9 September 2007. WC also proposed a number of options to try to secure Rooney share of PEL, which he was clearly desperate to secure given his efforts already to

advertise and sell lots of land [x90-94]. Of course he should have made contact with Rooney long before any of this, to seek to agree the transfer of shares from Wood and to seek to strike an agreement to advertise lots for sale. None of this had he done, and you may want to consider in due course whether those were the actions of a person trying to do honest business or not.

22. Rather than try to put right what he had already done wrong however, WC continued to disregard Rooney's legitimate interests in PEL. On 23 August 2007 WC made an application in PEL's name, but signed by him [remember, he had never been made a director so had no authority to do so] to subdivide the parcel of land known as 13/10/16 into 9 lots [x550-553]. Within a couple of weeks of that, WC tried to sell four lots to a man called John Ryan, and actually received two cheques for a total of EC$42,000 as deposits for these lots [x316-339, cheques x327]. Of course, WC had no right to seek to sell these lots of land, and although positively alerted by Rooney to his continuing interest, and the need to contact and consult him, forged on regardless. The fact that he knew he was not entitled to do this is illustrated by what he did next, applying to restore PEL in August 2007 after PEL had become a dormant company due to the passage of time and non-compliance with filing company returns [x111]**.** Then, on 14 September 2007, WC offered Rooney EC$300,000 for his share in the company [x90-98]. WC clearly realised he needed Rooney's agreement for what he had done, and at least if he got Rooney to now agree then he could continue dealing in the land with the consent and acquiescence of the lawful owner.

23. Rooney refused the offer of EC$300,000. On 19 September 2007 WC's lawyer David Brandt sent Rooney's lawyer Hogarth Sergeant a letter saying that he was acting for PEL (note, he was not and could not have been as WC was not a Director, and Rooney was) and demanding EC$226,000 that he said Rooney owed PEL [x116].

24. WC was anxious to get this sorted as he was in the middle of advertising and selling lots of land he had advertised. On 21 September 2007, and despite the lack of any agreement with Rooney, who retained his lawful share, WC sold land to the Osbornes [lot 40, x118] and to the Farrells [lot 19, x117]. Suspiciously, the transfer deed for the Farrells was originally dated July 2007, indicating that WC had

originally proposed to make the sale earlier [x117], and likely before he purported to buy Wood's shares when they met in Virginia, USA, on 30 July 2007.

25. WC even transferred land to himself and his wife [lot 39, x119] on 21 September 2007. When the sales were made, he signed himself as a director of PEL on the transfer deeds, and they were also signed by a person called Meredith Lynch as 'company director'. Of course we know that WC was not a PEL director, and that Meredith Lynch was not the PEL company secretary. The directors were still Rooney and Wood, per the Memorandum and Articles of Association of PEL [x61-x83], and the company secretary was Rooney.

26. Realising that he had acted outside of his authority, and had made sales he was not entitled to, WC then tried to make himself a director of PEL. Again, the fact that he did so shows you that he knew he had been acting illegally and without proper authority up to this point. On 24 September 2007 WC therefore filed a *'Change of Directors'* application with the Company Registry in Montserrat, to make himself a Director of PEL [x112]. The Registrar, understandably, wanted further clarification, by way of a PEL company resolution showing this to be the company's wish. The Registrar asked for this on 29 November 2007.

27. In December 2007 WC filed such a resolution, which of course was false [x110]. Only WC and Lynch were recorded as being present at the meeting, neither of whom had any authority to do anything. The false resolution claimed that there had been a meeting on 21 September 2007, which curiously was the date of the signing of the first land transfer deeds. The false resolution recorded that the notice requirements of the meeting had been waived for the purposes of an Extraordinary General Meeting and for the purpose of removing Wood and Rooney as Directors.

28. The false resolution also recorded that Rooney was refusing to return to Montserrat, and that Rooney had not made *'any contact with members of the company for several years'*. Given what you know about Rooney contacting both Wood and WC, this was patently false, but designed of course to indicate that WC had done everything he could to become a legitimate director, and that it was Rooney who was at fault, not him. The false resolution, resolved to remove both

Rooney and Wood as directors, and to appoint WC as sole director with immediate effect, and all backdated to 1 July 2007, conveniently before the first sale of land at Providence Estate. Of course Rooney was not told of this meeting, if it did take place, nor was he consulted in any way, as he should have been.

29. All of this you will have to consider in due course, because it shows not only the greed of WC in trying to sell land at Providence Estate which he wasn't entitled to sell, but his efforts to cover up his dishonesty after he had been found out. Of course the prosecution say that his efforts to sell when he was not a Director of PEL, his refusal to engage with Rooney, his filing of a change of director form application which was false, and the submitting of a detailed but false PEL company resolution all show that WC was acting dishonestly and seeking to get funds transferred to him to which he was not legally entitled. Ultimately it is the question of whether he acted fraudulently and dishonestly in securing the transfers of money to him which will decide whether he is guilty of money laundering as we say. Because if he did act in this way, then the funds transferred became criminal property when they went into his account, and he would be guilty of money laundering.

30. Meanwhile, and before the false resolution was provided to the Land Registry in Montserrat in December 2007, WC continued to make sales of lots of land. On 8 October 2007 he sold 4 lots to Kenneth Allen and others for over EC$418,000 [lots 14 to 17, x136] and on 23 October 2007 he sold lot 34 to Dion Weekes for EC$80,000 [x137].

31. Having become aware of the dealings in PEL and land at Providence Estate however, Rooney started legal action in the USA regarding the purported transfer of Wood's 60% share to WC which had taken place without any consultation with Rooney. The court in the USA made a legal finding that the transfer of this share to WC was illegal and null and void on 3 October 2008. It is interesting to note that WC refused to respond to requests to engage in those proceedings, and judgment was entered against him [x248-250].

32. On 31 October 2007 Rooney wrote to the Registrar of Companies in Montserrat requesting that PEL be restored to the register [x113], signing himself as the

'Legitimate Director and Company Secretary' of PEL. Despite receiving this information, when the Registrar received the false resolution from WC in December 2007 PEL was restored to the register on the terms requested by WC and with WC recorded now as the sole director [x111-112, 114-115]. Rooney's lawyer in Montserrat, Hogarth Sergeant, was informed of this in January 2008.

33. Having persuaded the Registrar to place PEL back on the register, and with WC now recorded as sole director, WC continued to make sales of land at Providence Estate. In January 2008 he sold land at lot 26 to the Krauses, even though that lot was already allocated to Rooney personally. In February 2008 he sold lot 27 to Philip Brelsford. Again, this was a lot already assigned to Rooney. Rooney promptly informed the new purchasers that the land belonged to him**.**

34. In April 2008 Hogarth Sergeant wrote to the Registrar seeking to restrict the sale of land at Providence Estate, and a restriction was duly imposed [x160, 169]**.** A further sale of lot 12 to Gary Taber was therefore halted [x166], but a sale in May 2008 to Joel Osborne of lot 35, later transferred to Howard Fergus, did go through.

35. On 9 May 2008 WC's lawyer David Brandt wrote to the Registrar, and claiming now to act in his capacity as acting for WC and not PEL, objecting to the restriction [x161]. Brandt stated that Rooney was not a director or secretary of PEL, never owned lots 26 and 27 and making other representations regarding the title of the property.

36. Following this the police became involved, and in particular officers from Bermuda were requested to investigate. WC was arrested, not interviewed, and later charged in relation to this offence..

37. In May 2019 these criminal proceedings for money laundering were commenced. Looking at the Indictment again, you will see that the total loss, of EC$855,380.54, is the amount transferred to the C&L account for the sale of the lots within the Providence Estate in 2007-2008. This amount can be seen on the face of the bank statements [but see and reconcile with schedule x497-498].

38. So the prosecution say that everything the defendant did shows that he was determined to get his hands on the property at Providence Estate and then to sell

lots within it to make money for himself. He bypassed Mr Rooney altogether, and instead of constructively engaging with him, knowing that he was a lawful part owner of the property, the defendant threatened him with legal action. The defendant made a number of fraudulent and dishonest representations in order to secure sales and get money transferred into his C&L account, and the main ones are set out in the Indictment: he said he was a legitimate director of PEL when he was not; he represented that he was entitled to sell property at Providence Estate when he was not; he filed a change of Director application which contained, and he knew contained, untruths; and received funds into his account for the sale of property which he was never entitled to sell. The prosecution say he did all of these things, but in law if you find any one of them proved, and that the defendant acted fraudulently and dishonestly at the time, he would be guilty of this money laundering offence. In truth there was clearly a pattern of dishonest behaviour and the facts are as we have set out to you. Although the prosecution do not have to prove motive, it is not difficult to see that the defendant's actions were borne out of greed and opportunism.

39. Ultimately it is for you and you alone to determine whether the defendant is guilty of this offence or not.

40. Please remember that these are serious charges, and in any criminal case the prosecution bring proceedings and the prosecution must prove them. You can only convict the defendant if you find the case against him proved to a high standard, that is, beyond reasonable doubt. Put another way, you can only convict him if, having heard all of the evidence, you are sure of his guilt. That is the law and it applies in this criminal case as in any other criminal case.

Other matters:

Additional documents required for trial

Large detailed plan, showing the layout of, and lots within, the Providence Estate

An updated schedule setting out the financial transactions making up the figure in the Count

A timeline of the main events

Batting Order

1. Owen Rooney
2. Peter Rooney [brother]
3. Vivienne Rooney [sister in law]
4. Shelley Isles-Hillocks [Montserrat Land Registry]
5. Hogarth Sergeant [attorney]
6. Susan Edgecombe [Tradewinds Estate Montserrat]
7. John Ryan [Ryan Investments Ltd, purchaser lots 37&38]
8. Joel Osborne [purchaser lot 35&40]
9. Kenneth Allen [QC, purchaser of neighbouring land for $1.75/ft]
10. Dion Weekes [lot 13/5/36]
11. Bernadette Matthew [Bank of Montserrat]
12. Lucille Irish [Royal Bank of Canada]
13. Paul Morris [Deputy Commissioner of Police]
14. Jessica Sweeney [OIC]

Jury Questionnaire

Have any of you had personal, business or financial dealings with any of the prosecution or defence witnesses, including the defendant?

Do any of you have friendships or relationships with any of the parties involved which would make it difficult for you to consider the case objectively and dispassionately?

It may also be helpful, given the historical coverage of the case, to indicate at the beginning that jurors should not engage in any research or their own investigations into people or things connected to this case

Richard Jory QC

Henry Gordon

25 June 2020

IN THE EASTERN CARIBBEAN SUPREME COURT

HIGH COURT OF JUSTICE

MONTSERRAT

MNIHCR2020/0008

REGINA

V

WARREN CASSELL

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IN THE EASTERN CARIBBEAN SUPREME COURT

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
ON APPEAL FROM THE COURT OF APPEAL OF
MONTSERRAT

Appeal No: JCPC/2025/0031 and JCPC/2025/0031A

BETWEEN:-

THE KING **Appellant**

V

WARREN CASSELL **Respondent**

APPELLANT'S FURTHER SUBMISSIONS

Summary of Appellant's further submissions

1. This document is submitted pursuant to an Application dated 22 May 2026, supported by the Respondent. The Appellant's Written Case focused on the Grounds upon which the Eastern Caribbean Court of Appeal found that the Respondent's appeal should succeed. The Judicial Committee of the Privy Council granted the Appellant permission to appeal on this Ground.

2. This document addresses the further Grounds of Appeal advanced by the Respondent, and set out within the Statement of Facts and Information at 14.4.1-14.4.8.

14.4.1 Whether the amended indictment was bad on its face because it did not identify any indictable offences of which the EC$855,380.54 constituted the proceeds

3. This issue of the Indictment was addressed at a pre-trial hearing in front of the High Court judge in Montserrat at the time, Mr Justice Morley, on 27 March 2020. In a detailed note provided in advance of the hearing **[Annex 1 to Appellant's Written Case, EB/1064]**, the Appellant set out the rationale behind the drafting of the Indictment. The Court agreed with this analysis. **EB 1064-1073**

4. In summary, the following essential propositions are evident:

   a. It is not required of the prosecution to establish that the property represented the proceeds of a particular crime or crimes [*R v Bholah*]

   b. Further, as proof of a particular predicate crime is not an essential element of the offence of money laundering, it is not required of the prosecution to particularise any specific offence in the Indictment [*R v Bholah*]

   c. The prosecution can prove the property derives from crime by evidence of circumstances which give rise to the irresistible inference that it can only be derived from crime, as an alternative to showing that it derives from a specific kind of unlawful conduct. [*R v Anwoir*]

   d. The actus reus of an offence of money laundering can be committed by the process which constitutes the offence itself (i.e concealing or disguising) [*R v GH*]

   e. Property becomes the proceeds of criminal conduct at the time when it is received by the perpetrator of frauds against victims, by reason of the fact that it was obtained through fraud [*R v GH*]

5. The Respondent's submissions to the effect that there has to be an underlying predicate offence, and that the particulars had to reveal an underlying specific

offence rather than fraudulent conduct, are therefore misconceived. Even if the Respondent's submission that the Indictment must identify an indictable offence of which the property constituted the proceeds were correct, the Indictment would not have been bad on its face. The Respondent argues that there is no offence of *'fraud'* or *'fraudulent conduct'* in Montserrat and that none of the particulars described acts which necessarily constituted the commission of indictable offences. However the acts described in the particulars would amount to indictable offences, such as sections 218 and 220 of the Penal Code.

6. In terms of the evidence in support of the Appellant's case, this was set out in the Appellant's written submissions to the Court at first instance **[Record 90-95].** **EB 95-100**

14.4.2 Whether the amended indictment was bad on its face because it did not give any particulars as to how the Respondent was alleged to have concealed or disguised the EC$855,380.54

7. The amended Indictment was not bad on its face. It set out how property was concealed or disguised, in that it was *'transferred from investors into the bank account of Cassell & Lewis'*. **[Record 131].** The undisputed facts of the transfer of investor funds, in circumstances of alleged fraudulent conduct specified in the disjunctive particulars, coupled with the detailed Opening setting out what the Appellant was required to prove in order to establish guilt, was clear. **EB 136**

14.4.3 Whether there was any basis on which a reasonable jury, properly directed, could have concluded that the EC$855,380.54 constituted the proceeds of criminal conduct within the meaning of the Act

8. The evidence for this was set out in writing in the Appellant's written response to the submission of no case to answer **[Record 92-95].** It was the Respondent's fraudulent and criminal conduct that made the property criminal when it was credited to the account of Cassell & Lewis. **EB 97-+100**

14.4.4 Whether there was any basis on which a reasonable jury, properly directed, could have concluded that the Respondent concealed or disguised the EC$855,380.54

9. There was a clear basis for this finding, namely that the Respondent received investor funds into his account having conducted himself fraudulently and dishonestly, as set out explicitly in the particulars.

14.4.5 Whether there was any basis on which a reasonable jury, properly directed, could have concluded that the Respondent's purpose in concealing or disguising the EC$855,380.54 (if he had done so) was that of avoiding prosecution for an indictable offence or of avoiding the making or enforcement of a confiscation order;

10. The wording of the statute and this particular issue was addressed in the Appellant's written response to the submission of no case **[Record 94-95]**, and in written submissions to the Court of Appeal **[Record 515-519]**. **EB 99-100 EB 520-524**

11. In summary, the Appellant made it clear that there was no suggestion that the concealing or disguising was done for the purpose of making or enforcement of a confiscation order, so it had to be for the purpose of avoiding prosecution.

12. The authorities indicate that *'avoiding prosecution'* does not have to be the only purpose, or even the main purpose, but it must be a purpose. *'Purpose'* is different to any motive or intent. The Appellant's case was that there was a clear inference that the Respondent wanted to avoid prosecution, and that being so there was evidence to support this proposition. The Respondent's submission that there was no evidence that the Respondent thought (or any evidence from which a reasonable jury might have inferred that he thought) that he might be prosecuted is incorrect. During the trial evidence was adduced from which a clear inference arose that the Respondent wanted to avoid prosecution; for example his attempts to convince Rooney to sell him his shares, and filing a change of

directors form. The Learned trial judge directed the jury appropriately on this topic in his summing up **[Record 377/22-28; 384/17-24].** **EB 382, 389**

13. Detailed written submissions on this point were made by the Appellant to the Court of Appeal **[Record 515-519].** The Appellant relies upon those submissions. In summary, and in accordance with those submissions, the Appellant avers the following: **EB 520-524**

14. The provisions of the Proceeds of Crime Act 1999 (Montserrat) apply, per section 3(2) of the Act, to '*all indictable offences except drug trafficking offences.'* Accordingly, all possible indictable offences, other than drug offences, are covered whether offences under the 1999 Act or otherwise, including offences under common law.

15. The Crown do not have to identify a particular offence for which a defendant seeks to avoid prosecution, it also being settled law, not least in *Bholah* and other authorities, that the Crown need not prove the underlying criminality in a predicate offence before it can prove a charge of money laundering. Accordingly, there is no need for a judge to direct the jury on the particular offence or type of offence the prosecution of which is to be avoided by the concealment or disguising (see also the case law cited below). Any requirement to do so, as averred by the Appellant, would result in contradiction and an unwarranted elevation of the stated *'purpose'*.

16. The relative unimportance of this element may be reflected in the fact that the subsequent updated legislation dispensed with this term/requirement altogether.

17. The mischief that the 1999 Act addresses is the concealing or disguising of proceeds of crime with a view to avoiding prosecution for the underlying offence that gave rise to the proceeds of crime. In the instant case, all of the four (disjunctive) particulars in the single count would, as a matter of law, amount to indictable offences as discussed above.

18. Section 33 of the 1999 Act is in the same terms as section 93C of the English Criminal Justice Act 1988 (with the meaning of '*an offence to which this Act*

applies' in section 3(2) of the 1999 Act also mirroring section 71(9)(c)). The Court of Appeal of England and Wales in *Powell & Powell* [2004] EWCA Crim 2244 **[Record 583-588]** considered the convictions of two defendants under section 93C(2), being the offence of concealing or disguising another's proceeds of crime with the purpose of assisting the other to avoid prosecution (akin to section 33(2) of the 1999 Act). **EB 588-593**

19. As is clear from the judgment of Latham LJ, the trial judge's direction to the jury on the question of purpose was akin to the direction given by the learned Judge in this case (see paragraphs 9 and 13 of the judgment in *Powell*, and the transcript of the learned Judge's directions **[Record 586-588]**. The trial judge in *Powell* did not direct the jury that the offence to be avoided must be an indictable offence and a non-drug trafficking offence: indeed, no direction at all was given to the jury in that case as to what was meant by, in the language of the English statute, '*an offence to which this Part of this Act applies.'* The judge in that case made clear also that the '*purpose'* does not have to be the '*sole or dominant purpose'.* **EB 591-593**

20. The very complaint in that case was that the judge's attempts to define and explain the meaning of '*purpose'* overcomplicated the directions to the jury, as borne out by notes from the jury submitted during the summing up (per Latham LJ, at paragraphs 11 to 14) **[Record 587-588]**. The Court of Appeal held that the judge had summed up the case correctly (if anything, having included too much detail as to the elements of the offence) and went on to '*underline the value in cases such as this of a judge giving as simple an explanation to the jury of the necessary elements of the crime as is possible'* (per Latham LJ at paragraph 15). **EB 592-593**

21. Equally, in *Gulbir Rana Singh* [2003] EWCA Crim 3712 **[Record 590-610]** the trial judge gave the jury no direction that the offence to be avoided must be an indictable offence, or otherwise elaborated on what is meant *by 'an offence to which this Act applies'* (see paragraphs 36 to 38 of the judgment of Auld LJ) **[Record 600]**. The Court went as far as to say that '*Whether the intention included the avoidance, under either statutory regime of a confiscation order in addition to the avoidance of a prosecution is an artificial consideration, since* **EB 594-615**

under either regime confiscation proceedings depended upon conviction'. On this ground, leave to appeal in relation to the judge's direction on '*purpose'* was refused by the Court of Appeal, and the appeal against conviction on multiple other grounds was dismissed.

22. Even if these words had been included, the jury's verdict could not have been different. Equally, it is impossible to see how any alleged failure on the part of the learned Judge to direct the jury that the prosecution sought to be avoided must be for an *indictable* offence (and when, as a matter of law, it would be) could render the Appellant's conviction in any way unsafe, or that it amounts to a '*material irregularity'* in the meaning of section 39(1) of the Supreme Court Act, Cap 2.02.

23. In summary, the indictment contained all the material particulars, including that the Appellant's *purpose* (as distinct from his intention or motive) was to avoid prosecution for an offence. It was these of which the jury had to be, and were evidently, sure, and in relation to which they were appropriately directed by the learned Judge.

14.4.6 Whether the Judge conducted the trial fairly in so far as he allowed the Appellant to adduce Mr Rooney's opinion that PEL's property had been sold (or purportedly sold) for an undervalue

24. It was the Appellant's case that the Respondent made misrepresentations concerning ownership of the properties and, having done so, wanted to make a profit from their sale. There was evidence of the value of properties at different stages in development. In the circumstances, and given his knowledge of the valuations and subsequent sale prices, it was not inappropriate for the witness to comment upon their sale value being above or below their true value.

25. That said, even if this evidence is deemed inadmissible, the Appellant submits that its admission can not on its own be regarded as so egregious or unfair that it would support a substantive point of appeal.

14.4.7 Whether the Judge conducted the trial fairly in so far as he allowed the Appellant to adduce Mr Allen QC's opinion that any transfer of shares would have to be in accordance with any prior agreements or conditions that existed in relation to the shares

26. This entire line of questioning arose from the Respondent seeking to illicit opinion evidence from the witness in cross-examination, and in particular regarding the lawfulness or otherwise of the Respondent's actions. It is important therefore to read the evidence of Mr Allen as a whole and in context rather than in part **[Record 207/20-221/25]** The Respondent established that the witness had practised law for over 60 years, with familiarity of property and commercial law, and through this the Respondent laid the foundation for treating Mr Allen as an expert (and therefore someone who could proffer an opinion) **[Record 215/20-30].** The Respondent went on to ask the witness about the doctrine of separate legal personalities and its potential relevance to this case **[Record 215/30-219/16].** The Appellant did not object. It was clear however that the complete picture was not being put and it was in that context that questions were asked in re-examination by the Appellant **[Record 219/18-221/21].** There was nothing improper in the circumstances about the scenario being put, not least to correct the incomplete and potentially misleading impression that the Respondent had created by his questioning of the witness.

EB 212-226

EB 220

EB 220-229

EB 224-226

14.4.8 Whether the Judge directed the jury fairly as regards the significance of the ruling of the court in the United States concerning the 2007 share transfer

27. The Appellant set out argument regarding this matter and its relevance in written submissions to the Court below **[Record/524].** As conceded by the Respondent this judgment was not in itself inadmissible. It was a finding that the Respondent's agreement was null and void, albeit not binding and enforceable.

EB 529

28. The only relevance of this information was that it was evidence that showed that the Respondent was aware of Rooney's objection to the purported sale of Wood's

share. Whether it was binding or not was not central to the issues in the case, namely those set out within the Appellant's Response to the Defence Submission of No Case **[Record 92-95].** **EB 97-100**

29. Descending into the degree to which it was binding or enforceable was not relevant and could only have served to confuse the jury on a matter that they did not need to resolve, especially at the late stage at which it was raised. The Appellant's objection was as much to the timing as the lack of relevance **[Record 381/22-30].** **EB 386**

14.4.9 Whether the Judge directed the jury fairly as regards what needed to be established by the Appellant if the Respondent were to be convicted.

30. The Judge's direction needs to be considered in the round. The provision of the Route to Verdict document **[Record 502-504]** came about following correspondence between all parties **[Record 68-69].** It was due to the Appellant's concern that all necessary elements had not been addressed in the summing up that the Appellant urged its reading **[Record 380/24-381/8].** **EB 507-509 73-74** **385-386**

31. The route to verdict is itself an impartial, accurate document to which the Respondent, having had sight of it since 19 June, could not properly object.

32. As the Respondent represented himself and did not call evidence, the Appellant did not make a closing speech **[Record 363/27-364/2].** The Respondent did not give evidence, and so did not expose himself to cross-examination, but he made closing submissions to the jury at the close of the Appellant's case which included extensive reference to the documents adduced by the Appellant and relied upon by him, but also inadmissible evidence and assertions and speculation **[Record 364/10-369/22].** **EB 368-369** **EB 369-374**

33. Among other things he stated:

a. *'You would have heard from Montserrat's most senior lawyer (Mr Allen) aa man who is practising for over 30 years and said I did all my checks*

and was satisfied' **[Record 365/24-26]** **EB 370**

b. *'What is interesting is that we have had evidence from the Registrar of lands but we have had no evidence from the Registrar of companies. Bear in mind that the company Registrar holds all the company files, knows the directors that are listed, knows the shareholders that are listed in that file, if the shareholder or director requires a licence…ask yourselves why is the registrar of companies not here?'* **[Record 367/9-30]** **EB 372**

c. *'I submit that I operated in a way in which I genuinely believed that I had a right to sell the property. I had a right to act on behalf of Providence…'***[Record 369/8-9]** **EB 374**

34. Neither the Appellant nor the Learned trial Judge intervened. The subsequent summing up by the Learned trial Judge was favourable to the Respondent.

Richard Jory KC

Madeleine Pinto

29 May 2026