

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

MONTSERRAT

MNIHCRAP2022/0003

BETWEEN:

WARREN CASSELL

Appellant

and

THE KING

Respondent

Before:

The Hon. Mde. Margaret A Price Findlay

Justice of Appeal

The Hon. Mr. Trevor M Ward

Justice of Appeal

The Hon. Mr. Gerard St. C Farara

Justice of Appeal [Ag.]

Appearances:

Mr. Warren Cassell, the Appellant, appearing in person

Mr. Richard Jory, KC, with him Mr. Henry Gordon for the Respondent

2024: September 17;

2025: February 27.

Criminal appeal – Appeal against conviction – Concealing the proceeds of criminal conduct – Section 33 (1) (a) of the Proceeds of Crime Act 1999 – Duplicity – Whether the indictment was duplicitous – No Case Submission – Whether the trial judge erred in rejecting the no case submission - Tendering Documents- Evidence – Whether the judge erred in not requiring the documentary evidence of the crown to be admitted and marked before allowing the jury to consider those documents - Whether the conviction was unsafe and unsatisfactory

In 1989, Owen Rooney (“Rooney”) and one Walter Wood (“Wood”) formed a company called Providence Estate Ltd. (“PEL”) and purchased a lot of land comprising some fifty-three (53) acres of land in Providence Estate, St. Peters, Montserrat. Wood was the owner of sixty percent (60%) of the shares in PEL and Rooney owned the remaining forty percent (40%). The purpose of the company was to develop the land. Rooney and Wood eventually fell out and years passed with no activity being carried out with respect to the estate.

In 2006 the appellant formed a company, Cassell and Lewis Inc. The appellant acquired Wood’s 60% share in PEL paying Wood US\$300,000.00. Having acquired the shares, the appellant advertised several lots of land situated at Providence Estate for sale, including

those reserved for Rooney. The appellant in September 2001 was recorded as a director of PEL at the Companies Registry and made a request to subdivide the property at Providence Estate. The appellant also petitioned the court for PEL to be restored to the Register and paid the relevant fees for this to occur.

The appellant started selling lots and receiving monies for those lots from prospective purchasers in September 2007. The monies received from those prospective purchases were placed into the account of Cassell and Lewis. All of this was done without consultation with or any involvement of Rooney, who still owned 40% of the shares in PEL. The appellant continued selling lots and executing transfers with respect to the lands at Providence Estate and received monies relative to those sales. All monies so received were deposited into the bank accounts of Cassell and Lewis. The appellant continued selling lands into 2008, by which time he had received in excess of EC\$855,000.00 in revenue, all monies going into the account of Cassell & Lewis.

A complaint was made to the authorities by Rooney who became aware of the sale of the land without any consultation or involvement of himself who remained a 40% shareholder in PEL with entitlement to a portion of the proceeds of the sales and to certain lands within the development. As a result, the police arrested the appellant, and he was charged with the offence of concealing the proceeds of criminal conduct contrary to Section 33(1)(a) of the **Proceeds of Crime Act 1999**.

In the indictment, the prosecution alleged that the appellant had received the sum of EC\$855,380.54, such sums having been transferred from investors into the account of Cassell and Lewis for sales of lands at Providence Estate. The indictment further alleged that the monies were in whole or in part, directly or indirectly the proceeds of criminal conduct, namely the fraudulent conduct of the appellant in dishonestly: (a) representing that he was a director of PEL and/or (b) representing that he was legally entitled to sell land at PEL and/or (c) filing a Change of Directors application with the Companies Registry regarding PEL and/or (d) receiving funds into the bank account of Cassell and Lewis for the sale of lands at Providence Estate, for the purpose of avoiding prosecution for an offence or the making of a confiscation order.

The appellant was convicted and sentenced to three (3) years and six (6) months imprisonment on 22nd June 2022 following a trial by jury. The appellant filed an appeal against conviction and sentence for the offence of concealing the proceeds of criminal conduct and filed 14 grounds of appeal by way of a notice of appeal filed on 5th July 2022 and an amended notice of appeal filed on 17th September 2024. The appellant did not pursue all the grounds of appeal at the hearing, but made representations with respect to *inter alia*: (i) the trial was a nullity as it had proceeded on an indictment which was duplicitous, (ii) the learned trial judge erred in wrongfully rejecting the no case submission made by the appellant and (iii) the verdict was unsafe and unsatisfactory having regard to the numerous errors made by the learned trial judge.

Held: allowing the appeal, quashing the conviction of the appellant and setting aside the sentence and no retrial ordered that:

1. If a charge contains more than one offence, it is defective and considered bad for duplicity. The stated purpose for the rule against duplicity is to enable a defendant to know the case he is being called upon to answer so that he will not be prejudiced or embarrassed in preparing his defence. Such prejudice or embarrassment could result if the defendant is uncertain as to the specific offence for which he is charged. This principle has been developed and designed to ensure fairness. However, more than one incident of commission of the offence may be included in a count if those incidents taken together amount to a course of conduct having regard to time, place or purpose of commission. Thus, where a person is charged with a single offence which can be carried out in a multiplicity of ways a charge will not be bad for duplicity even where a number of separate criminal acts are implied.

Section 33(1)(a) of the **Proceeds of the Crime Act 1999** Laws of Montserrat applied; United Kingdom **Proceeds of Crime Act 2002** considered.

2. In the Montserrat **Proceeds of Crime Act** where an individual attempts to conceal criminal property, this may involve disguising, converting or transferring the said property once it is done for the purpose of avoiding prosecution for an offence. Upon examining the activity that the appellant was charged with, that is concealing, it is clear that this was a single activity covering a course of conduct by the appellant over a period of time. Therefore, the charge was not duplicitous. The particulars of the indictment followed strictly the wording of the legislation in alternatively describing the nature of the offence and did not create separate offences. Therefore, this ground of appeal fails.

Proceeds of the Crime Act 1999 Chap 4.04 Laws of Montserrat; **Archbold: Criminal Pleading, Evidence and Practice 2024**, Sweet & Maxwell considered; **The Commonwealth Caribbean Criminal Practice and Procedure**, Dana S. Seetahal with updates with Roger Ramgoolam, Routledge, 4th Edition considered; **Blackstone's Criminal Practice 2025**, Oxford University Press, considered; **Ware v Fox** [1967] 1 All ER 100 considered; **Thomson v Knights** [1947] 1 All ER 112 applied.

3. The criteria which a trial judge ought to apply to a submission of no case to answer is whether there is material on which a jury could without irrationality be satisfied of guilt. Where there is such material, the trial judge must allow the trial to proceed. In a criminal trial, the judge has a supervisory role and in effect carries out a filtering process to decide what evidence is placed before the jury. The trial judge is tasked with and may be required to consider whether the prosecution has provided sufficient evidence to leave the case to the jury for decision.

R v Galbraith [1981] 2 All ER 1060 applied; **Daley v R** [1998] 1 WLR 494 applied.

4. It is common ground that the proper approach to a submission of no case to answer can be found in the age-old test propounded by Lane CJ in the case of **R v Galbraith**. In considering the submission of no case to answer, the Court must have in mind the charge before the Court and its constituent parts in order to assess

whether either of the two (2) limbs of **R v Galbraith** apply. The constituent elements as set out in the indictment in this matter required not only oral testimony but the necessary documentary evidence to prove to the satisfaction of the jury that the appellant had committed the offence for which he was charged. Failure by the Crown to properly tender the relevant documents was fatal to their case.

R v Galbraith [1981] 2 All ER 1060 applied.

5. With respect to the second limb of **Galbraith**, the issue to be decided by the Court is, not whether there was some evidence but if what evidence existed was of such a tenuous nature that the case ought not to be left to the jury. This involves an assessment or evaluation of the quality and reliability of the evidence rather than the legal sufficiency of the evidence. Taken as a whole, the jury in this matter was faced with satisfying themselves to the standard of beyond a reasonable doubt, that in the absence of the relevant documentation, the appellant had committed the offence of concealing the proceeds of criminal conduct, as alleged by the Crown. In this matter, in the absence of documentary evidence, the case against the appellant was tenuous and the jury was in effect left with little or no evidence upon which to conclude that the necessary framework required for the essential elements of the charge were placed before them, in order to come to a conclusion of guilt to the required standard. The Crown's evidence taken at its highest, was such that a jury properly directed could not properly convict the appellant, and the learned trial judge ought to have accepted the no case submission and consequently had a duty to withdraw the case from the jury. Having failed to do so the learned trial judge erred. This ground of appeal therefore succeeds.

R v Colin Shippey et al [1988] CLR 767 applied; **Edwin Gomez v The Queen** ANUHCRA2014/0012 consolidated with **Isaiah Benjamin v The Queen** ANUHCRA2014/0013 (delivered 17th August 2022, unreported) followed.

6. It is trite law that all documents, photographs and reports used as evidence must satisfy the requirements of the law to be admitted as evidence. During a trial, each piece of evidence should be marked and formally admitted. Such exhibits must be marked and formally admitted into evidence before they can be considered by the judge and jury. At no point in the transcript of the proceedings of the court below were any documents tendered and marked accordingly by the court as exhibits in the proceedings. In fact, the documents did not form part of the Record of Appeal. This procedure is highly irregular and unusual in either civil or criminal matters. In the absence of agreement of the parties that the 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. The learned trial judge therefore erred in allowing the jury to be shown documents relative to the matter during the Crown's opening address and further allowing the jury to highlight or identify certain portions of those documents before they were properly tendered as exhibits in the matter. Further, the jury was allowed to consider the documents during their deliberations. Failure to produce the necessary documents in support

of their case left the Crown's case bare of the necessary proof required to show to the jury that the appellant did what the Crown sought to represent that he had done.

R v Troy Christian ANUHCR2022/0062 (delivered 16th January 2024, unreported), applied; Paragraph 2.12 of **Stone's Justices Manual 2024**, Butterworths considered.

7. There was a material irregularity when the learned trial judge not only allowed the jury to be shown documents which were not admitted into evidence at the opening of the case for the Crown but further those documents remained with the jurors throughout the entirety of the trial and also during their deliberations, without ever having been admitted, tendered or marked as exhibits by the court. This Court is therefore left in doubt with regards to the correctness of the conviction of this appellant, and having considered all of the circumstances of the case, this Court cannot be satisfied that this conviction is safe and satisfactory and there is a real risk that this appellant was convicted on evidence which ought not to have been seen or considered by the jury, as it was not properly tendered at his trial. A miscarriage of justice has therefore occurred. This ground of appeal also succeeds.

JUDGMENT

- [1] **PRICE FINDLAY JA:** This is an appeal against conviction and sentence for the offence of concealing the proceeds of criminal conduct for which the appellant was convicted and sentenced to three (3) years and six (6) months imprisonment on 22nd June 2022 following a trial by jury.
- [2] The brief facts are as follows: In 1989, Owen Rooney ("Rooney") and one Walter Wood ("Wood") formed a company called Providence Estate Ltd. ("PEL") and purchased a lot of land comprising some fifty-three (53) acres of land in Providence Estate, St. Peters, Montserrat.
- [3] Wood was the owner of sixty percent (60%) of the shares in PEL and Rooney owned the remaining forty percent (40%). The purpose of the company was to develop the land.
- [4] Rooney and Wood eventually fell out and years passed with no activity being carried out with respect to the estate.

- [5] In 2006 the appellant formed a company, Cassell and Lewis Inc. The appellant acquired Wood's 60% share in PEL paying Wood US\$300,000.00. Having acquired the shares, the appellant advertised several lots of land situated at Providence Estate for sale, including those reserved for Mr. Rooney.
- [6] The appellant in September 2001 was recorded as a director of PEL at the Companies Registry and made a request to subdivide the property at Providence Estate. The appellant also petitioned the Court for PEL to be restored to the Register and paid the relevant fees for this to occur.
- [7] The appellant started selling lots and receiving monies for those lots from prospective purchasers in September 2007. The monies received from those prospective purchases were placed into the account of Cassell and Lewis Inc. All of this was done without consultation with or any involvement of Rooney who still owned 40% of the shares in PEL.
- [8] The appellant continued selling lots and executing transfers with respect to the lands at Providence Estate and received monies related to those sales. All monies so received were deposited into the bank accounts of Cassell and Lewis. The appellant continued selling lands into 2008, by which time he had received in excess of EC\$855,000.00 in revenue, all monies going into the account of Cassell & Lewis.
- [9] A complaint was made to the authorities by Rooney who became aware of the sale of the lands without any consultation or involvement of himself who remained a 40% shareholder in PEL with entitlement to a portion of the proceeds of the sales and to certain lands within the development.
- [10] As a result, the police arrested the appellant and he was charged with the offence of concealing the proceeds of criminal conduct contrary to section 33(1)(a) of the **Proceeds of Crime Act 1999**¹.

¹ Chap 4.04 Laws of Montserrat.

[11] In the indictment, the prosecution alleged that the appellant had received the sum of EC\$855,380.54, such sums having been transferred from investors into the account of Cassell and Lewis for sales of lands at Providence Estate.

[12] The indictment further alleged that the monies were in whole or in part, directly or indirectly the proceeds of criminal conduct, namely the fraudulent conduct of the appellant in dishonestly:

- (a) representing that he was a director of PEL and/or
- (b) representing that he was legally entitled to sell land at Providence Estate. and/or
- (c) filing a Change of Directors application with the Companies Registry regarding PEL and/or
- (d) receiving funds into the bank account of Cassell and Lewis for the sale of land at Providence Estate.

for the purpose of avoiding prosecution for an offence or the making of a confiscation order.

[13] The appellant filed 14 grounds of appeal by way of a Notice of Appeal filed on 5th July 2022 and an amended Notice of Appeal filed on 17th September 2024.

[14] The appellant did not pursue all the grounds of appeal at the hearing, but made representations with respect to the following grounds:

- (1) The trial was a nullity as it had proceeded on an indictment which was duplicitous.
- (2) The learned trial judge erred in wrongfully rejecting the no case submission made by the appellant.
- (3) The conviction of the appellant was unsafe and unsatisfactory on account of errors in the summation of the learned trial judge:

- (a) Directed the jury to find the defendant guilty if he engaged in dealings that were fraudulent and dishonest and the proceedings of that fraudulent or dishonest conduct went into or was transferred into the defendant's bank account.
- (b) Directed the jury that if they found the defendant's dealings prior to the money going into his account were fraudulent or that they were dishonest and that the proceeds of the dishonesty went into his account or transferred into his account that they were duty bound to find the defendant guilty.
- (c) Directed the jury that if the money was transferred into the defendant's account that was concealing for the purposes of avoiding prosecution. The money need not be hidden, once it is transferred that is sufficient.
- (d) Directed the jury to find that the defendant was guilty if any one of four things were proved:
 - (i) Are you satisfied to the extent that you feel sure that Warren Cassell represented that he was a legitimate director of PEL.?
 - (ii) Are you satisfied to the extent that you feel sure that he was legally entitled to sell lands at PEL?
 - (iii) Are you satisfied to the extent that you feel sure that the filing of the change of directors was genuine?
 - (iv) Are you satisfied to the extent that you feel sure that the money that went into the account were monies derived from these criminal acts if you so find that they were criminal acts?
- (e) Directed the jury to find the defendant guilty if he was acting dishonestly or fraudulently.

- (f) Directed the jury that in order to convict the defendant they would have to be satisfied that EC\$855,380.54 was transferred into the account of Cassell and Lewis and it represented in whole or in part, directly or indirectly the proceeds of criminal conduct.
 - (g) Directed the jury that they must convict if they were sure, firstly, that the money was transferred into the account of Cassell and Co. whole or in part and it was the proceeds of criminal conduct and, secondly, that the Defendant concealed or disguised the money to avoid prosecution for an offence.
- (4) The learned trial judge erred when he permitted counsel for the Crown to draft directions styled “Route to verdict” and read them verbatim to the jury.
 - (5) The learned trial judge erred when he gave the jury directions on the meaning of the words “concealed” and “disguised” when the meaning of those words are not questions of law. The learned trial judge ought to have left the words to the jury for them to consider whether in the whole of the circumstances the words do or do not apply to the facts as proved.
 - (6) The learned trial judge failed to adequately put the appellant’s defence to the jury.
 - (7) The learned trial judge erred in permitting the Crown to allow the jury to look at documents during the Crown’s opening address when those documents had not been admitted as evidence.

(8) The learned trial judge erred when he failed to properly direct the jury as to the elements of “for the purpose of avoiding prosecution for an offence or the making of a confiscation order.”

(9) The sentence was wrong in principle.

Ground 1 – Was the indictment duplicitous

[15] Section 33(1)(a) of the **Proceeds of Crime Act 1999** provides:

“33.(1) A person commits an offence if he –
(a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents the proceeds of criminal conduct.”

[16] The appellant submitted that the charge was duplicitous in that the particulars of the offence state that he “concealed or disguised” property. He posited that the word “or” appears in the relevant section and that means that the word “conceals” is not synonymous with the word “disguises”.

[17] The appellant also relies on section 118 of the **Proceeds of Crime Act 2010**² and submits that this legislation makes it clear that section 33(1)(a) of the **Proceeds of Crime Act 1999** creates two distinct offences.

[18] Section 118 of the **Proceeds of Crime Act 2010** provides:

“Concealing, disguising, converting, transferring and removing criminal property.

118(1): Subject to sub-section (2), a person is guilty of an offence if he –
(a) conceals criminal property
(b) disguises criminal property
(c) converts criminal property
(d) transfers criminal property
(e) removes criminal property from Montserrat.”

² Act No. 1 of 2010, Laws of Montserrat.

- [19] The appellant submits that the later Act may be used to aid in the construction of the earlier Act. The appellant further submits that the only proper construction that can be put on section 118 of the later Act is that it clearly creates two offences, and further what is true of the later Act is true of the earlier Act; that the concealing of criminal property is one offence and the disguising of property another, and that both offences cannot be the subject of a single count indictment, and as such offends the rule against duplicity.
- [20] The respondent submitted that the indictment was not irregular or duplicitous as section 118 of the **Proceeds of Crime Act 2010** is in the same style as section 327(1) of the **United Kingdom Proceeds of Crime Act 2002**. The respondent posited that there are multiple ways of committing the offence of concealing property contained in section 33(1) and the single count as set out in the indictment reflected precisely the wording of the section.
- [21] The respondent submitted that if the 5 ways of committing the offence charged as set out in section 118(1) subsections (a) to (e) of the **Proceeds of Crime Act 2010** and at section 327 of the **United Kingdom Proceeds of Crime Act** do not create five (5) separate offences according to **Archbold Criminal Pleading, Evidence and Practice 2024**³ ("**Archbold**") then the two (2) ways of committing the offence under the **Proceeds of Crime Act 1999** plainly did not.
- [22] The respondent relied on **Archbold** at paragraph 26-13 which provides:
- "It is likely that S.327(1) will be construed as creating a single offence that can be committed in a number of ways, thus permitting the different methods of commission to be alleged in a single count in the alternative."
- [23] The paragraph continues:
- "This however, should not be taken to be a licence to allege different methods of commission without discrimination. The prosecutor should identify possible methods of commission and should specify those methods and only those methods."

³ Sweet & Maxwell Ltd.

Discussion

[24] **The Commonwealth Caribbean Criminal Practice and Procedure**⁴ states:

“It has been said that duplicity is a matter of form and not evidence. It arises where the form of a complaint or a count in an indictment discloses two (2) or more offences. If it does, it means that the charge is double, it is duplicitous. If the form appears to be satisfactory, but from the evidence led it appears that the charge relates to two (2) offences, then it would be easier to amend the complaint or count to strike out the ingredients in the charge relating to another offence.”

[25] It is clear that if the charge contains more than one offence, it is defective and considered bad for duplicity.

[26] The stated purpose for the rule against duplicity is to enable a defendant to know the case he is being called upon to answer so that he will not be prejudiced or embarrassed in preparing his defence. Such prejudice or embarrassment could result if the defendant is uncertain as to the specific offence for which he is charged. This principle has been developed and designed to ensure fairness.

[27] **Blackstone’s Criminal Practice 2025**⁵ at D.11.45 to D11.49 states:

“The ordinary rule is that each count on an indictment must allege only one offence. If a count alleges more than one offence, it is said to be bad for duplicity and should be quashed before arraignment. Whether or not a count is bad for duplicity is decided by looking at the wording without reference to the prosecution case as disclosed by the evidence... Duplicity in a count is a matter of form; it is not a matter relating to the evidence called in support of the count...the only matters to be considered by the judge in determining whether a count is bad for duplicity are the form (the wording) of the count and any additional particulars supplied by the prosecution.

In summary, the conclusion in **DPP v Merriman**⁶ was that a count is not to be held bad on its face for duplicity merely because its words are logically capable of being construed as alleging more than one criminal act...The test of whether it is proper to have a single count is: can the separate acts attribute to the accused fairly be said to form a single activity or transaction or one course of conduct? It follows from that test that if the particulars of a count can be sensibly interpreted as alleging a single activity or course of

⁴ Dana S. Seetahal with updates with Roger Ramgoolam, Routledge, 4th Edition.

⁵ Oxford University Press.

⁶ (1973) AC 584.

conduct, it would not be bad for duplicity even if a number of distinct criminal acts are implied.”

[28] The **UK Criminal Procedure Rules**, Rule 10.2(2) provides that:

“more than one incident of the commission of the offence may be included in a count if those incidents taken together amount to a course of conduct having regard to time, place or purpose of commission.”

This is a clear indication of the approach to be taken in determining whether a charge is bad for duplicity or not. Where a person is charged with a single offence which can be carried out in a multiplicity of ways, a charge will not be bad for duplicity even where a number of separate criminal acts are implied.

[29] In the Montserrat **Proceeds of Crime Act**, it can be said that when an individual attempts to conceal criminal property, this may involve disguising, converting or transferring the said property once it is done for the purpose of avoiding prosecution for an offence.

[30] This point has been illustrated in **The Treatise of Criminal Law**⁷, the learned authors make the point in relation to section 327 of the **United Kingdom Proceeds of Crime Act 2002** that:

“S.327 is a single offence that can be perpetrated in five (5) different ways, but often these ways of perpetrating will overlap. When a person tries to conceal property this will also involve disguising it, converting it or transferring it...The indictment should not be bad for duplicity, if it charges various acts as a single perpetration of that offence.”

[31] Where an indictment charges two (2) or more offences in the alternative it will be considered duplicitous.

[32] In **Ware v Fox**⁸ where the defendant was charged with (1) being concerned with the management of certain premises which were used for the purpose of smoking

⁷ Glanville Williams and Dennis Baker, LexisNexis, 5th Edition.

⁸ [1967] 1 All ER 100.

cannabis or cannabis resin or for the purpose of dealing in cannabis resin, the Court rightly held that the relevant section of the **Dangerous Drugs Act** created two (2) offences, (a) being concerned in the management of premises used for smoking cannabis and (b) being concerned in the management of premises used for dealings in cannabis. The charge in that case was plainly duplicitous, clearly if the indictment charges two (2) or more offences in the alternative, that indictment would be considered duplicitous and quashed.

[33] If the indictment charges different modes of committing one offence, this does not offend against the rule against duplicity once the words of the statute creating the charge are adhered to.

[34] In **Thomson v Knights**⁹ the Court found that a provision may create two (or more) offences or it may create one offence with alternative ways of committing that offence.

[35] A perusal of the amended indictment filed on the 14th June 2022 reads as follows:
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.

[36] The appellant in this matter could have been under no misapprehension of the charge which he was facing. The statement of offence was clear as to what the prosecution was alleging against him. The particulars of offence merely mirrored the wording of the section as it appears in the Act.

[37] As stated, the purpose of the rule against duplicity is to enable the defendant to know what charge he is to answer and to be in a position to defend against that charge. The appellant was made fully aware that he was being charged with

⁹ [1947] 1 All ER 112.

concealing and was neither prejudiced or embarrassed in the preparation of his defence.

[38] In **Taylor v Khan**¹⁰, the Court of Appeal of Trinidad and Tobago considered an appeal where on a summary complaint it was alleged that the defendant “willfully secreted” or “willfully kept” a postal packet which ought to have been delivered to a third party, contrary to section 45 of the Post Office Ordinance.

[39] Section 45 stated:

“Any person who fraudulently retains or willfully secretes or keeps, or detains or when required by an Officer of the post office, neglects or refuses to deliver up:

(a) any postal packet which is in the course of transmission by post...shall be guilty of a misdemeanor...”

[40] The Magistrate invited the prosecutor to amend the charge, because he was of the view that it was bad for duplicity. The prosecutor declined and the Magistrate dismissed the charge.

[41] On appeal, it was held that:

“(i) the expression “secreted or kept” which follows strictly the language of the section is alternatively descriptive of the nature of the offence and does not create two offences;

(ii) the complaint was not void for duplicity and the Magistrate was wrong to dismiss the charge.”

[42] The appeal was allowed.

[43] Very much like **Taylor v Khan**, in this matter the words “concealing” and “disguising” are descriptive of the nature of the offence charged. The particulars of the offence in this case as in **Khan**, merely mirrored the wording of the section of the Act which created the offence.

¹⁰ (1969) 15 WIR 254.

[44] In **Martin Jno Baptiste v The Queen**¹¹, Thom JA stated quoting from **Blackstone's Criminal Practice**:

“A count is not to be held bad on its face for duplicity merely because its words are logically capable of being construed as alleging more than one criminal act.”

[45] When one examines the case, what activity was the appellant charged with, it is concealing, it is clear that this was a single activity covering a course of conduct by the appellant over a period of time. Therefore, the charge was not duplicitous.

[46] The particulars followed strictly the wording of the legislation in alternatively describing the nature of the offence and did not create two separate offences.

[47] This ground of appeal therefore fails.

Ground 3: The no case submission

[48] At the close of the case for the Crown, the appellant made a no case submission which was rejected by the learned trial judge.

[49] The appellant indicated to the Court that none of the exhibits were tendered, admitted into evidence and marked hence were not evidence before the court below.

[50] The appellant submits to this Court that notwithstanding the submissions made, the learned trial judge rejected the no case submission but failed to provide any reason for that ruling. The appellant further posits that the learned trial judge without properly considering the matter or if at all suddenly and abruptly dismissed the submission giving no reasons for so doing.

¹¹ MNIHCRAP2019/0004 (delivered 21st October 2022, unreported).

- [51] The respondent in their submissions posit that the learned trial judge was correct in rejecting the no case submission as the respondent had produced evidence regarding all the elements of the offence as set out in the indictment.
- [52] The respondent submitted that the evidence which was provided to the Court included that of officials of the Land Registry and other officials in Montserrat, evidence from persons who had purchased lands from the appellant and more directly from Rooney who was the rightful director of PEL who provided detailed and compelling evidence regarding the details of the case alleged against the appellant.
- [53] The respondent further submitted that the lead officer, Jessica Sweeney produced a spreadsheet setting out the details of every property and financial transaction in the matter, without objection from the appellant. They posit that there was no issue, but that the transfers of property and transfers of funds were in evidence and were accurate. They further posit that Ms. Sweeney gave evidence of each individual transaction and explained all the underlying material and produced these in evidence.
- [54] The respondent submitted that there was clearly a *prima facie* case made out against the appellant which the learned trial judge rightly found he had to answer. Further, the respondent submitted that through the witness Sweeney, the Crown had clearly produced the documentary material in evidence when she gave her testimony in front of the jury.
- [55] Lastly, the respondent submitted that while it may have been preferable if the learned trial judge had produced full reasons for his rejection of the no case submission, having considered both the written and oral submissions of the parties, the learned trial judge did not err in arriving at the conclusion that he did in rejecting the submission. The absence of reasons does not in and of itself render the appellant's conviction unsafe or unsatisfactory.

Discussion

- [56] It is common ground that the proper approach to a submission of no case to answer can be found in the age-old test propounded by Lane CJ in the case of **R v Galbraith**¹². Lord Lane stated:

“How then should the judge approach a submission of “no case”? (1) If there is no evidence that the crime as alleged has been committed by the defendant, then there is no difficulty. The judge would of course stop the case. (2) The difficulty arises when there is some evidence but it is of tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge comes to the conclusion that the prosecution’s evidence taken at its highest, in such that a jury properly directed could not properly convict upon it, it is his duty upon a submission being made to stop the case. (b) Where however, the prosecution’s evidence is such that the strength or weakness depends on the view taken of the witness’ reliability or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could possibly come to the conclusion that the defendant is guilty then the judge should allow the matter to be tried by the jury...”

- [57] **Blackstone’s Criminal Practice 2025**¹³ stated the following principles which are to be applied by the Court in determining submissions of no case to answer:

- (a) If there is no evidence to prove an essential element of the offence, a submission must obviously succeed.
- (b) If there is some evidence which taken at face value establishes each essential element, the case should normally be left to the jury.
- (c) If, however, the evidence is so weak that no jury reasonably directed could convict on it a submission should be upheld. Weakness may arise from the sheer improbability of what a witness is saying, from internal inconsistencies in the evidence or from its being a type which the accumulated experience of the courts have shown to be of doubtful value.

¹² [1981] 2 All ER 1060.

¹³ See D.16.58.

(d) The question of whether a witness is lying is nearly always one for the jury, but there are exceptional cases where the inconsistencies are so great that any reasonable tribunal would be forced to the conclusion that the witness is untruthful and that it would not be proper for the case to proceed on that evidence alone.

[58] The Privy Council in **Daley v R**¹⁴ acknowledged that it has been recognised for many years that a trial judge has the power to withdraw a case from the jury if after due consideration he is of the view that the evidence led by the prosecution is insufficient to sustain a conviction.

[59] The criteria which a trial judge ought to apply to a submission of no case to answer is whether there is material on which a jury could without irrationality be satisfied of guilt. If there is, the trial judge must allow the trial to proceed.

[60] In a criminal trial the judge has a supervisory role. The judge in effect carries out a filtering process to decide what evidence is placed before the jury. The trial judge is tasked with, and may be required to consider whether the prosecution has provided sufficient evidence to send the case to the jury for decision.

[61] Lord Devlin, in the Hamlyn Lectures (1956, republished in 1988¹⁵) wrote:

“...It is the business of the judge as the expert who has a mind trained to make examinations of the sort to test the chain of evidence for the weak links before he sends it to the jury; in other words, it is for him to ascertain whether it has any reliable strength at all and then for the jury to determine how strong it is...”

[62] On a no case submission the question which the trial judge has to decide is whether a properly directed jury could convict on the evidence led by the prosecution at the close of their case.

¹⁴ [1998] 1 WLR 494

¹⁵ Sir Patrick Devlin, Trial by Jury (8th Hamlyn Lecture, 1956) (rep 1988) p 4.

- [63] The judge does not have to consider whether the prosecution has proved its case beyond a reasonable doubt, for if a judge were required to do so he would be usurping the jury's function something which a court ought to be guard against.
- [64] The question is, whether there was sufficient evidence on which a reasonable jury properly directed might convict.
- [65] In their opening address the Crown placed great emphasis on the documents involved in the matter and made reference to those documents as a means of proving the guilt of the appellant. They referred to the appellant falsifying documents, receiving funds for the sale of lands via cheques and further reference was made to documents from the Land Registry, Corporate Registry. The Crown invited the jury to consider those documents and requested that having studied those documents along with the oral testimony of the Crown witness to find the appellant guilty of the charge for which he was before the court.
- [66] The Crown from the opening address took the jury through a series of documents in great detail, including but not limited to bank statements, land registry documents, survey plans, reports, share transfer documents, court documents, newspaper advertisements, emails, corporate documents, applications for subdivision of lands, cheques, letters and land transfers. The Crown was allowed to read portions of these documents and the jurors were invited to highlight certain portions of various documents.
- [67] It is trite law that all documents, photographs and reports used as evidence must satisfy the requirements of the law to be admitted as evidence. During a trial, each piece of evidence should be marked and formally admitted. Such exhibits must be marked and formally admitted into evidence before they can be considered by the judge and jury.

[68] **Stone's Justices' Manual 2024**¹⁶ at paragraph 2.12 states:

"Evidence may be presented to the Court otherwise than by straightforward oral testimony by a witness as to facts observed. This other kind of evidence includes formal admissions, written statements, public and private documents, banker's books, maps and plans...Each has rules and procedures which must be observed if they are to be admitted into evidence. Some documents are allowed to speak for themselves, others need to be presented by a witness before becoming receivable as evidence."

[69] It is the practice that each exhibit must be identified by a label or other mark and sufficiently described in the statement to identify it. Identification should be made by the initials of the person who will produce the exhibit and a consecutive number.

[70] The learned trial judge from the outset, at the opening address of the crown allowed the prosecution to show documents to the jury and allowed the jury to be taken through some of the contents of those documents without them being tendered or marked as exhibits in accordance with approved practice and procedure.

[71] The appellant objected to this practice, arguing that documents not yet admitted into evidence ought not to be shown to the jury, however, the learned trial judge overruled the appellant's objection and allowed the Crown to show the documents to the jury prior to them being admitted into evidence. The appellant described the practice adopted as "unprecedented" and "unorthodox." This Court must agree with such a description.

[72] The learned trial judge himself recognised the importance of the documents in relation to the case when he said to the jury:

"...this case will be determined on the evidence you will hear from the various witnesses that will come over the next few days and the documentary evidence they will put before you to support that testimony"...(my emphasis)

¹⁶Butterworths.

- [73] At the close of the Crown's case, no application was or had been made for any of the documents referred to or shown to any witness in the matter, for any such documents to be tendered, admitted or marked as exhibits in the matter.
- [74] At the end of the examination in chief of Jessica Sweeney, after having given evidence of the various transactions related to the sale of lands at Providence Estate which she had compiled into a spreadsheet, she indicated that she had looked at all the exhibits in the matter, and stated that she had received documents from the Land Registry from Shelly Isles and that she (not the court) had numbered those documents – SI 1 – SI 34.
- [75] At no point in the transcript of the proceedings of the court below were any documents tendered as exhibits and marked accordingly by the court as exhibits in the proceedings. In fact, the documents do not form part of the Record of Appeal.
- [76] Witnesses were taken through land registry documents, bank documents, correspondence made up of letters and emails, court documents, minutes of board meetings, audit documents, valuations, architectural plans and other documents, none of which from the record were ever tendered and marked by the court.
- [77] 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.
- [78] Bakre J in **R v Troy Christian**¹⁷ stated:
- “At this point, permit me to state that I would have totally discountenanced this evidence in this regard because the statement of Milton Sweeney though forms part of the dispositions filed by the prosecution in their case,

¹⁷ ANUHCR2022/0062 (delivered 16th January 2024, unreported).

was never tendered in exhibit either by the prosecution or by the defendant's counsel who chose to rely on it in evidence. It is my respectful view that the mere loading of a document with the indictment in the disposition would not automatically make it an exhibit to which the Court would rely unless the document was properly tendered."

- [79] In this matter, the learned trial judge erred in allowing the jury to be shown documents relative to the matter during the Crown's opening address and further allowing the jury to highlight or identify certain portions of those documents before they were properly tendered as exhibits in the matter.
- [80] It is trite law that a document must be properly tendered, marked and exhibited before the Court accepts it as evidence upon which the Court can depend on in arriving at a decision.
- [81] In the civil case of **Gulabpate v Snit Pushpa Rane Pandey and others**¹⁸, the Honourable Allahabad High Court set aside a judgment of the lower court as a direct result of documents not being properly tendered and being used as a basis for a decision of the lower court. The court held that there were no exhibits marked in the case and there was no endorsement admitting the documents in evidence. The court further found that the documents did not form part of the documentary evidence adduced by the parties, and as such there was no legally admitted documentary evidence before the court. The matter was remitted for hearing *de novo* and the judgment was set aside.
- [82] In this matter, the Crown was relying not only on the oral testimony of the witnesses but were placing heavy reliance on the documentary evidence to prove the guilt of the appellant.
- [83] The Crown wanted the jury to see through the documentation the course of criminal conduct engaged in by the appellant. The acquisition of the shares, the application

¹⁸ (2019) 11 ADJ 769 (ALL).

to restore the company PEL, the change of shareholding and directors, the transfer of the questioned lands, the monies received via cheques, the opening of the account of Cassell and Lewis, the movement of funds in and out of that account. Those documents were all relevant to the proof of their case.

[84] Stripped bare of the documents, the Crown's case comprised of the oral testimony of Rooney with respect to the share transfer and the testimony of the persons who paid money to the appellant and who were given transfers which were duly registered at the Land Registry. Further, there was the testimony of the various officials at the Bank, the Land Registry, the Commercial Registry and the police, but not one document which was referred to by any of these witnesses was tendered to the court during the course of the trial.

[85] Failure to produce the necessary documents in support of their case left the Crown's case bare of the necessary proof required to show to the jury that the appellant did what they presented that the appellant did. There was as a result no evidence that the appellant represented that he was a director of Providence Estate or that he was entitled to sell land on behalf of the company. There was also no evidence of the appellant filing any documents for or on behalf of the company nor that any bank accounts were opened or that monies were received into bank accounts for or on behalf of Cassell and Lewis. Indeed, there was no evidence that an account existed in the name of Cassell and Lewis. Shorn of this documentary evidence, it left the Crown with no evidence with which to show that the appellant had done anything which would satisfy the various components of the wrongdoing with which he was charged.

[86] Was this a case where the jury should have been left to decide the weight of the evidence upon which the Crown based its case?

- [87] Was this a case where the learned trial judge was justified in saying that the Crown's evidence taken at its highest was such that a jury properly directed could not properly convict on it?
- [88] In considering the submission of no case to answer, the court must have in mind the charge before the court and its constituent parts in order to assess whether either of the two (2) limbs of **Galbraith** applies.
- [89] In this matter, the first test, is whether there is no evidence that the crime alleged has been committed by the appellant that is that essential evidence has not been called has to be looked at in light of the fact that the prosecution failed to tender any documents in the matter.
- [90] When one considers the constituent elements set out in the indictment, that is,
- (a) representing that he was a legitimate director of PEL, and/or
 - (b) representing that he was legally entitled to sell land at Providence Estate, and/or,
 - (c) filing a change of directors application with the Companies Registry regarding PEL, and/or,
 - (d) receiving funds into the bank account of Cassell and Lewis for the sale of land at Providence Estate.
- [91] In fact, there was no documentary evidence before the court regarding the incorporation of PEL or the appointment of Rooney, Wood, the appellant or anyone as directors or shareholders of PEL. There was no documentation before the court showing that PEL owned any lands in Montserrat.
- [92] With respect to the funds representing the proceeds of conduct, there is no documentary evidence properly tendered to the court to show that funds were transferred into the account of Cassell and Lewis, no documents showing that the appellant was the sole signatory on that account, there is no document to show that

this appellant advertised lands for sale at Providence Estate. None of the alleged falsified corporate documents were tendered as exhibits.

[93] Further, none of the alleged transfer documents evidencing the sale of lands at Providence Estate to various persons were tendered, neither copies of the cheques allegedly paid for those lands nor bank accounts nor statements were placed before the court.

[94] To my mind, the constituent elements as set out in the indictment required not only oral testimony but necessarily documentary evidence to prove to the satisfaction of the jury that the appellant had committed the offence for which he was charged. Failure by the Crown to properly tender the relevant documents was fatal to their case.

[95] With respect to the second limb of **Galbraith**, the issue to be decided by the Court is, whether there was some evidence but if what existed was of such a tenuous nature that the case ought not to be left to the jury. This involves an assessment or evaluation of the quality and reliability of the evidence rather than the legal sufficiency of the evidence.

[96] Taken as a whole, at its highest, the jury in this matter was faced with satisfying themselves to the standard of beyond a reasonable doubt, that in the absence of the relevant documentation, the appellant had committed the offence of concealing the proceeds of criminal conduct, as alleged by the Crown.

[97] In **R v Colin Shippey et al**¹⁹, Turner J, when considering the second limb of **Galbraith** made an assessment of the whole of the evidence and came to the conclusion that the prosecution's case taken at its highest, did not mean picking out the plums and leaving the duff behind. The interpretation placed on **Galbraith** was not that if there were parts of the evidence which went to support the charge then

¹⁹ [1988] CLR 767.

regardless of the state of the rest of the evidence that was enough to leave the matter to the jury.

[98] In this matter, in the absence of the documentary evidence, the case against the appellant was tenuous and the jury was in effect left with little or no evidence upon which to conclude that the necessary framework required for the essential elements of the charge were placed before them, in order to come to a conclusion of guilt to the required standard.

[99] The Crown's evidence taken at its highest, was such that a jury properly directed could not properly convict this appellant, and the learned trial judge ought to have accepted the no case submission and consequently had a duty to withdraw the case from the jury. To my mind, the no case submission ought to have been accepted by the learned trial judge on either limb of Galbraith and the case ought to have been withdrawn from the jury.

[100] Having failed to do so the learned trial judge erred. This ground of appeal therefore succeeds.

[101] The appellant further complained that the learned trial judge failed to give any reasons for his rejection of the no case submission, and it was impossible to determine whether his assessment of the sufficiency of the evidence was correct. This failure to give reasons made the conviction unsafe.

[102] The respondent submitted that whilst it would have been preferable for the learned trial judge to have provided full reasons for his decision to refuse the submission of no case to answer. His failure to do so did not make the conviction unsafe.

[103] When a no case submission is made this Court is concerned with whether there was in fact a case to answer. In **Edwin Gomez v The Queen**²⁰, Baptiste JA stated:

“...importantly, the real question in considering the Judge’s ruling that there was a case to answer is not whether his statement of the legal principles as understood by him were correct but whether his assessment of the sufficiency of the evidence was correct”.

[104] This Court is unable to ascertain what was the reasoning of the learned trial judge in concluding that the no case submission ought not to succeed and while this failure to give reasons was not a fatal omission, had reasons been given it would have provided some guidance to this Court as to how the learned trial judge arrived at his decision.

[105] Where the court below fails to give reasons for the exercise of a discretion, the Court of Appeal is entitled to review the decision of the lower court and substitute its own discretion. This Court having considered the state of the evidence at the close of the Crown’s case has concluded that the learned trial ought to have upheld the submission. This ground of appeal also succeeds.

Ground 14 – Verdict is unsafe and unsatisfactory

[106] Under this ground, the appellant argues that the verdict was unsafe and unsatisfactory having regard to the numerous errors made by the learned trial judge.

[107] The appellant submitted that the learned trial judge made several errors at the trial and that the cumulative effect of those errors made the conviction unsafe. One of the errors complained of was the learned trial judge permitting the Crown to give documents to the jury at the opening of their case when those documents were not admitted in evidence.

²⁰ ANUHCRA2014/0012 consolidated with with Isaiah Benjamin ANUHCRA2014/0013 (delivered 17th August 2022, unreported).

[108] Having already discussed at length the issue of the documentation in this matter, I will not repeat what has already been stated, except to cite section 39 of the **Supreme Court Act Montserrat**²¹ which states:

“(1) The Court of Appeal on any such appeal against conviction shall subject as hereinafter provided allow the appeal if it thinks that the verdict of the jury should be set aside on the ground that it is unsafe or unsatisfactory or that the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that there was a material irregularity in the course of the trial and in any other case shall dismiss the appeal:

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.

(2) Subject to this Act the Court of Appeal shall, if it allows an appeal against conviction, quash the conviction, and direct a judgment and verdict of acquittal to be entered, or, if the interests of justice so require, order a new trial.

[109] In this matter there was a material irregularity when the learned trial judge not only allowed the jury to be shown documents which were not admitted into evidence at the opening of the case for the Crown but further those documents remained with the jurors throughout the entirety of the trial and also during their deliberations, without ever having been admitted, tendered or marked as exhibits by the court.

[110] In the case of **Graham and Others v The Queen**²², Bingham CJ stated:

“If the Court is satisfied, despite any misdirection of law or any irregularity in the conduct of the trial or any fresh evidence, that the conviction is safe, then the Court will dismiss the appeal. But if, for whatever reason, the Court concludes that the appellant was wrongly convicted of the offence charged or is left in doubt whether the appellant was rightly convicted of that offence or not, then it must of necessity consider the conviction unsafe. The Court is then subject to a building duty to allow the appeal.”

²¹ Cap 2.01 Laws of Montserrat.

²² [1994] Crim LR 212.

- [111] As already indicated, there was in this matter material irregularity in the conduct of this trial, and this Court is left in doubt with regards to the correctness of the conviction of this appellant, and having considered all of the circumstances of the case, this Court cannot be satisfied that this conviction is safe and satisfactory.
- [112] Further, in *R v Davis; R v Rowe; R v Johnson*,²³ Mantell LJ stated:
- “The Court is concerned with the safety of the conviction. A conviction can never be safe if there is doubt about guilt...A conviction may be unsafe even where there is no doubt about guilt but the trial process has been vitiated by serious unfairness of significant legal misdirection.”
- [113] The material irregularity which occurred here leaves this Court in doubt as to the safety of the conviction of this appellant. Here there was a fundamental failure of procedure, and there is a real risk that this appellant was convicted on evidence which ought not to have been seen or considered by the jury, as it was not properly tendered at his trial. A miscarriage of justice has occurred.
- [114] The learned trial judge’s decision to allow the jury to see and study the documents both during the opening by the Crown and in their deliberations was procedurally incorrect and highly irregular.
- [116] As a result, given all the circumstances of the case, this Court is not satisfied that this conviction is safe and satisfactory, and this ground of appeal also succeeds.
- [117] As a result, the conviction of the appellant is hereby quashed and the sentence set aside.
- [118] Having arrived at this conclusion with respect to these grounds, I do not find it necessary to consider the other grounds of appeal raised by the appellant in the appeal.

²³ [2001] 1 Cr App Rep 115.

[119] In the interest of justice this Court is not minded to order a retrial in this matter. This is the second trial of the appellant with respect to this matter and further the appellant has already served the sentence which was passed in this matter in full having been released from prison in December 2024. The Court is not of the view that any useful purpose will be served in trying the appellant a third time.

I concur.
Trevor M Ward KC
Justice of Appeal

I concur.
Gerard St. C Farara
Justice of Appeal [Ag.]

By the Court

Chief Registrar