

IN THE EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

CASE NO: ANUHCR 2015/0096

BETWEEN:

THE QUEEN

and

KASROY SIMON

Appearances:

Mrs. Shannon Jones-Gittens, Counsel for the Crown
Mr. Andrew O’Kola, Counsel for the Defendant

Before: The Honourable Mr Justice Colin Williams

2021: September 27th, 28th, 29th, 30th;
October 1st, 4th, 5th, 19th

JUDGMENT

Background

- [1] **WILLIAMS J.:** The Defendant, Kasroy Simon is the brother of Jamil Morrissey and Jakima Morrissey. The three males all have the same father. The virtual complainant, Jacinta Morrissey is Jamil’s and Jakima’s mother. Mr. Simon is accused of fraudulently obtaining money from Ms. Morrissey. The Crown accuses Mr. Simon of falsely representing to Ms. Morrissey that he could assist Jamil and Jakima with criminal matters they had before the Court and collecting money from Ms. Morrissey to do so. Mr. Simon has denied the allegation.
- [2] On the 21st January, 2019 the Director of Public Prosecutions indicted Kasroy Simon on one count of ‘*Obtaining Money by False Pretense.*’ According to the ‘*Statement of Offence*’, Kasroy Simon is charged with:
- “*Obtaining money by false pretense, contrary to section 27 (1) (a) of the Larceny Act, Chapter 241 of the Revised Edition (1992) Laws of Antigua and Barbuda.*”
- [3] There is no section 27 (1) (a) of the **Larceny Act of Antigua and Barbuda** here is a section 27 (a) which deals with the offence described in the indictment. The Defendant’s counsel, Mr. Andrew O’Kola did not raise any objection to the indictment; neither was it alleged that the Defendant was misled in any way as to what he was being charged with. In the circumstances, the inclusion in the

'Statement of Offence' of subsection (1) is treated as an error that did not prejudice the Defendant in any way.

[4] Section 27 (a) of the **Larceny Act of Antigua and Barbuda** provides that:

"Every person who, by any false pretence – with intent to defraud, obtains from any person any chattel, money, or valuable security, or causes or procures any money to be paid, or any chattel or valuable chattel or valuable security to be delivered, to himself or to any person for the use or benefit or on account of himself or any other person, shall be guilty of a misdemeanor."

[5] According to the particulars of offence, (as amended):

"Kasroy Simon between the 6th day of December 2013 and 24th day of January 2014, in Antigua and Barbuda with intent to defraud, did obtained [sic] the sum of XCD\$15,960.00 from Jacinta Morrissey by falsely pretending that he could have court proceedings against Jamil Morrissey and Jakima Morrissey discontinued and varied."

[6] The charge against Mr. Simon arises from a series of payments made to him by Ms. Morrissey. The allegation is that Mr. Simon received a total of \$15,960.00. The Defendant denies receiving that sum of money from Ms. Morrissey, but acknowledged that he received from Ms. Morrissey funds amounting to \$13,800.00.

[7] The Defendant also disputes the reason for which the money was handed over to him by the Virtual Complainant. Mr. Simon's case is that the funds were for a purpose other than that alleged by the Crown, that it was a loan and that he has repaid most of it with an undertaking as to how the outstanding balance would be repaid.

Elements of the Offence

[8] In order for the Crown to prove that Kasroy Simon is guilty of obtaining money by false pretenses, evidence must be lead in relation to every element of the offence, so that the forum of fact is certain of the Defendant's guilt.

[9] The elements to be proven are that Kasroy Simon: -

- I. In fact made the pretense;
- II. Obtained the money as a result of the pretense;
- III. Intended to defraud; and
- IV. Knew the pretense was false.

Judge Alone

- [10] Pursuant to section 4 (2) (a) of the **Criminal Proceedings (Trial By Judge Alone) Act No. 8 2021**, this matter came on for trial before a single Judge sitting alone, without a jury. The Judge therefore being both the forum of law and the forum of fact.
- [11] As in all criminal trials, the burden of proof rests on the prosecution. The Defendant has absolutely nothing to prove. The standard of proof, as in all criminal trials, is proof so that the forum of fact is sure of the Defendant's guilt.

Crown's Case

- [12] In 2013, Ms. Morrissey's son, Jamil, was arrested and detained on a firearm charge. Ms. Morrissey spoke with Jamil at the prison; and Jamil said something to her about the Defendant. Ms. Morrissey knows the Defendant as Kashandi. Ms. Morrissey relayed a message to the Defendant for him to get in touch with Jamil at the prison. Ms. Morrissey said that the following morning, she received a telephone call from Kashandi. Kashandi told her that he knows someone who could help her and that he gave the person her number to call her.
- [13] Ms. Morrissey said she received a phone call from someone who said he was the DPP and who said that Kashandi told him about her son. Ms. Morrissey did not know who or what is the DPP. The person informed her that he was over all the judges and magistrates and he was going to help her. The caller said he was doing it as a return favour as he found out it was Kashandi who had given him blood when he got into an accident some years previously.
- [14] Subsequent to the telephone call from the person who said he was the DPP, the Defendant called Ms. Morrissey and told her that the DPP wants \$3,800.00. Kashandi kept on asking her: "*how soon you can get the money?*" On the 6th December, 2013 she went to the bank and withdrew the money. The Defendant met her in the bank. She handed over the money to him. Mr. Simon placed it in a black bag and left the bank.
- [15] A few days later the Defendant contacted her. He said the DPP wanted \$5,000.00. On the night of the 11th December, 2013 the Defendant told her in a telephone call that the DPP is working so hard, so make it \$5,500.00. She went to the bank the following morning and withdrew the funds. The Defendant met her in the bank. He collected the money. He again placed the money in a black bag. He hustled away saying that he had a CID meeting.
- [16] Jamil then missed his sign in date at the police station and he was again detained. Ms. Morrissey spoke with the Defendant about carrying clothes and something to eat for Jamil. The Defendant told her to bring \$800.00 as well to give the Magistrate. Ms. Morrissey gave him the money.
- [17] On the night of 26th December, 2013 the Defendant called Ms. Morrissey and told her that there was a Bench Warrant issued for her other son, Jakima. (Jakima at the time also had a firearms charge). The Defendant told her that someone needed \$1,500.00. Ms. Morrissey did not hand this sum directly over to the Defendant; the money was given to the Defendant by Jakima's girlfriend, Shirlene Greene, who met the Defendant in St. John's and paid him.

- [18] On 5th January, 2014 Ms. Morrissey received a text saying it is the DPP and that he needed \$3,800.00. Kashandi called right after and asked if the DPP called her and how soon he can get the money. Ms. Morrissey again went to the bank and withdrew the money. She handed over the money to the Defendant. He put the money into a black bag and left.
- [19] Apart from those transactions for which sums were withdrawn from the bank, the Virtual Complainant said that Mr. Simon collected smaller sums of money from her at her home. On 20th December, 2013 Kashandi came with his Jamaican girlfriend asking for \$374.00. Ms. Morrissey said that on the other occasion, he said that he needed \$360.00 to get a 'police record' for her son. She said that the Defendant told her that the DPP helps young people who get into trouble and that the DPP would help her son get a job. Ms. Morrissey inquired of the Defendant whether it was not \$10.00 for a police record, he told her yes, but that there were three policemen in the office, so he wants \$360.00. That was the 6th of January, 2014. The following night the Defendant turned up at her home in a police vehicle along with some officers whom the Defendant said were his friends. \$200.00 was needed for "an orange stamp" to go on the police record. The money was handed over.

Other Sums

- [20] Ms. Morrissey testified that she gave the Defendant other sums of money as well. However, in relation to those sums, there is no allegation that they were dishonestly obtained by the Defendant.
- [21] The Virtual Complainant said that the last time she gave Kashandi money was on the 24th of January, 2014. It was \$450.00. She said that Kashandi asked her for some money to pay child support. Ms. Morrissey said that following that payment to the Defendant, she decided to call Kashandi's family.
- [22] Also, when Jamil got locked up for failing to sign in at the police station, on the 14th December, 2013 she gave Kashandi \$50.00 to buy breakfast for Jamil as well as some clothes for her son. This, Ms. Morrissey said, was in addition to the \$800.00 the Defendant collected from her, saying that he was going to give it to the Magistrate.

Case Conflicts

- [23] There were some discrepancies and inconsistencies in the case for the Crown which had to be addressed and resolved. These discrepancies and inconsistencies concerned the two principal prosecution witnesses, Jacinta Morrissey and Shirlene Greene.
- [24] Ms. Morrissey testified that on the 27th December, 2013 she gave Ms. Greene – who was her son Jakima's girlfriend – "*\$1,500.00 in hard \$100.00... and told her about what Kashandi called about.*" Ms. Greene was given the money to pass on to Kashandi. However Ms. Greene for her part had a somewhat different recollection. Ms. Greene said that she went to town, withdrew the money from the bank, spoke with the Defendant on the phone using the number she was provided with; they met each other, she handed over the money to Kashandi, he wrote Magistrate Clerk on the envelope and then she went to the Magistrate's Court with the Defendant. Ms. Greene said that Ms. Morrissey subsequently refunded the money.

- [25] Not much turns on whether the money was refunded to Ms. Greene, or if the money was first given to Ms. Greene who then went and handed it over to the Defendant. The fundamental issues here are:
- a) Whether one can believe Ms. Morrissey's testimony that Kashandi said to her that Jakima "*was in big problem*" as someone at the Court informed him that a bench warrant was out for Jakima;
 - b) Whether one can believe Ms. Morrissey's testimony when she said Kashandi told her the person at the magistrate's court wanted \$1,500.00; and
 - c) Whether the \$1,500.00 was in fact paid to the Defendant as the Crown alleges.
- [26] Another inconsistency arose during Ms. Greene's testimony. Under cross examination, after Ms. Greene's memory was refreshed from her statement given in 2014, she accepted that the bank she said, in her evidence in chief, she withdrew the \$1,500.00 from was not the bank she actually got the money from to give to the Defendant. Ms. Greene explained that she went to two banks that morning, one where she had her personal account and the other, which she now accepts she withdrew the \$1,500.00 from, was where there was a joint account between herself and Jakima Morrissey.
- [27] Could the fact that Ms. Greene acknowledged that she identified the wrong bank from which she withdrew the money mean that she is an unreliable and untruthful witness? Is her reason for the error sufficiently explained by her, noting that nearly eight years have passed since the matter she is testifying about occurred? And fundamentally, could she be believed when she said she paid the \$1,500.00 to the Defendant at Ms. Morrissey's request and that Ms. Morrissey refunded the money?
- [28] The Virtual Complainant also had occasional challenges recounting with precision the sequence of events when she said that the Defendant came to her home and collected cash. She however made clear that the "*big money*" was always handed over to the Defendant in the bank, while he collected the "*small money*" from her home.
- [29] Ms. Morrissey's testimony that the Defendant collected money from her either at the bank or at her home gave rise to consideration of the issue of previous inconsistent statement. This is because when Ms. Morrissey gave her witness statement to the police on 2nd May, 2014 she said that she met the Defendant at the West Bus Station when she handed over \$800.00 to him, along with clothes for Jamil and \$50.00 to buy Jamil breakfast.
- [30] Whether Ms. Morrissey met the Defendant at the West Bus Station, or whether the Defendant came to her home does not appear to be a significant inconsistency. Given the passage of time, memories could have faded. The fundamental issue is: whether the Defendant made any representations to Ms. Morrissey about the need for the \$800.00 and whether it is accepted by the forum of fact that Ms. Morrissey did in fact hand over the money to the Defendant.

Credibility Challenges

- [31] The Crown's case cannot succeed if the Virtual Complainant fails the credibility test. If Ms. Morrissey cannot be believed or is disbelieved in relation to the critical matters, then the case against the Defendant is bound to fail.

The Receipt

- [32] The greatest test to Ms. Morrissey's credibility rested with the fact she informed the police that the Defendant had in fact repaid her \$12,000.00. Ms. Morrissey said that she did so after the Defendant was arrested and was in police custody. Ms. Morrissey said that when Kashandi was at the police station *"he was begging for his life... He called me and told me that his mother and his father don't love him... He told me the police officer don't like him. He said when you go up, tell the police officer me done pay \$12,000.00 and when you go to court tell the Magistrate I do not wish to continue the matter any longer."* Ms. Morrissey said that she felt sorry for Kashandi and she did say to the officer that he had paid her \$12,000.00 – but that it was a lie.
- [33] Ms. Morrissey also acknowledged that the Defendant's girlfriend, Sharla, came to see her and: *"I write a note and say Kashandi paid me \$12,000.00 but it was a lie. The girl came and took that note."* She said that she was at Magistrate's Court the following day when Kashandi passed the note she had given to Sharla to his lawyer but the Magistrate remanded the Defendant.
- [34] The issue which arises is: could someone who admits to being untruthful in connection with this matter be believed? Not only did Ms. Morrissey say to the police that she received the money, but she further committed that to writing. However Ms. Morrissey seeks to explain it by saying she was acting at the request of the Defendant for whom she felt sorry.
- [35] The Defendant in his testimony acknowledged that the note of which Ms. Morrissey testified was indeed written after he was arrested and passed through his girlfriend to him. But, the Defendant said, this was a second note that Ms. Morrissey prepared evincing the repayment of the \$12,000.00. Mr. Simon said that the first was at his home, but the police did not accede to his request to take him to his house to get it, so he got a second receipt from Ms. Morrissey.

Conduct and Demeanour

- [36] Ms. Morrissey during her evidence-in-chief seemed determined to deliver her evidence in the manner she understood it. She at times resisted exhortations to confine her testimony within specified boundaries. At times, Ms. Morrissey responded during cross examination with some resentment and annoyance.
- [37] Prosecuting Counsel characterized the Virtual Complainant's conduct as a demonstration of Ms. Morrissey's frustration. Counsel noted that while one may say the Virtual Complainant's reaction was somewhat un-sophisticated, it ought to be acknowledged that she was being real.

- [38] Skilled cross-examiners are able to – for want of a better term – upset or annoy a witness into error. It cannot be doubted that Ms. Morrissey was somewhat less than forthright or cooperative with Defence Counsel on some occasions. The issue is: was her account as to what transpired between herself and the Defendant undermined?
- [39] The Virtual Complainant denied having seen her statement since she gave it to the police. Ms. Morrissey however in her testimony was recalling precise dates and sums withdrawn – saying at times what day of the week it occurred. Pressed by Defence Counsel as to how she could recall such information without refreshing her memory from her statement, Ms. Morrissey said that every time she withdrew the sums and gave money to Kashandi she made a note of it in her book. Counsel sought to doubt Ms. Morrissey's evidence on that point; she insisted that each time she gave Kashandi money, she recorded it in the book – which she kept in her bag. Counsel requested to be shown the book for inspection. Ms. Morrissey retrieved it and handed it to Counsel. He examined the records Ms. Morrissey made in the notebook; there were no further questions on that issue.

Circumstantial Evidence

- [40] Although the Crown's case rested essentially on direct evidence from Ms. Morrissey and to a lesser extent supportive evidence from Ms. Greene, some circumstantial evidence was advanced in support of the case against the Defendant.
- [41] Ms. Gordina Hector-Murrell in 2014 was a Forensic Scientist attached to the Regional Cyber Investigations Lab. She did an analysis of the Defendant's mobile phone, number 268-788-8032 to determine if there was communications with telephone number 268-779-2904. According to the investigating officer in the matter, that latter number belonged to Ms. Morrissey. Ms. Hector-Murrell's mandate was to examine the period 1st December, 2013 to 31st January, 2014.
- [42] The Forensic Scientist found that the first contact during the period was an outgoing call from the Defendant's phone to 779-2904, on the 3rd December, 2013. The last communication was an incoming call to the Defendant's phone from 779-2904 on the 24th January, 2014. During the period there were 124 contacts between the two phones. There were 76 outgoing contacts from the Defendant's phone to 779-2904; the 76 contacts included 5 Short Message Service, SMS. There were a total of 48 incoming contacts to the Defendant's phone from 779-2904. None of the incoming contacts to the Defendant's phone from 779-2904 were SMS. Most of the calls from the Defendant's phone were in December 2013. Of the 15 calls in January 2014, two of the calls were on the 11th, six on the 13th and three on the 23rd.

Defendant's Case

- [43] Mr. Simon in his evidence in chief said that he was a police officer on suspension. He was suspended on the 16th January, 2013 and the matter was dismissed the following day.
- [44] Mr. Simon said that while on suspension he receives \$1,870.14 and that he had no other form of employment.

- [45] The Defendant maintained that the allegations made against him are false: he did not have any power to make contact with the DPP, neither did he have the capacity to make contact with the Chief Magistrate regarding his brothers, Jamil and Jakima.
- [46] The Defendant said that on three different occasions in January or February 2014, Ms. Morrissey gave him money, amounting to \$13,800.00. There were three payments to him: for \$3,800.00, \$6,000.00 and \$4,000.00. This money was to assist with an operation for his daughter. The operation itself cost some \$25,000.00. The operation had to be done because his daughter's: "...small intestine had cross over, as we say wrap around her appendix. As a result, they had to remove the appendix and patternise the small intestine, because they were floating around in her tummy. So it affected her from digesting and passing feces."
- [47] Mr. Simon said that on the three occasions that he received money from Ms. Morrissey, he collected the money at her house.
- [48] The Defendant acknowledged that when he gave the police a statement under caution on 24th May, 2014 he told Corporal Proctor that the sums he received from Ms. Morrissey were: \$3,800.00, \$6,800.00, and \$800.00. However, those figures were not correct. Mr. Simon said that while he was in custody he "*remembered exactly how she [Ms. Morrissey] had given me the money.*" The Defendant said that in an interview with the police two days later, on 26th May, 2014 he gave the police the identical breakdown to what he is saying in Court now.
- [49] Mr. Simon stated that he has paid back Ms. Morrissey \$12,000.00. He was "*throwing two box hand*" and he made payments of \$4,600.00 and \$7,400.00 to Ms. Morrissey from the monies that he received. Mr. Simon said that after he paid the second installment, he got a receipt from Ms. Morrissey. That receipt was at his home when he was incarcerated. The Defendant said that he asked Officer Proctor to take him home to get the receipt but the officer said "*not now.*"
- [50] Mr. Simon stressed that he never received any payment amounting to \$5,500.00, or \$800.00, or \$360.00 or \$200.00 from Ms. Morrissey or \$1,500.00 from Ms. Greene.
- [51] He never texted Ms. Morrissey with anything referencing the DPP. The only text he ever sent to Ms. Morrissey was '*please call me*'.

Testimony Tested

- [52] In cross examination the Defendant said that he was accustomed to visiting Ms. Morrissey's home since he was small. Their relationship was good.
- [53] Mr. Simon said he has been a police officer since 2002. He knew of the DPP's power to discontinue matters. He was also familiar with what a bench warrant was.
- [54] The Defendant said that he also earned money from side jobs he was doing prior to being suspended. He said there was "*a night gig at Wendy's Bar and Snackette and during the day I would do an off and on driving job.*"

- [55] In relation to the box-hand, he said it was himself and his daughter's mother, Crystal, who paid it. One was \$150.00 with 30 hands and the other was \$500.00 with 15 hands. [This would mean a payment of \$4,500.00 in one case and \$7,500.00 in the other]. Out of the box hand money, he reimbursed Ms. Morrissey \$4,600.00 and \$7,400.00. The Defendant went on to say that he gave Crystal \$19,800.00 towards the operation for their daughter. Of that figure, \$13,800.00 was from the money he got from Ms. Morrissey and "*my contribution, about \$6,000.00 from my earnings and the box hand.*" Prosecuting Counsel pointed out that the box hand money was already fully accounted for, since according to the Defendant, it was paid to Ms. Morrissey as a refund.

Tangential Issues

- [56] Not every disputed point has to be resolved. Only those questions that are required to be answered in order to reach a verdict need to be addressed.
- [57] There were a number of lesser issues that arose which ultimately did not have an impact on the actual elements of the offence. Some of these are:
- Ms. Morrissey said that it was not until her son Jamil was arrested and asked her to get in touch with the Defendant that she got to meet Kashandi. For his part, the Defendant said that he used to be at Ms. Morrissey's home since he was small. It was not necessary to resolve this. However, consideration of the different versions fell to be borne in mind in evaluating the overall credibility of the witness.
 - The Defendant maintained that he used to be speaking with the Virtual Complainant by telephone many years. He contended that if the records had been examined beyond the period that Ms. Hector-Murrell was asked to look at, the contact over the years between himself and the Virtual Complainant would have been apparent. First, the Defendant would have had disclosure of Ms. Hector-Murrell's findings for several years. If the Defence considered it that important, it could have requested of the Crown to do a more detailed search. Secondly, in any event, whether or not there were conversations before December 2013 is only important to the extent that the Defendant said it was in October that he spoke to Ms. Morrissey about his daughter.
 - The Crown sought to highlight that the Defendant first said he had no other source of income other than the half-pay he was receiving while on suspension from his job and that he initially said the date for collecting his '*box money*' couldn't be changed, that is why he needed the funds from Ms. Morrissey. However he later said that he got his '*box money hand*' earlier. Those are matters assessed when considering credibility and do not have any direct relationship to the elements of the offence.
 - Documentary evidence regarding the sums withdrawn by Ms. Morrissey from the bank though marked for identification, was not tendered as part of the case. Officer

Marlon Proctor identified five bank receipts handed to him by Ms. Morrissey. However, Ms. Morrissey testified that she lost the receipts and the Crown accordingly did not seek to tender the receipts. The Defendant acknowledged that he signed a “white paper” with two of the receipts acknowledging sums he received from Ms. Morrissey. But his initials were not on the receipts neither was this “white paper” available to be tendered. The receipts were therefore not available for examination.

Apology?

[58] There was evidence from Ms. Morrissey that the Defendant acknowledged receiving the sums of money as alleged by the Crown.

[59] According to Ms. Morrissey:

“I write all the figures in a book. I call Kashandi. All the figures I called out, he said: ‘That’s correct; that’s correct’. Kashandi told me he sorry for what he did to me and he apologized. He apologized to me; that was before he went to jail. After the apology, he said he was going to come and bring half of the money. But he never did.”

[60] Ms. Morrissey repeated that bit of evidence while being cross examined:

“He did apologise. When I call him and read out all the figures to him. He did tell me he will bring half of the money. I told him to come and meet me and a next son at Ebenezer; but he never show up. It was after the 24th January 2014 I got my figures together and I called him.”

Credibility Assessment

[61] Having listened to all of the evidence; having observed the demeanour of the witnesses; and having reviewed the evidence, it is clear that the Defendant’s testimony as to what occurred cannot be believed.

[62] It seems strange that the Defendant would have spoken to the Virtual Complainant in October 2013 about his daughter’s illness; that they had no further conversation about it; then in January 2014 she suddenly started giving him thousands of dollars to pay for his daughter’s operation.

[63] The box money which was central to his interaction with Ms. Morrissey had several incomprehensible twists: was he throwing the hands or was it being done jointly with Crystal as the Defendant said in cross examination? When Mr. Simon spoke to Ms. Morrissey about needing money for his daughter’s operation, it was because he couldn’t get his hand changed. However, soon after he got the money from Ms. Morrissey, the dates were changed and he got both hands. Then, the money from the box hands, which together totaled \$12,000.00, the Defendant said was used to refund Ms. Morrissey, but he still claimed that some of the additional \$6,000.00 he gave to Crystal to pay for the operation came from the box money.

- [64] Further, at the time the Defendant's claims Ms. Morrissey started to give him this money, is coincidentally the same time period that the telephone calls between them petered out. It is strange that the intense exchange of calls occurred during the time that Ms. Morrissey said the Defendant was making demands; but at the time when the Defendant said Ms. Morrissey started to give him thousands of dollars, the calls ceased.
- [65] Although the Defendant's narrative may be rejected, it does not mean that he is automatically guilty of the offence as charged. The forum of fact must be satisfied on the Crown's case and from Ms. Morrissey's testimony in particular, that Kasroy Simon is guilty.
- [66] It was noted earlier that there were discrepancies and inconsistencies to be assessed. Also the Virtual Complainant while confident with regard to the dates transactions were done, appeared to be non-cooperative in other circumstances.
- [67] While Ms. Morrissey may not be classified as a senior citizen by some, she is clearly someone of advanced years. From the testimony in Court she had at least four adult children. She worked in the hotel industry as a cleaner. The Defendant in cross examination said that prior to this matter, Ms. Morrissey never made any false report against him. There was nothing to suggest that she had a devious or cunning disposition.
- [68] Ms. Morrissey did seem determined to inform the Court of certain things: *"I never asked Kashandi for no help. He told me that he know somebody that could help me... Kashandi called me on the 26th... want more, more. Kashandi never get enough... All along it was a lie; nothing tall go like that. I didn't know that at the time."* But do these things mean that her testimony is false and concocted?
- [69] Upon close scrutiny of Ms. Morrissey and her evidence, it is difficult to conceive of her fabricating this narrative. Ms. Morrissey did speak out of turn on occasions, but it seemed to be more out of passion and an intolerance to suggestions that she was anything less than forthright. In her simplicity there was honesty.

Findings

- [70] Having considered the totality of the evidence, the following findings of fact are made:
- i. Towards the end of 2013, Ms. Jacinta Morrissey's son, Jamil Morrissey, was arrested and charged for a firearm matter;
 - ii. Another of Ms. Morrissey's sons, Jakima Morrissey, also had a firearm matter pending before the Magistrate's Courts, but he was out on bail;
 - iii. Ms. Morrissey spoke with Jamil while he was in custody and the conversation included something about the Defendant, whom she knew as Kashandi;
 - iv. Ms. Morrissey made efforts to relay Jamil's message to Kashandi;
 - v. The Defendant called Ms. Morrissey's cell phone on 3rd December, 2013. That was the first contact between them in the month of December 2013 via this medium;
 - vi. During December 2013, the Defendant sought to contact Ms. Morrissey on almost 60 other occasions via cell phone;

- vii. The last cell phone contact between the Defendant and Ms. Morrissey in January 2014 was on the 24th;
- viii. There was a significant decrease in the Defendant's efforts to reach Ms. Morrissey via cell phone in January 2014. While there were 59 calls and SMS from the Defendant's phone to 779-2904 in December 2013, in January 2014 there were 17 calls and SMS from the Defendant's phone to 779-2904.
- ix. In the months of December 2013 and January 2014, Ms. Morrissey handed over sums of money to the Defendant;
- x. The sums handed over to the Defendant were based on what figures Mr. Simon told the Virtual Complainant were needed;
- xi. None of the funds Ms. Morrissey handed over to the Defendant was for any medical attention to the Defendant's daughter. The only time Ms. Morrissey gave the Defendant money for anything relating to any child, is when she gave Mr Simon \$450.00 to pay child support;
- xii. The money the Defendant got from Ms. Morrissey was not a loan, neither has the Defendant paid any money back to Ms. Morrissey.
- xiii. The Defendant represented to Ms. Morrissey that the sums he was collecting was to get certain named people to do things to help her sons;
- xiv. At no time did the named people inform the Defendant that they would do anything to assist Ms. Morrissey's sons. The Defendant never had any communication with these people about Jamil Morrissey, Jakima Morrissey or at all;
- xv. The Defendant knew what he was saying to Ms. Morrissey about the purpose for collecting the money was false.

Conclusion

[71] Kasroy Simon is guilty as charged of the offence of obtaining money by false pretenses from Jacinta Morrissey.

Colin Williams
High Court Judge

By the Court

Registrar