

BEFORE THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

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

B E T W E E N:

THE KING

Appellant

-v-

WARREN CASSELL

Respondent

AGREED STATEMENT OF FACTS AND ISSUES

References are to pages and, where applicable, line numbers in the Record and the transcript of the trial (contained within the Record).

A. Introduction

1. Summary

1.1 On 22 June 2022, after a trial before the Eastern Caribbean Supreme Court (John J ('**the Judge**') and a jury), the Respondent was convicted of a single count of concealing the proceeds of criminal conduct contrary to section 33(1)(a) of the Proceeds of Crime Act 1999. The Respondent was sentenced to imprisonment for a term of 3 years and 6 months. On 27 February 2025 the Court of Appeal of the Eastern Caribbean Supreme Court (Price-Findlay JA, Ward JA and Farara JA (Ag.)) quashed the Respondent's conviction, set aside his sentence, and declined to order a retrial. With permission granted by the Board (Lords Lloyd-Jones, Burrows

and Stephens) on 10 December 2025, the Appellant now appeals to His Majesty in Council against the decision of the Court of Appeal in so far as it quashed the Respondent's conviction; and the Respondent cross-appeals against the decision of the Court of Appeal in so far as the Court omitted formally to enter a verdict of acquittal.

- 1.2 The Court of Appeal's reasons for quashing the Respondent's conviction, in brief summary, were that at trial none of the many documents relied on by the Appellant had been tendered, admitted into evidence and marked as an exhibit, and that accordingly none was in evidence before the court; that without documentary evidence the Appellant's case was unsustainable, so that the Judge ought to have acceded to the Respondent's submission that he had no case to answer; and that this was not a case for the application of the proviso. In the light of its decision to quash the Respondent's conviction for the reasons it gave, the Court of Appeal did not address various other grounds on which the Respondent had also appealed against his conviction (except for the Respondent's contention that the indictment was bad for duplicity in one respect, which the Court of Appeal rejected).
- 1.3 The Appellant submits to the Board that the Court of Appeal erred: (i) in finding that there was any material irregularity as regards the treatment of documents; and (ii) in any event in holding that without documentary evidence the Respondent had no case to answer; and (iii) in failing to apply the proviso.
- 1.4 The Respondent submits to the Board: (1) that the Court of Appeal was right to quash his conviction for the reasons that it gave; and (2) that in any event that decision ought to be upheld on other grounds, namely: (i) that the Respondent had in any event no case to answer; and/or (ii) that the trial judge's summing up of the case to the jury was unfair. The Respondent also submits by way of cross-appeal that the Court of Appeal erred in failing formally to enter a verdict of acquittal.

2. Charge and Indictment

- 2.1 On 13 June 2022 the Respondent was arraigned on a single Count of Concealing the Proceeds of Criminal Conduct, contrary to Section 33(1)(a)

of the Proceeds of Crime Act 1999, Cap 4.04. He pleaded not guilty and represented himself at the trial.

2.2 The Particulars of the Amended Indictment [133] were that the Respondent *'between the 1st day of January 2007 and 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 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 [the Respondent] in dishonestly*

- i. representing that he was a legitimate Director of Providence Estate 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 Providence Estate Limited, and/or*
- iv. receiving funds into the bank account of Cassell & Lewis 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.'

3. The Allegation

3.1 Between 1 January 2007 and 4 November 2008, the Respondent caused Providence Estate Limited ('PEL') to sell (or apparently to sell) a number of lots of land carved out from an area called Providence Estate, the proceeds of which sales were deposited into the account of Cassell & Lewis Inc ('C&L'), a company owned by the Respondent.

4. The Prosecution case

4.1 This section contains the Appellant's summary of the Prosecution case.

- 4.2 The Prosecution case was that the Respondent, a practising attorney in Montserrat, made a number of false representations regarding the ownership of land within the Providence Estate which were designed to indicate that he could lawfully sell the property. In reality, he was not legally entitled to sell the lots of land, and knew he was not legally entitled to sell it. He completed formal legal documentation which was false and which 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 in 2007 and 2008 received payments into his company bank account for these sales. So ultimately, he received these funds as a result of his fraudulent and dishonest misrepresentations.
- 4.3 In total the Respondent received EC\$855,380.54 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.
- 4.4 The true directors of PEL were two American men, Owen Rooney and Walter Wood. In 1989 they registered PEL as a company with the land registry in Montserrat. PEL was used to purchase this land with the plan of then developing it with a number of private properties. 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.
- 4.5 A licence was granted to develop Providence Estate.
- 4.6 On 20 February 1990 Rooney gained approval for the development of 40 residential houses on the land.
- 4.7 Little work was then done. After the 1995 and 1997 volcanic eruptions, Rooney revised his plans. The plan was now to develop 537 affordable housing units. This plan was submitted and acknowledged by the Ministry

EB 1238

of Finance and Economic Development on 6 January 1998.

- 4.8 More years passed without development and Rooney had developed some medical conditions.
- 4.9 On 26 January 2007 the Respondent tried to contact Rooney through his brother Peter Rooney regarding purchase of the land owned by PEL. On 29 January 2007 lawyers acting for the Respondent did make contact with Owen Rooney. After that time there was no further contact between the Respondent and Rooney, either directly or through lawyers.
- 4.10 On 24 July 2007 the Respondent formed C&L, of which he was the sole director. A bank account for C&L had in fact already been set up at the RBC Bank on 4 December 2006, several months earlier.
- 4.11 On 30 July 2007 the Respondent travelled to Virginia, USA where he met Walter Wood. Wood purported to transfer his 60% shareholding in PEL to C&L for US\$300,000. Despite having contact details for Rooney, and despite Rooney having first refusal on the sale of any shares, the Respondent did not notify Rooney of this meeting. 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. **EB 1251**
- 4.12 The Respondent then set about advertising lots of land within PEL through a cousin's real estate business, Tropical Island Estates Limited, and through other advertising. **EB 1276-1277**
- 4.13 In August 2007, Rooney was alerted to the fact that WC was advertising PEL land for sale. Rooney made contact with Wood and with WC, and told both to contact his lawyer in Montserrat, Hogarth Sergeant. **EB 1279**
- 4.14 Shortly after that the Respondent applied to restore PEL to the companies register, as it had become a dormant company due to the passage of time and non-compliance with filing company returns. **EB 1303**
- 4.15 On 23 August 2007 the Respondent made an application in PEL's name,

- signed by him, to subdivide a parcel of land. Within two weeks he tried to sell four lots to John Ryan, receiving two cheques for a total of EC\$42,000 as deposits for these lots. **EB 1303**
- 4.16 On 7 September 2007 the Respondent wrote to Owen Rooney, in a letter within an email dated 9 September, proposing a number of options to try to secure Rooney's share of PEL. Within this letter the Respondent made a claim against Rooney for US\$400k, and options for him to act upon were set out. **EB 1283**
- 4.17 At about the same time Rooney was in fact trying to pay his outstanding taxes and debts owed to the government of Montserrat. Rooney also rejected the offers from the Respondent. **EB 1288**
- 4.18 On 14 September 2007, the Respondent increased his offer to Rooney to EC\$300,000 for his share in the company. Rooney refused the offer. **EB 1289**
- 4.19 On 19 September 2007 the Respondent's lawyer David Brandt sent Rooney's lawyer Hogarth Sergeant a letter saying that he was acting for PEL and demanding EC\$226,000 that he said Rooney owed PEL. **EB 1308**
- 4.20 On 21 September 2007 the Respondent sold land to the Farrells [lot 19] and the Osbornes [lot 40]. The transfer deed for the Farrells was originally dated July 2007. **EB 1309**
EB 1310
- 4.21 On this same date the Respondent transferred land to himself and his wife [lot 39]. 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'. In reality the directors remained Rooney and Wood, as set out in the Memorandum and Articles of Association of PEL. **EB 1311**
- 4.22 On 24 September 2007 the Respondent filed a '*Change of Directors*' application with the Company Registry in Montserrat, to make himself a Director of PEL. **EB 1304**
- 4.23 In December 2007, and in support of this change of directors' application,

the Respondent provided to the Land Registry a document purporting to be of a meeting and resolution and headed 'Providence Estate Limited', dated 21 September 2007. This document purported to resolve that there had been a meeting on 21 September 2007, the same date of the signing of the first land transfer deeds. The 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. **EB 1302**

4.24 This document 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.*" The resolution further purported to remove both Rooney and Wood as directors, and to appoint the Respondent as sole director with immediate effect, purportedly effective from 1 July 2007, just prior to the first sale of land at Providence Estate.

4.25 Rooney was not told of this meeting – if there was a meeting at all – nor was he consulted in any way. Rooney found out about the Respondent purporting to act on behalf of PEL through his contact with the Inland Revenue in Montserrat when he was trying to settle his taxes, his response being contained in an email the next day.

4.26 Having become aware of the dealings in PEL and land at Providence Estate, Rooney started legal proceedings in the USA.

4.27 On 3 October 2008 the court in the USA made a legal finding that the transfer of this share to the Respondent was illegal and null and void on 3 October 2008. The Respondent had refused to respond to requests to engage in those proceedings, and judgment was entered against him. **EB 1358**

4.28 On 8 October 2007 the Respondent sold 4 lots of land to Kenneth Allen and others for over EC\$418,000 [lots 14 to 17]. On 23 October 2007 he sold lot 34 to Dion Weekes for EC\$80,000. **EB 1328**
EB 1329

4.29 On 31 October 2007 Rooney wrote to the Registrar of Companies in Montserrat requesting that PEL be restored to the register, signing himself as the 'Legitimate Director and Company Secretary' of PEL. **EB 1305**

4.30 In January 2008 the Respondent 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, another lot already assigned to Rooney. Rooney promptly informed the new purchasers that the land belonged to him.

4.31 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. A further sale of lot 12 to Gary Taber was therefore halted, but a sale in May 2008 to Joel Osborne of lot 35, later transferred to Howard Fergus, did go through.

EB 1352

4.32 In summary the Respondent had now received EC\$855,380.54 made up from 2007 and 2008 sales (2007: funds from the Osbornes, Allen, Markham, Weekes; 2008: funds from the Brelsforths, Ryans and Osborne).

4.33 On 9 May 2008 the Respondent's lawyer David Brandt wrote to the Registrar, claiming now to act in his capacity as acting for the Respondent and not PEL, objecting to the restriction. 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.

EB 1353

4.34 Following this the police became involved, and in particular officers from Bermuda were requested to investigate. The Respondent was arrested, he refused to be interviewed and he was then later charged in relation to this offence.

4.35 In May 2019 these criminal proceedings for money laundering were commenced. It can be seen that the total loss, of EC\$855,380.54, was the amount transferred to the C&L account for the sale of the lots within the Providence Estate in 2007-2008.

5. The Defence case

5.1 The Respondent's case was that he had acted honestly and had not sought to conceal anything.

B. DOCUMENTS

6. The issue concerning documents

6.1 Early in his opening address to the jury, leading counsel sought to put two files of documents before the jury [143/30]. The Respondent objected, stating (in the absence of the jury) that this was unprecedented in Montserrat and that the only thing that counsel could give the jury was the indictment [144/12-15]. Counsel replied that it was standard to give documents to jury during the opening address and that the documents had been with the Respondent for long time. The Respondent argued that documents that had not been admitted into evidence ought not to be shown to the jury at that stage [146/17-20]. The Judge asked counsel to confirm that “the purpose of handing them out at this stage is simply to refer and not a question of admission into evidence at this stage” and counsel so confirmed [147/6-8]. The Judge ruled (without giving reasons) that the two files of documents could be handed to the jury, which they then were, along with some highlighter pens. These jury bundles remained with the jury throughout the trial, including when the jury later retired to consider their verdict. They contained copies of documents taken from the exhibits to the written witness statements of several persons.

EB 148

EB 149

EB 151

EB 152

C. Particular Witnesses in the Trial

The following witnesses gave evidence at the trial.

Evidence of Susan Edgecombe [Tradewinds Estate Montserrat, transcript/49-51] EB 184

7.1 The evidence of Susan Edgecombe was that she had email correspondence with Owen Rooney regarding properties. She was cross-examined by the Respondent.

Evidence of Dion Weekes [purchaser of land, transcript/51-63]

EB 186

7.2 The evidence of Dion Weekes was that he purchased a plot of land from the Respondent acting for PEL. He identified plot 34 as one he was interested in. He made an offer then payment to secure the plot. He

identified documents in the jury bundles relating to the purchase of land showing the purchase of land. The Respondent put to him that the land registry showed the title had passed to him from PEL.

Evidence of John Ryan [purchaser of land, **transcript/63-76**]

EB 198

7.3 The evidence of John Ryan was that he purchased plots of land from the Respondent. He identified documents in the jury bundles relating to the purchase of land showing the purchase of land. He was cross examined on the circumstances of his purchase. The jury asked a question about one of the documents.

Evidence of Kenneth Allen [purchaser of land, **transcript/77-91**]

EB 212

7.4 The evidence of Kenneth Allen was that he was a QC and that he purchased land from PEL and the Respondent. He was cross examined about his original statement, C&L, documents, his understanding of the law, and on conversations with the Respondent including his relationship with Mr Wood. In re-examination, and dealing with a point raised in cross-examination, counsel put to Mr Allen that ‘any transfer of shares would of course have to be in accordance with any prior agreements or conditions that existed in relation to the shares’ **[219/31]**, and asked him, ‘if there is more than one director indeed more than one shareholder should they be consulted if there is a proposal of any shares?’ **[221/4]**, eliciting affirmative answers in each case.

Evidence of Owen Rooney [Director and Secretary of PEL, **transcript/91-166**]

EB 226

7.5 The evidence of Owen Rooney was that he identified land in Montserrat to buy and develop and went into partnership with Walter Wood. He described their relationship and how they set up PEL. He described how he became aware of the Respondent’s activities and what he called his attempts to hijack PEL and the action he took in respect of it. He was taken through all the exhibits he produced regarding land registry, division of plots and land, payments, emails, correspondence with the Respondent, the veracity or otherwise of documents and representations re PEL.

- 7.6 Among other things he had not authorised the Respondent to pass a resolution to remove him as a director, and to appoint the Respondent **[transcript/126]**. He said he would not have consented to a change of directors **[transcript/127]**. He stated that the purported transfer of shares from Wood to the Respondent was null and void **[transcript/128]**. The Respondent's application to restore PEL was, he said, through deception and fraud and he, Owen Rooney, remained the legitimate director of PEL **[transcript/128]**. As director he did not authorise sales to the Farrells or other individuals nor did he or PEL receive any of the proceeds **[transcript/131]**. EB 261
EB 262
EB 263
EB 266
- 7.7 Rooney said that the Respondent never had any standing in PEL and he and his legal representatives were hijacking PEL **[transcript/136-137]**. PEL had no bank account of its own since 1990 so could not receive any benefit from any sales **[transcript/138]**. He did not consent to any of the sales. All of the properties were sold well under market value **[transcript/141]**. Neither he nor PEL got a penny from the sales of the properties **[transcript/144]**. The Respondent was not entitled to the proceeds of the sale **[transcript/146]**. EB
271-272
EB 273
EB 276
EB 279
- 7.8 Mr Rooney was cross examined on some of the documents to which Rooney had been taken, their meaning, his relationship with Wood, the documents showing transfer of properties, legal proceedings in the USA and Montserrat, correspondence and other matters **[transcript/149-162]**. The Respondent asserted that Rooney had provided the court with a '*plethora of documents*' **[transcript/156]**. It was put to him that he, Rooney, did not need the Respondent's permission to transfer any of the properties, or to pay the taxes due, both of which were denied by Rooney. It was put to him that Rooney was not a lawful director but that the Respondent was, which Rooney denied **[transcript/161]**. EB 281
EB 296
- 7.9 In re-examination, dealing with a point raised in cross-examination, counsel put to Rooney that the transfer of Wood's shareholding to the Respondent 'was rendered null and void by a court in the States, yes?', with which Rooney agreed; and asked him 'so just that we're clear as a director of [PEL] should you have been notified of any purported change in EB 298

shareholdings?', to which Rooney answered 'Yes', and confirmed that he had not been consulted at any stage [transcript/163]. Rooney stated that the Privy Council had ruled that he was a director of PEL [transcript/165]. EB 300
He said that the Respondent was nowhere listed as a director of PEL, and no legal director was concerned in the transfers of property [transcript/165- EB 301
166]. Wood could not legally transfer his shares without consulting Rooney [transcript/166].

Evidence of Peter Rooney [brother of Owen Rooney, transcript/170-172] EB 305

7.10 The evidence of Peter Rooney was that he received a phone call on 26 January 2007 from the Respondent seeking contact with his brother Owen Rooney regarding the purchase of land. Peter Rooney provided details.

Evidence of Joel Osborne [purchaser of land, transcript/175-179] EB 308

7.11 The evidence of Joel Osborne was that he purchased a plot of land from the Respondent. He confirmed the plot of land he was interested in. He dealt directly with the Respondent who told him he was a director of PEL [transcript/175]. He was referred to and confirmed the land registry documents for the land he was interested.

7.12 He was cross examined and confirmed that he had no reason to doubt that the Respondent was a director of PEL [transcript/177]. EB 312

Evidence of Shelley Isles-Hillocks [Montserrat Land Registry, transcript/179- EB 314
196]

7.13 The evidence of Shelley Isles-Hillocks was that she worked at the land registry. She did not have personal knowledge of the transfers [transcript/180]. She was taken through all of the certified copies of land EB 315
registry documents and explained their meaning and which plots of land they related to.

7.14 She was cross examined regarding land registry procedure, where restrictions might be placed on land, and taken to documents she produced as examples. EB 327

Evidence of Paul Morris [Deputy Commissioner of Police, transcript/196-203] EB 331

7.15 The evidence of Paul Morris was that he arrested the Respondent on 4 November 2008 for conspiracy to defraud Owen Rooney. He was cross examined, and it was put to him that the Respondent was not charged with drug offences, or obtaining by deception.

Evidence of Bernadette Matthew [Bank of Montserrat, transcript/203-209]

EB 338

7.16 The evidence of Bernadette Matthew was that she worked at the Bank of Montserrat as a compliance officer. She knew the Respondent and that he held a number of accounts at the bank. She confirmed that she was asked to go back over records and try to identify financial transactions and cheques relevant to this case. She printed out documents regarding these transactions for officers and provided a summary schedule [transcript/204]. She was taken through the documents and individual transactions regarding funds received into the Respondent's accounts.

7.17 She was cross-examined and confirmed she had not reported any suspicious activity.

Evidence of Lucille Irish [Royal Bank of Canada, transcript/209-218]

EB 344

7.18 The evidence of Lucille Irish was that she was a bank clerk at the Royal Bank of Canada. She was asked to print out documentation regarding transactions on the account for Cassell & Lewis and review some of the transactions. She was asked questions about these documents and regarding particular transactions on the account. She confirmed that the Respondent was the recorded signatory for the account [transcript/215].

EB 350

7.19 She was cross-examined and confirmed that it was not unusual for large amounts to go through the account. She produced copies of the clearance list and bank statement for Cassell & Lewis.

Evidence of Hogarth Sergeant [deceased, Attorney in Montserrat, transcript/219-220]

EB 354

7.20 The evidence of Hogarth Sergeant was read. He was instructed by Rooney to contact the Respondent when Rooney became aware that the Respondent was offering property for sale. The Respondent made financial

offers for shares in PEL. He handed relevant documents to investigators in this case and produced them as his exhibits.

Evidence of Jessica Sweeney [OIC, transcript/220-229]

EB 355

7.21 The evidence of Jessica Sweeney was that she was a police officer with the Montserrat police specialising in financial crime. She analysed bank documents produced to her and produced a spreadsheet showing how the sums of the transactions and cheque figures added up to the Indictment amount. The Respondent, having been provided with the analysis prior to the trial, was asked whether he objected to its being passed to the jury and said that he did not. [transcript/221]. She went through the schedule cross-referencing each entry with the original documents provided. The final figure was given as EC\$855,380.54 [transcript/226].

EB 356

7.22 She described how she received all the documents from Shelley Isles and numbered them SI/1-34 [transcript/226].

EB 361

7.23 She was cross-examined by the Respondent. She confirmed she was acting as the investigating officer [transcript/227]. She did not take all of the statements. She confirmed that the Respondent had no criminal convictions [transcript/228].

EB 362-363

D. NO CASE SUBMISSION, RESPONDENT'S CASE AND CLOSING SUBMISSIONS

8.1 The Respondent made a submission of no case to answer at the conclusion of the prosecution case [transcript/231]. In a note provided to the Judge [492-499] he argued among other things that there had been no evidence that he had concealed or disguised any sum of money; no evidence that the money represented proceeds of criminal conduct; and no evidence that his purpose in concealing or disguising the money (if he had done so) had been that of avoiding prosecution or the making or enforcement of a confiscation order. He asserted that none of the documents had been tendered and admitted into evidence and that they were therefore not in evidence and should be disregarded and removed from the jury's possession. The prosecution response was made orally and in a written skeleton [ref].

**EB 367
EB 497-504**

EB 617

8.2 The Judge ruled that there was a case to answer and indicated that his reasons would in due course be provided in writing. He did not subsequently provide written reasons.

8.3 The Respondent chose not to give evidence **[transcript/233]**. **EB 368**

8.4 The Crown indicated that given the Respondent had chosen to represent himself and not given evidence, the prosecution would not make closing submissions **[transcript/233]**. **EB 368**

8.5 The Respondent made a closing address **[transcript/234-239]**. **EB 369**

E. The Summing Up and Directions of Law

9.1 On 21-22 June 2022 the Judge summed up the case **[transcript/239-255]**. The parties will refer in their printed cases to such parts of the summing up that they contend to be material to this appeal.

9.2 In advance of the summing up the Appellant enquired whether it would assist to have representations as to how the case should be summed up. The judge indicated that he was receptive to this. Having addressed the court and when invited to comment on the directions, the Appellant addressed the court specifically on the issue of dishonesty and the purpose of avoiding prosecution, and indicated that the matter was easily addressed by reading the route to verdict prepared by the Appellant (which had been submitted to the Judge and the Respondent by email on the morning of 21 June **[500] [transcript/250-251]**). The Respondent was not asked whether he assented to this course. He did not raise any objection to it. The judge acceded to this request and incorporated elements of the Appellant's document into his summing up, which was given on 22 June. **EB 623-625**
EB 505-506

F. Conviction and Sentence

Conviction

10.1 On 22 June 2022 the jury returned a unanimous verdict of guilty **[transcript/255]**. **EB 390**

Sentence

10.2 The Respondent was sentenced to 3 years and 6 months' imprisonment [transcript/269-271].

EB 404-408

G. Appeal to the Court of Appeal

11. Hearing of the Appeal

11.1 The Respondent appealed against his conviction and sentence to the Court of Appeal. The hearing of his appeal occurred on 17 September 2024. The Respondent advanced Grounds of Appeal against Conviction, and Amended Grounds, set out within the Certified Record [Certified Record/1-4, 410-414] and the Appellant's written submissions [Certified record/462-485]. The Respondent's submissions are contained within the Certified record [Certified record/511-641].

EB
415-418
467-480
516-646

12. Judgment of the Court of Appeal

12.1 On 27 February 2025 the Court of Appeal delivered its judgment and allowed the appeal against conviction. In particular the Court found that the documentary evidence had not been marked and properly admitted into evidence, had not been produced properly at trial, should not have been available in the jury bundle during prosecution counsel's opening address or any time thereafter, including during evidence or during retirement, which amounted to a material irregularity [Certified record/1022-1023, 1034-1048].

EB
1120-1121
1132-1046

12.2 The Appellant had drafted a total of fourteen Grounds of Appeal but pursued nine at his Appeal Hearing [Certified Record/1025-1028]. The Court dismissed Ground 1 of the Appeal considering whether the Indictment was duplicitous [Certified record/1028-1034] and did not consider the other Grounds advanced.

1123-1126
1126-1132

12.3 The Court of Appeal ordered the Respondent's conviction to be quashed and his sentence to be set aside [Cassell v R (2025) 106 WIR 241 paragraph 119].

12.4 In the judgment delivered on 27 February 2025 the Court of Appeal stated it was not minded to order a retrial in this matter as "The Court is not of the view that any useful purpose will be served in trying the appellant a third time" [paragraph

119 of judgment]. The Court did not expressly direct a judgment and verdict of acquittal to be entered within the judgment.

H. Application to the JCPC

13. Hearing of the Appeal

13.1 The Appellant subsequently filed an application to the JCPC for permission to appeal [ref]. On 21 July 2025 [ref] the Respondent filed his response. On 10 December 2025 [ref] permission was granted to the Appellant to appeal the decision of the Court of Appeal allowing the appeal against conviction [ref]. The Respondent has been granted permission to cross-appeal against the omission of the Court of Appeal to enter a verdict of acquittal. The Order of the JCPC being that “Permission to appeal be GRANTED on the grounds of appeal, respondent’s notice and cross appeal.”

EB
1149-1167
1168-1188
1189

14. Issues raised by the Appeal

14.1

14.1.1 whether there was a procedural flaw in the manner in which the documentary evidence was admitted; and

14.1.2 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

14.1.3 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.

14.2

14.2.1 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.

14.3

- 14.3.1 whether the Court of Appeal was right to quash the Respondent's conviction and to not engage the statutory proviso.

14.4

- 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;
- 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;
- 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;
- 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;
- 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;
- 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;
- 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;

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;

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.

15. Issues raised by the Cross Appeal

15.1

15.1.1 whether the Court of Appeal, having quashed the Respondent's conviction, erred in not directing a judgment and verdict of acquittal to be entered in accordance with s39(2) of the Supreme Court Act.

Richard Jory KC

**Thomas Roe KC
David Dorsett Phd**