
**IN THE EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA**

**IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

CASE NO: ANUHCR 2020/0117

BETWEEN:

THE QUEEN

and

**[1] HAROLD LOVELL
[2] JACQUI QUINN
[3] WILMOTH DANIEL**

Defendants

Appearances:

Mr. Oris Sullivan and with him Mr. Sean Nelson, Counsel for the Crown
Ms. Anesta Weekes, Q.C and with her Mr. Charlesworth Tabor, Counsel for No: 1 Accused
Mr. Dane Hamilton, Q.C and with him Mr. Chaku Symister, Counsel for No: 2 Accused
Mr. Justin L. Simon, Q.C and with him Mr. Sylvester Carrott, Counsel for No: 3 Accused

2021: November 9th, 10th, 11th, 12th, 15th, 16th, 17th, 18th, 19th, 23rd

RULING

- [1] **WILLIAMS J.:** At the close of the Prosecution's case, Counsel for the three defendants - Mr. Harold Lovell, Dr. Jacqui Quinn and Mr. Wilmoth Daniel - submitted that their clients have 'no case to answer' in relation to the offenses of embezzlement, conversion and corruption with which the Defendants were charged.
- [2] The test to be applied when a Defendant contends that there is no case to answer is found in the judgment of Lord Lane CJ in **R v Galbraith** [1981] 1 WLR 1039; 73 Cr App R 124 (CA) at 127:
- “(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty – the judge will stop the case.

“(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence.

“(a) Where the judge concludes that the prosecution’s evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case.

“(b) Where however the prosecution’s evidence is such that its strength or weakness depends on the view to be taken of a witness’s 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 on which the jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury...

“There will of course, always in this branch of the law, be borderline cases. They can safely be left to the discretion of the judge.”

[3] The Defendants seek to assail the Crown’s case on two fronts:

i. In relation to the Counts for embezzlement:

- a. The Counts as they appear on the indictment are improperly drafted and therefore defective;
- b. The charges of embezzlement are ill-conceived, in that the Defendants cannot be properly charged for such an offence; and

ii. In relation to the Counts for conversion and corruption:

- a. There is no evidence that the crime alleged has been committed; and/or
- b. There is inherent weaknesses, vagueness and inconsistencies so that the prosecution’s case taken at its highest, is such that a jury properly directed cannot properly convict on it.

Background

[4] On or about the 24th April, 2008 three Daewoo buses arrived at the port in Saint John’s, Antigua and Barbuda. The buses were shipped on the container vessel ‘Ryujin’. The buses were consigned to the “Ministry of Foreign Affairs of Antigua and Barbuda,” for the attention of “Mr. Colin Murdoch, Permanent Secretary”.

[5] The shipper is identified on the cargo manifest as the Korea International Cooperation Agency, KOICA. The packing list identified the buses as ‘Diplomatic Cargo’. The buses were gifts from the Government of the Republic of South Korea.

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- [6] Permanent Secretary Murdoch requested the assistance of the Transport Board to have the buses cleared from the customs. Mr. Hubert Jarvis, an official of the Transport Board, cleared the buses. The buses were then taken to the Transport Board's Motor Pool.
- [7] During the course of 2008, the three buses were, on differing occasions, separately registered and licensed at the Transport Board in the names of the three defendants: Mr. Harold Lovell, Dr. Jacqui Quinn and Mr. Wilmoth Daniel.
- [8] In 2008 when the buses arrived in the country, the three Defendants were Parliamentary Representatives and Ministers of Government in Antigua and Barbuda.
- [9] The nine charges against the three accused for embezzlement, conversion and corruption, concern three buses.
- [10] The Vehicle Identification Number (VIN) for each of the three buses were: KL5UM52HE8U001554, KL5UM52HE8U001555 and KL5UM52HE8U001556

Insured and Registered

- [11] The bus with the VIN ending 01554 was insured at the National General Insurance Company, NAGICO, on 13th June, 2008 in the name of the third defendant, Mr. Wilmoth Daniel. The bus was issued with license plate number C-9874 by the Transport Board.
- [12] The bus with the VIN ending 01556 was examined at the Transport Board on 20th August, 2008. The bus was insured at the Antigua and Barbuda Insurance in the name of the first defendant, Mr. Harold Lovell. The bus was issued license plate number C-10211 by the Transport Board.
- [13] The bus with the VIN ending 01555 was insured at the General Insurance Company Limited in the name of the second defendant, Dr. Jacqui Quinn. On the 3rd December, 2008 the bus was issued with license plate number C-10255 by the Transport Board.
- [14] Eight years after the buses first arrived in Antigua and Barbuda, on the 30th May, 2016 summonses were served on the three Defendants by then Assistant Superintendent of Police Lisborn Michael, charging them with one count each of embezzlement, conversion and corruption.
- [15] The Defendants were committed to stand trial on 18th June, 2020. They were indicted by the Director of Public Prosecutions on the 20th day of January, 2021.
- [16] The three Defendants are charged separately. There is no suggestion of joint enterprise. They are joined in this indictment based on the subject matter of the offences.
- [17] Counts One, Two and Three concerned Mr. Lovell only.
- [18] Counts Four, Five and Six concerned Dr. Quinn only.
- [19] Counts Seven, Eight and Nine concerned Mr. Daniel only.

Jurisdiction

- [20] By virtue of the **Criminal Proceedings (Trial By Judge Alone) Act**, No. 8 of 2021, the charges on the indictment in this matter are mandated to be tried by a single Judge.
- [21] The **Criminal Proceedings (Trial By Judge Alone) Act**, was signed by the Governor-General on the 28th May, 2021.
- [22] Statutory Instrument 2021, No. 46 the **Criminal Proceedings (Trial by Judge Alone)** (Notice of Commencement Order), 2021 was published in the Gazette, No. 38, appointing the 7th day of June, 2021, as the date the new law entered into force.
- [23] **Act No. 8 of 2021** provides at section 4 (1) that:
- “...every person who is committed for trial or indicted, either alone or jointly with others, for any one or more of the offences set out in subsection (2) of this section shall be tried before a judge of the court sitting alone without a jury....”
- [24] Subsection (2) lists at (a) “indictable offence under the **Larceny Act**, Cap. 241” and at (c) “indictable offences under the **Prevention of Corruption Act**, No. 21 of 2004.”
- [25] The three offences with which the Defendants are charged are for offences under the **Larceny Act** and the **Prevention of Corruption Act**.
- [26] The **Criminal Proceedings (Trial By Judge Alone) Act** did not alter in any way the considerations to be applied by the Judge, as the forum of law, when there is a ‘no case’ submission. The Judge is only to consider at this stage whether a prima facie case is made out. The fact-finding function of the single Judge arises only at the very end of the case.

The Charges and the Law

- [27] Prior to the commencement of any evidence being lead, the Crown sought – and was granted – extensive amendments to all of the counts on the indictment. These amendments in the ‘Particulars of Offence’ concerned the date of the offences; substituting the wording “of Antigua and Barbuda” for “within the United Progressive Party Administration” in the description of the Government; and in relation to the corruption charge, a completely different offence.

Counts One, Four and Seven

- [28] Embezzlement is an offence contrary to section 20 (2) (b) of the **Larceny Act** Cap. 241 of the Laws of Antigua and Barbuda, Revised Edition 1992. The law states:
- “Every person who – being employed in the public service of Her Majesty or being a member of or employed in the police force – embezzles or in any manner fraudulently applies or disposes of for any purpose whatsoever except for the public service any chattel, money, or valuable security entrusted to or received or taken into possession by him by virtue of his employment, shall be guilty of a felony....”

[29] The 'Particulars of Offence' of the embezzlement charges as contained in the indictment stated that the named Defendant:

"between the 23rd day of April, 2008 and the 31st day of December 2015, in Antigua and Barbuda, being a Minister of Government of Antigua and Barbuda, did fraudulently apply one Daewoo motor bus [VIN number inserted] valued at \$218,520.00 ECC for his [her] own use."

[30] The particulars of this offence as it appeared in the indictment did not include the words "being employed in the public service". The omission has to be revisited later as it is fundamental to the Defendants' challenge of the viability of the charge.

[31] Mr. Sullivan in his opening of the Crown's case, noted that section 48 (2) of the **Larceny Act** provides for an alternative conviction to embezzlement. The relevant part of the subsection states:

"If on the trial on any indictment against section 20 [embezzlement], it is proved that the defendant stole the property in question, the jury may find him guilty of stealing...."

Counts Two, Five and Eight

[32] Conversion is an offence contrary to section 21 (1) (d) of the **Larceny Act**. The law states:

"Every person who – having either solely or jointly with any other person received any property for or on account of any other person, fraudulently converts to his own use or benefit or the use or benefit of any other person, the property or any part thereof or any proceeds thereof, shall be guilty of a misdemeanor...."

[33] The 'Particulars of Offence' for the conversion charges as indicted stated that the named Defendant:

"between the 23rd day of April 2008 and the 31st of December 2015, in Antigua and Barbuda, being a Minister of Government of Antigua and Barbuda, fraudulently converted one Daewoo motor bus [VIN number inserted] valued at \$218,520.00 ECC donated by the Government of the Republic of Korea to the Government of Antigua and Barbuda, being the property of the Government of Antigua and Barbuda, for his [her] own use."

[34] Two issues arose at the 'no case' stage in relation to this charge: the misidentification of the section – or the stating of a non-existent section; and the listing of the wrong VIN for the vehicle in relation to the Second Defendant.

Counts Three, Six and Nine

[35] Corruption, as charged, is contrary to section 3 (1) (h) of the **Prevention of Corruption Act No. 21** of 2004 of the Laws of Antigua and Barbuda. The law states:

“A person commits an offence if he – improperly uses for his benefit or that of a third party, any property belonging to a public body to which he has access as a result of or in the course of the performance of his functions as a public official.”

[36] The ‘Particulars of Offence’ for the corruption charges stated that the specified Defendant

“between the 23rd day of April 2008 and the 31st of December 2015 in Antigua and Barbuda improperly used for his [her] benefit or that of a third party, property namely one Daewoo motor bus [VIN number inserted] valued at \$218,520.00 ECC belonging to a public body, namely the Government of Antigua and Barbuda which he [she] had access to as a result of the performance of his [her] functions as a public official.”

No Dispute

[37] Some aspects of the Crown’s case are not disputed by the Defendants. Those matters for which there is a consensus are:

- i. That the Daewoo buses were gifts from the Government of South Korea;
- ii. That it was the Prime Minister at the time, Mr. Baldwin Spencer, who initially engaged officials from the Republic of Korea about donating the buses;
- iii. That Antigua and Barbuda’s Ambassador to the United Nations, Dr. John Ashe, was designated by Prime Minister Spencer as the point of contact with the Koreans;
- iv. That the buses arrived in Antigua and Barbuda in April 2008;
- v. That the buses were consigned to the Ministry of Foreign Affairs for the attention of the then Permanent Secretary, Mr. Colin Murdoch;
- vi. That the buses were each valued at ECC \$218,500.00;
- vii. That the buses were cleared from the customs by an official of the Transport Board at Mr. Murdoch’s request;
- viii. That when the buses were removed from the port in Saint John’s, they were taken to the Transport Board’s Motor Pool;
- ix. That each of the buses was registered, insured and licensed in the respective names of the Defendants;
- x. That the insurances and licenses for the respective buses were renewed in the names of the three Defendants;
- xi. That each Defendant gave instructions to different persons on separate occasions to collect a bus from the Transport Board;

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- xii. That the Defendants were Ministers of Government in 2008;
 - xiii. That the late Dr. John W. Ashe apart from playing a central role in the procurement of the buses, also gave written directions as to how the buses ought to be allocated;
 - xiv. That two other buses gifted by the Koreans arrived in Antigua and Barbuda prior to the three in this matter and were assigned to Parliamentary Representatives by Ambassador Ashe.

[38] The Crown for its part agrees with some aspects of the Defendants' case:

- i. None of the Defendants personally went to insure the bus;
- ii. None of the Defendants went to personally register the bus;
- iii. None of the Defendants personally removed any of the buses from the Transport Board's custody or control;
- iv. The buses were applied to community use.

Matters in Dispute

[39] The Defendants pleaded 'not guilty' to all three charges laid against them. They join issue with the Crown on a number of points. The points of disagreement between the Defendants and the Crown included:

- i. Neither one of the Defendants acted fraudulently;
- ii. The Defendants did not embezzle any of the buses;
- iii. No one converted any of the buses to his or her own use;
- iv. The buses were not used improperly, whether for any personal benefit or that of a third party;
- v. The buses were not the property of the Government of Antigua and Barbuda; and
- vi. The extent of Ambassador Ashe's authority.

[40] It is to be noted that there was a difference between what was said in and out of Court statements by the First and Second Defendants on the one hand and the Third Defendant on the other hand, about the ownership of the bus that the particular Defendant is accused of embezzling, converting and corruptly obtaining. Mr. Lovell and Dr. Quinn said that the bus belonged to the community and they were the custodians; Mr. Daniel said the bus was given to him personally.

[41] As far as Mr. Lovell and Dr. Quinn were concerned, they had no animus possidendi – no intent to possess; no manifest intention to control. They said further, that although they each incurred

expenses for the licensing, insurance and maintenance of the respective buses there was no factum possidendi – the fact of possession was absent. Mr. Daniel pointed to the written assurance from Ambassador Ashe that the bus was donated to him; accordingly, the bus belonged to him.

- [42] To assess whether the Crown has made out a prima facie case for the Defendants to answer, it is necessary to review the evidence.

The Genesis?

- [43] The convenient starting point is a request made by the Cabinet of Antigua and Barbuda to the Director of Audit to conduct an audit “of vehicles and other items purchased/donated through the Antigua and Barbuda Permanent Mission to the United Nations between the calendar years 2009 and 2014.” (See Exhibit ‘DE-1’).

- [44] No vehicles were either purchased by the Mission or received as donations during the time period of the audit requested by the Cabinet. The Director of Audit in his report dated 20th November, 2015 stated:

“However, in 2007 and 2008, the New York Mission and the Ministry of Foreign Affairs received donations from the Republic of Korea in the form of school buses. It should be noted that the documentation could not be found in the Mission during the examination of their records in 2015.”

- [45] The Director included in his report five Daewoo buses that arrived in Antigua and Barbuda courtesy the Republic of Korea.
- [46] The Special Audit Report was sent to the Prime Minister, the Attorney General, the Cabinet Secretary and the Financial Secretary.
- [47] A police investigation into the five buses mentioned in the Director of Audit’s report was launched on the 8th December, 2015. ASP Michael headed the police investigative team.

Documentary Evidence

- [48] Commencing on the 5th January, 2016 a number of search warrants were executed at the insurance companies that provided coverage for the three buses. The investigators retrieved various documents such as the insurance proposal forms, the Transport Board applications and renewals of insurance policies. Correspondence and copies of documents were also recovered from the Ministry of Foreign Affairs, customs and a shipping agency.
- [49] Included in the documents obtained by the investigators were forms which showed that each of the three buses – C-10211, C-10255 and C-9874 - was insured and licensed in the names of the respective Defendants – Mr. Lovell, Dr. Quinn and Mr. Daniel. The forms also indicated the VIN KL5UM52HE8U001556, KL5UM52HE8U001555 and KL5UM52HE8U001554, corresponded with the respective license plates.
- [50] While the forms bore the names of the Defendants as applicants, registrants, or policy holders, none of the forms had the signature of any of the Defendants.

Official Correspondence

- [51] Ambassador John W. Ashe once headed Antigua and Barbuda's Permanent Mission to the United Nations.
- [52] The earliest reference to buses in the documentation tendered and exhibited during the course of the trial was a Memorandum from Ambassador Ashe which was addressed to the Minister of Finance Dr. Errol Cort and Mr. Trevor Walker, Minister of State in the Prime Minister's Office. That Memorandum was copied to Prime Minister, Mr. Baldwin Spencer and Permanent Secretary, Mr. Colin Murdoch. It was dated 11th October, 2005 and titled 'Procurement of two School Buses'. It stated:
- "I am pleased to inform that, in my (sic) response to a request to my friend and colleague, H.E. Mr Choi Young-Jin, Permanent Representative of the Republic of (South) Korea to the United Nations, the Government of the Republic of Korea has agreed to deliver two new school buses to Antigua and Barbuda in the first half of 2006. In keeping with the specifics of the request, one bus is designated for the newly opened school in Barbuda and the second is to be determined by Minister Cort.
- "In conveying the positive decision of his Government, Ambassador Choi was at great pains to attribute the timing of the delivery to the need to reflect the cost of the buses in the appropriate Ministry's budget for 2006. However, it should be noted that South Korea will be competing against Samoa for a seat on the International Criminal Court, in elections to be held in the UN General Assembly in January 2006, and they have requested our support."
- [53] Diplomatic Notes were exchanged between the Embassy of the Republic of Korea based in the Dominican Republic and the Ministry of Foreign Affairs in Antigua and Barbuda. The Diplomatic Notes tendered in evidence by the Crown detailed exchanges referring to multiple vehicles.
- [54] Although the correspondence was not necessarily specific to the three Daewoo buses that are in issue in this trial, the correspondence provide the context and so are relevant.
- [55] On the 7th February, 2006 a Diplomatic Note from the Korean Embassy referred to "two school buses requested through the Permanent Mission of Antigua and Barbuda to the United Nations." ['MP-22'].
- [56] On the 2nd May, 2006 the Ministry of Foreign Affairs of Antigua and Barbuda contacted the Korean Embassy about "the donation of two school buses and two police cars to Antigua and Barbuda." The Ministry of Foreign Affairs sought "to remind the Embassy that the consignee for the school buses is the Permanent Secretary, Ministry of Education." ['MP-23']. (It is noted that the Ministry of Foreign Affairs specifically designated the Ministry of Education to be the consignee for the first two buses – one of which was to be used in Barbuda as a school bus).
- [57] Ambassador Ashe then sent a Memorandum to Prime Minister Spencer and copied to Mr. Murdoch and the Director of Communications, Mr. Maurice Merchant, on the 19th May, 2006. It was titled: 'Delivery of vehicles':
- "During today's bilateral discussion with my counterpart, Ambassador Choi Young-Jin, Permanent Representative of the Republic of Korea to the United Nations, on the above

captioned subject, I was informed that the delivery date for the two police vehicles which the Government of the Republic of Korea has agreed to provide is October 2006.

“Ambassador Choi has agreed to submit my request for two garbage trucks for consideration by his government. In addition, he has undertaken to provide me with the specific date for the delivery of the two school buses (one for Minister Cort and other for Minister Walker), despite the fact that the delivery of the buses is within the purview of the Korean Embassy in the Dominican Republic.

“Please do not hesitate to contact me if you have any questions.”

[58] A Diplomatic Note from the Korean Embassy on the 19th July, 2007 contained the first reference to three Daewoo buses. The correspondence sought to “update the Ministry about the actual process of the cooperation projects from the Korean Government to Antigua and Barbuda as follows:

- 1) Police Cars (Hyundai Tucson, 2EA) will be arriving in October 2007.
- 2) School Buses (Daewoo BS106 3EA) will be arriving in November 2007.
- 3) Interns or technical support (US\$50,000.00) needs to be required specification from Ministry of Foreign Affairs of Antigua and Barbuda.
- 4) Scholarship Program at Kangnam University (2-3 students) needs to be required nominations from Ministry of Foreign Affairs of Antigua and Barbuda.” [‘MP-26’]

[59] This Diplomatic Note of 19th July, 2007 is the last time the term ‘school bus’ appears in any correspondence between the Ministry of Foreign Affairs and the Korean Embassy.

[60] With regard to the police vehicles, the Korean Embassy requested the Ministry “to arrange a handing over ceremony.” [‘MP-27’]. There is no request for a handing over ceremony for any other vehicles besides those for the police.

[61] The buses were first scheduled to arrive in November 2007; but the shipment was “delayed due to their oversized special container” to January 2008. [‘MP-28’]. That shipment was further delayed “due to the fact that special container ships for these oversized buses are only a few... The Korean Government is doing its best to find an available ship and expecting to next shipping schedule of February 2008.” [‘MP-29’].

Diplomatic Query

[62] With the Royal Antigua and Barbuda Police Force investigation into the Korean buses underway in 2016, the Ministry of Foreign Affairs also made queries.

[63] Correspondence from the Ministry of Foreign Affairs of Antigua and Barbuda to the Korean Embassy dated the 9th March, 2016 referred to the “Korean buses that the Ministry acquired from the Government of South Korea in 2006. The Ministry wishes to confirm that these buses were in fact

gifts from the Government of South Korea and would be grateful official correspondence could be sent to this effect.” (sic) [‘MP-30’].

[64] The query from the Ministry of Foreign Affairs of 9th March, 2016 referred to 2006. The Diplomatic Note made no specific mention of the three buses which arrived in 2008, for which Mr. Lovell, Dr. Quinn and Mr. Daniel were charged.

- i. Why was there in the diplomatic Note, no query from the Foreign Affairs Ministry regarding the status of the three buses?
- ii. Did the Foreign Affairs Ministry consider or regard or accept that the three Daewoo buses were part of the 2006 arrangement?

[65] The Korean Embassy in its reply to the Ministry of Foreign Affairs, dated the 11th March, 2016 referenced the Diplomatic Note two days earlier “regarding the buses that the Government of Antigua and Barbuda acquired from the Government of the Republic of Korea in 2006 and in subsequent years thereafter.” [‘MP-31’]. The Embassy went on to “confirm to the Government of Antigua and Barbuda, that the aforementioned buses were in fact donations as part of the Grant Aid given by the Republic of Korea to Antigua and Barbuda.”

[66] The Defendants drew attention to the wording of the Diplomatic Note which states that “the aforementioned buses were in fact donations as part of the Grant Aid given by the Republic of Korea to Antigua and Barbuda” and it did not include the qualifying “the Government of” Antigua and Barbuda – as expressed in other parts of the correspondence. This, in their view signals that the buses the Koreans sent “in subsequent years” to 2006 were aid to Antigua and Barbuda and not specifically “the Government.”

Customs and the Manifest

[67] The Korean Embassy notified the Ministry of Foreign Affairs on the 27th March, 2008 that “the three Daewoo BS106 buses, provided under the KOICA Cooperation Program” would be arriving at port Saint John’s shortly. [‘MP-33’].

[68] The Embassy provided the Bill of Lading, Commercial Invoice, Packing List and Marine Cargo Insurance Policy to the Ministry of Foreign Affairs. The buses were described as ‘diplomatic cargo’.

[69] Principal Customs Officer, Mr. Kirt Williams, said that in January 2016, he led a team of officers that the Comptroller of Customs assigned to locate the cargo manifest for the vessel ‘Ryujin’. He located the manifest which included the three vehicles consigned to the “Ministry of Foreign Affairs, Attention Mr. Colin Murdoch/Permanent Secretary.”

[70] Among Mr. Williams’ observations was that there was no declaration prepared in relation to the manifest. Mr. Williams said: “If there was a declaration prepared, it would have mentioned a warrant number and a processing date.” Without the declaration, he could not ascertain whether duty was paid on the three vehicles.

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- [71] Mr. Williams acknowledged that in many cases, imports for the Government of Antigua and Barbuda are delivered by the Comptroller of Customs or a Deputy Comptroller without declarations. There can be delivery of the shipment pending the submission of documents.
- [72] The buses were cleared on the 7th May, 2008.

The Clearing

- [73] In 2008, Mr. Hubert Jarvis was the Product Development Officer at the Transport Board. He is now the General Manager. Back in 2008, Mr. Jarvis reported directly to Mr. Harry Josiah, who was the General Manager of the Transport Board at that time.
- [74] Mr. Jarvis was the person who went to the Port in Saint John's and cleared the Daewoo buses from the customs. He was acting on the General Manager's instructions to do so.
- [75] Mr. Jarvis recalls that the buses were consigned to the Ministry of Foreign Affairs.
- [76] After the buses were released into Mr. Jarvis' custody, they were then taken to the Transport Board's Motor Pool at Potters. The buses remained at that Government facility for a while. The buses could not be removed from the Motor Pool unless they were licensed.
- [77] Mr. Jarvis said that after he cleared the buses from the customs, he had nothing further to do with them. He did not even know who drove the buses to the Motor Pool.

The Consignee

- [78] Ambassador Colin Murdoch served as the Permanent Secretary in the Ministry of Foreign Affairs from 1994 to 2009, and then again from September 2014 to August 2016. He is now based in Geneva, Switzerland as the OECS Ambassador to the WTO.
- [79] Mr. Murdoch could recall that Antigua and Barbuda received school buses under the KOICA Programme, but he could not recall the specifics regarding the number of buses in every year.
- [80] With regard to procurement of the buses, Mr. Murdoch said that Ambassador Ashe discussed the acquisition of the buses with a representative of South Korea at the United Nations. Ambassador Murdoch recalled accompanying the Prime Minister at the time, Mr. Baldwin Spencer to a meeting in Belize, where a bilateral meeting with Korean Foreign Minister was held; the acquisition of buses was discussed.
- [81] Ambassador Murdoch said that a formal Diplomatic Note was sent by the Antigua and Barbuda Ministry of Foreign Affairs confirming the request to the Korean Government. The Crown did not seek to tender any such note.
- [82] Ambassador Murdoch testified that three buses were consigned to the Ministry of Foreign Affairs. Upon receipt of the shipping documents, the Ministry passed on the documents to the Transport Board. He said: "It was the responsibility of the Ministry of Foreign affairs to refer the documents to the Government Department responsible for vehicles and transportation for them to be cleared, processed and then put on the road."

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- [83] When asked by the Prosecutor who was responsible for the allocation of the vehicles, Ambassador Murdoch said: "The Government Department responsible for vehicles and transportation." He went on to state that he "did not" allocate the buses, neither was he authorized to do so.
- [84] Mr. Murdoch was questioned as to whether there was a procedure for allocating Government vehicles. He replied that: "If there is a procedure, I am not aware of it."
- [85] Mr. Murdoch was of the view that Ambassador Ashe did not have the responsibility for allocation of buses. He said that he believed "advisors advise; Ministers decide." The former Permanent Secretary said regarding the correspondence he saw from Ambassador Ashe "I am not clear he [Ambassador Ashe] was making a decision or conveying a decision." Mr. Murdoch stated that he was "not aware" of any law Ambassador Ashe may have broken in taking a decision about which Minister gets which bus. Mr. Murdoch said: "For Ambassador Ashe to take that decision means I could have taken that decision, because I was [Ambassador] Ashe's boss." Mr. Murdoch said he never contacted or responded to the Ambassador, informing Dr. Ashe that he could not be allocating the buses.
- [86] Ambassador Murdoch said that Ambassador Ashe was Antigua and Barbuda's representative based in New York before he was appointed as Ambassador to the United Nations. Mr. Murdoch agreed that Ambassador Ashe would make contact with Ambassadors and foreign nations on behalf of Antigua and Barbuda; make requests on behalf of the country; and that if Ministers had needs they would contact Ambassador Ashe.
- [87] Ambassador Murdoch was asked whether he gave direction as to what to do with the buses, he said: "absolutely not... the Ministry's role was over." He said that once the buses were received and sent to the Transport Board and receipt of the buses were acknowledged to the Korean Embassy, the Ministry's role was over. Ambassador Murdoch stated that he had "no knowledge to whom they [the buses] were designated. That was outside the Ministry of Foreign Affairs."
- [88] The former Permanent Secretary said that the Ministry of Foreign Affairs was the "official point of contact between Governments. If something is sent, it comes to the Ministry of Foreign Affairs. Then the Ministry passes it on to the relevant Department."
- [89] Mr. Murdoch said: "Those buses were consigned to me. Where they ended up had nothing to do with me."

The Intention

- [90] Mr. Baldwin Spencer was the Prime Minister of Antigua and Barbuda from March 2004 to June 2014. He served as Minister of Foreign Affairs. The three Defendants were members of his Cabinet of Ministers.
- [91] Mr. Spencer said he visited South Korea for a meeting of the Group of 77 and China. Arrangements were made for him and Ambassador Ashe to meet with South Korea's Foreign Affairs Minister "on the margins of that meeting" for bilateral discussions. A request was made for buses to be used in the community in Antigua and Barbuda. It was agreed that Ambassador Ashe would follow up those discussions with the South Korean Ambassador to the United Nations.

"Discussions were initiated with the Ministry of Foreign Affairs to the extent that there was agreement, it will be channeled through the United Nations [Missions]. So the Ambassador

of South Korea at the United Nations and the Ambassador for Antigua and Barbuda will coordinate to have this programme implemented.”

- [92] While Mr. Spencer refers to a meeting in South Korea, Ambassador Murdoch refers to a meeting in Belize. The subject matter of both bilateral meetings included the buses. Ambassador Ashe was also said to be present at both meetings.
- [93] The former Prime Minister in describing the rationale for the request to Korea, said that “the UN Ambassador [Mr. Ashe] and I had a discussion. We felt we could raise some support for communities in Antigua and Barbuda as it relates to transportation.”
- [94] Mr. Spencer considered that the Memorandum from Ambassador Ashe on the allocation of the buses, as in the case of Minister Cort and Junior Minister Walker to be reasonable and he was not caught by surprise: “I think that he was acting pursuant to the understanding we had as to how such things would be allocated.”
- [95] The issue of the buses was never discussed in Cabinet.
- [96] The former Prime Minister said he was not to be directly responsible for the allocation of the buses; that was left up to Ambassador Ashe. Mr. Spencer agreed with Counsel Ms. Weekes, Q.C that he was content to let Dr. Ashe make decisions to implement the plan.
- [97] The idea, Mr. Spencer said, was that the Parliamentary Representative would be the custodians of the buses which would provide transportation in the various communities. Church groups, community organizations, schools and other groups would have access to the use of the buses. The Members of Parliament would “put the necessary mechanisms in place so that the buses were licensed, insured and over time, the buses were maintained.”
- [98] Mr. Spencer went on to say that: “The expectation was that the Parliamentary representative will be the custodian. So whatever had to be done by the Representative to facilitate the operation of the buses will be expedited.”
- [99] There was evidence from some witnesses, such as Ms. Josette Payne, the Administrative Officer at the Transport Board who lives in Potters and from now Senior Superintendent of Police Michael of the buses being applied to community use. Ms. Payne said the bus in her area “used to take old people... take excursions” and that it was “a bus for everybody.”

Licensing

- [100] Mr. Jarvis as General Manager of the Transport Board provided detailed information with regard to the first time registration and licensing of a new vehicle. He also explained the change of ownership process.
- [101] Mr. Jarvis explained that for a first time registration of a vehicle the owner goes to the Transport Board with all the requisite documentation. These include the customs documents which show that the vehicle came into Antigua and Barbuda legitimately through the Port. Mr. Jarvis said this was also part of their collaboration with the customs to ensure that customs gets its fair share of the revenue. There must also be an insurance certificate in the name of the importer or consignee of the vehicle. The vehicle is then registered in the name of the consignee.

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- [102] According to manager Jarvis, if a person seeks to register a vehicle in the name of a person other than the one identified as the consignee in the customs documentation, that person will then first have to go back to the customs to have the change in the name effected, before the registration could take place in the new name. Mr. Jarvis said that a reason why the person had to “get clearance” from the customs was in the event that the original importer was given a waiver or discount, then the customs would be able to determine if the new owner had to pay any additional duties and taxes.
- [103] The Transport Board manager said that to effect a change of ownership of a vehicle, the current owner goes to the Transport Board with the purchaser and signs over ownership of the vehicle. The clerks at the Transport Board are required to verify signatures and that all the documents are in order. The purchaser must have with them a valid insurance for the vehicle. If the clerk is not satisfied with the documentation, then the matter is referred to a supervisor. Among the things that the clerk checks, is whether there are any outstanding charges (security interest) by any third party.
- [104] Mr. Jarvis said that it was not necessary for the owner of the vehicle to attend at the Transport Board in person when they were registering or licensing a vehicle. He said that while ideally the owner should be present at the Transport Board to do the registering or licensing, it was not mandatory. Mr Jarvis said that “once all the documents are in place”, a person may register a vehicle for a third party. It was necessary however for the owner to sign the appropriate Transport Board form.

Cross Examination – Mr. Hamilton, Q.C

- [105] Mr. Jarvis, in cross examination by Mr. Hamilton, Q.C said the three buses that were released into his (Mr. Jarvis’) custody at the customs arrived at the Motor Pool in an unlicensed state.
- [106] Mr. Jarvis said that for the Transport Board to release the buses from its custody, they had to be licensed. He agreed that the Second Defendant could not go to the Motor Pool and take the bus out. He said: “I don’t know what transpired with the release. For a vehicle to leave the Motor Pool it has to be licensed.”
- [107] Mr. Jarvis stated that he was not a part of the registration and licensing of the buses.

Cross Examination – Ms. Weekes, Q.C

- [108] The Transport Board manager was also cross examined by Ms. Weekes, Q.C. Mr. Jarvis was asked about the bus licensed in the First Defendant’s name. Mr. Jarvis said the Government was responsible for bringing in the bus and that the Transport Board was responsible to ensure the bus was safe. “It’s a Government asset,” he said. Mr. Jarvis said that there had to be specific legal authority for the buses to be released and said that “nobody complained to me” about any problem (concerning the buses).
- [109] Mr. Jarvis agreed that the sequence of events as far as he knew in relation to the bus with VIN ending with 01556 was: the bus was brought in by the Government; it was cleared at customs; it sat at the motor pool; it left in the name of Harold Lovell. He assumed that all the information on the Transport

Board 'yellow card' was correct: "I have full confidence in the data. I can't speak to how the name Harold Lovell got on the card. The Supervisor/Data Entry Clerk would have been satisfied on the basis of the documents to produce this official registration in the particular name."

Cross Examination – Mr. Simon, Q.C

- [110] Mr. Jarvis, in cross examination from Mr. Simon, Q.C explained that if the clerk was dissatisfied or uncomfortable with registration documents, the matter would be referred "to a Supervisor or Departmental Head."
- [111] Mr. Jarvis said he saw the first registration for the bus in the name of the Third Defendant. He agreed it was "plausible that there was authorization from a Government Department to have the buses registered in the Defendant's name." He said while anybody could come to register the bus, they had to "come with official documents" in order to complete the process. He agreed "absolutely" that anyone coming to register the buses in the name of an individual would have to have something from the Ministry of Foreign Affairs and Ministry of Finance to have the vehicles released.

The Release

- [112] Mr. Harry Josiah headed the Transport Board in 2008. The Motor Pool had multiple uses, including the safe custody of vehicles. The Motor Pool was supervised by the facility manager, Mr. Iva Warner.
- [113] Mr. Josiah was made aware of a request from the Ministry of Foreign Affairs regarding the safe keeping of the buses. He saw the "big, large, yellow buses" there.
- [114] The former Transport Board Manager said that the buses would have only been released if the Transport Board was provided with the necessary documentation. He did check the data base and the vehicles left on the instructions of the Ministry of Foreign Affairs.
- [115] When Mr. Josiah was re-examined by Mr. Sullivan regarding the authorization, he said it was Mr. Murdoch from Foreign Affairs who gave the instructions to Mr. Warner.
- [116] Mr. Josiah said there was nothing about the documentation that seemed wrong or worried him, and "under no condition I will allow a vehicle for the Government to leave without the requisite authority."

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- [117] Mr. Caudley George was a civil servant in 2008. He worked in the Ministry of Tourism. The First Defendant, Mr. Harold Lovell, was the Minister of Tourism. Mr. George has been a very good friend of Mr. Lovell for three decades. They are both members of the same political party.
- [118] Mr. George recalled that sometime in 2008, Mr. Lovell spoke to him about getting a Daewoo bus registered and licensed. It was a brief conversation. Mr. George went to the insurance company and picked up some documents. He took those documents to the Transport Board and he was given the documents for the bus. Mr. George said that he did not have to sign anything.

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- [119] When Mr. George saw the bus, the number plate was already on the bus. He did not put on the plates. "It was a yellow bus. Long. It seemed to be larger than regular buses I was accustomed to. I was accustomed to driving big buses in the UK – double decker but this was a little beyond me. My decision: I can't manage this. It's too long for me; I can't manage on these roads." Mr. George called a friend to drive the bus from the Motor Pool.
- [120] Mr. George said that he has gone to the Transport Board on other occasions to arrange for the renewal of the bus license. He said that when he was off island, someone else renewed the bus license.
- [121] Mr. George testified that the First Defendant never drove the bus. The bus would be parked at one of the places in the constituency, or with his [Mr. George's] permission, where the driver lives. He said that the operation of the bus was left to him. The bus was used for activities of the St. John's City East Constituency Branch programmes, as well as for various community organizations, an organization for elderly persons, the Princess Margaret School and churches in the community. He said that most of the time the organizations did not have the means to pay for use of the bus – such as paying for diesel – but they were accommodated as much as possible. Maintenance work on the vehicle was done by a member of the community who also functioned as a driver on occasions.

The Interviews

- [122] The Crown tendered interviews conducted by the Police with the Defendants as part of its case.

Third Defendant

- [123] Mr. Wilmoth Daniel was the first of the three Defendants to be interviewed by the Police. He was interviewed at the Langsford Police Station by then ASP Mr. Lisborn Michael and Sergeant 359 Marlon Proctor, on the 27th January, 2016.
- [124] Very early in the interview, Mr. Daniel proffered an explanation as to how the bus C-9874 came to be licensed in his name:
- Q 3: In relation to the allegation I just spoke to you about, could you give an explanation as to how the Daewoo bus came into your possession right up to when the police seized it from you on the 8th December, 2015?
- A: Sometime in 2007 I spoke to Ambassador John Ashe if it was possible he could solicit a donation of a bus for me to operate in my constituency to assist in carry out the senior citizens, to assist the churches if they need any use of the bus and to other organization[s] who request use of the bus and for political purposes. I was called in 2008 by someone who represented Transport Board and they informed me that there was a bus down at the harbor for me. I don't know how they know; I would assume that there had to be some sort of communication to inform them that the bus was mine. They asked me if I wanted them to bring the bus to my home and I said yes on the basis that I knew that I had requested the bus from Ashe, so that is the reason I told them to bring it. A day or two later, they send me the documents for me to arrange for the insurance because I never signed to say that I was the owner. I don't recall who but it [was] someone from Transport Board. I don't recall

also whether I had send my driver or anyone to Bryson's Insurance but I remember I called Bryson's Insurance and told them that I was gonna send somebody to prepare this insurance for this bus of mine. I paid them several thousand dollars for the insurance. And then the document with the insurance papers were sent back to Transport Board who processed everything. And so the sticker was put on the bus in terms of the official licensing. From then the bus was involved with the political activities in terms of helping the constituency and lending it to various groups and that sort of thing. I can't drive that bus. I have never driven it. After several years the bus deteriorated and I had to do a massive rehaul [sic] of it. I painted it up and refurbished the inside and the engine too at one time and a new alternator and so on. Several things were done to the bus. The most important thing though is this information because this is in 2008 – I was called to the office by Mr. Murdoch, the Permanent Secretary, I was called to his office and he deliver this to me: a document of confirmation of ownership of the Korean bus. And I myself had requested as early as June 2008 when the bus came from Mr. Ashe for clarification that he did solicit the bus on my behalf. The letter says 'Confirmation of ownership of Korean bus' from John Ashe. It was sent 18th June 2008 at 10:33 am to Mr. Colin Murdoch @hotmail.com cc to Colin Murdoch @cwblackberry.net and it reads as follows: 'Ambassador Murdoch I wish to confirm that the bus donated by the Government of the Republic of Korea and currently in possession of the Honourable Wilmoth Daniel was based on a request made by me to the aforementioned government. The bus therefore is owned by Minister Daniel and is intended to be used for the transportation purposes for his constituency. Regards, J. Ashe.' If I had any idea that it was not my own I would not have put all that money into insurance and licensing the bus. No rental fees was collected in fact the latest company who I had loaned the bus to was Antigua APUA. They had people coming in from overseas and they need[ed] to transport [them] around and so on. So the bus was given to a young man who said that he worked at APUA and they had it one week."

Q 13: Based on the document I showed you, which is a letter dated 4th June, 2007 from Colin Murdoch to the Korean Ambassador, are you satisfied that the bus in question was donated to the Government of Antigua and Barbuda?

A: I am seeing this document for the first time. I don't know of its authenticity for the simple reason now that I am seeing it knowing what I have, I am yet to believe whether Mr Murdoch is someone who speaks the truth. I believe based on how the information was presented to me that the bus was my bus. I so believed that it was my bus that I had spent thousands and thousands of dollars on the bus. If I had believed otherwise I would not have spent that money, I would have sent back the bus.

[125] Mr. Daniel in the course of the interview repeated that it was someone from the Transport Board who called him and informed him that a bus was there for him. Mr. Daniel said that because the Transport Board was the licensing authority, he believed that they had all the documentation.

[126] Mr. Daniel stated that he had "never benefitted" from the bus: "I have never rented the bus or done anything to benefit from the bus."

Second Defendant

[127] Dr. Jacqui Quinn, the Second Defendant, was interviewed at the Langsford Police Station on the 5th February, 2016 by ASP Michael and Sergeant Proctor. It may be useful to reproduce some of the questions asked and answers given.

Q 12: We have several documents to show you in regards to the vehicle, but for now, can you explain how you came to be in possession of the Daewoo bus that you had?

A: Do you have a document with my signature indicating that I acquired the bus you are referring to?

Q 13: To my knowledge no. But we do have several documents to show you. Can we continue at this point by you explaining how you came to be in possession of the Daewoo bus that you had?

A: Now, the bus was a donation and I just use 'the bus' because all of the numbers and so that you have given, I can't verify that. I will have to verify that. I will just say 'the bus'. As the MP for St George, I received the bus as a trustee for the community. As far as I am aware, the bus came in my name. I facilitated the licensing and registration. The bus was owned in common by the community. I was a mere facilitator. I never touched the keys to that bus. The bus never came upon my property. The bus was always in the care of the driver and when it started to develop problems it was in the care of the mechanic. In fact, you removed the bus from property adjacent to the mechanic's home. I never converted nor cause to convert ownership of the bus.

Q 14: You said the bus was a donation; who donated the bus?

A: As far as I am aware, Dr. John Ashe, UN Ambassador and former President of the UN sourced the vehicle from friendly benefactors.

Q 16: How do you know that he [Ambassador Ashe] was the one who donated the bus?

A: This was communicated to me by Honourable Baldwin Spencer and by Mr. Colin Murdoch, Permanent Secretary of Foreign Affairs.

Q 24: Who handed over the vehicle to you?

A: I believe that would have been the Chairman of my Branch who cleared the vehicle. Michael Lewis. He is the Chairman of the Community Branch and he never gave it to me. He actually took possession of it as the driver. That is important.

Q 25: What directives if any did you give to him in terms of clearing the vehicle?

A: None. I gave him no directive. As Chairman of the Community Branch he would have made all the arrangements. He never handed the bus over to me. As the MP for the area, I merely facilitated, as trustee of the community, which is also your Community ASP Michael. You know what we used the bus for. The bus was used for transporting the church groups, sporting clubs, taking senior citizens on island tours. I recall even my mother, Mary Quinn, who is a historian – she used to be on the bus giving an oral history of various communities and I never charged one penny, not even for gas. I used to pay for the petrol and whatever else was required.

Even snacks and drinks for the senior citizens. I facilitated all that. The bus was never put to commercial use. The bus was a community bus and when the Barnes Hill Clinic was closed and pregnant and nursing mothers and senior citizens were forced to use the Clare Hall Clinic, the bus used to transport them. We did not charge a penny. It was a community vehicle.

Q 26: Whose idea was it for the bus to be registered, licensed and insured in your name?

A: Well, as the MP for the area, someone had to take responsibility. You can't put the whole community on those documents and with the financial obligations, someone had to come forward. So I basically acted on behalf of my community.

Q 27: So whose idea was it?

A: As the MP of the area, I took responsibility and it's a financial responsibility that I took on.

Q 28: Have you ever heard of the KOICA Programme?

A: No. Never.

Q 29: ... I am going to show you again one of the four documents that I showed you earlier which is a commercial invoice. It says something concerning the KOICA programme on it. Can you take a look at this document for me please?

A: I have no knowledge of the programme you refer to. And the documents shed no further light.

Q 30: The KOICA Programme is a diplomatic arrangement between Antigua and the Republic of Korea whereby Antigua receives aid yearly in the area of \$50,000.00 US to \$100,000.00 US. Do you understand?

A: Thank you for the information.

Q 38: According to the records at the Antigua and Barbuda Transport Board, the bus we are speaking about is registered and insured in your name. Did you at any time made [sic] a declaration of that before the Integrity Commission?

A: Absolutely not; because as I said to you, it's a community vehicle and I was trustee. I never declared it as part of my assets.

Q 41: Did you at any time receive any letter from anyone that the bus was for your community?

A: Yes, I believe it might have been from Dr. Ashe, via Colin Murdoch.

First Defendant

[128] Mr. Harold Lovell was the last of the Defendants to be interviewed by the Police. This was done at the Langsford Police Station by ASP Michael and Sergeant Proctor on the 6th February, 2016.

Q 5: Could you explain how you came to be in possession of the bus?

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- A: ...with regard to the earlier statement that you were investigating the fraudulent conversion of this vehicle, I absolutely deny being involved with any fraudulent conversion of this vehicle.
- Q 6: Okay, Can you explain to me how you came to be in possession of the bus?
- A: Sometime in or about 2008, I was approached by Ambassador John Ashe, who at the time was Antigua and Barbuda's Permanent Representative to the United Nations, who told me that he would be able to obtain a bus to be used in my community. It was for community purposes. I told him that I would be happy to accept anything that would assist the people of St John's City East community. Subsequently I was informed that the bus had arrived and I should make arrangements to collect it, which I did.
- Q 9: Do you have any documents in regards to the conversation with John Ashe?
- A: John Ashe at the time had sent me a letter; I cannot place my hand on it at the moment. I have moved house and moved office several times.
- Q 10: Can you recall the nature of the letter?
- A: The nature of the letter was basically to confirm the conversation that we had and that the bus would be for the use of the community.
- Q 12: Earlier in your answers you said that you were told to collect the bus. How and where did you collect the bus?
- A: I didn't personally collect it. As I recall, Mr. Caudley George collected it on my behalf.
- Q 16: What can you tell me about this document? (Copy of a Motor Vehicle Examiners Certificate)
- A: The only thing I would say is that where it speaks to owner, I merely held it as custodian for the community.
- Q 20: Did you subsequently insure this bus in your name?
- A: I subsequently insured it on behalf of the community but because of what was on the registration document it had to be done in my name.
- Q 36: Have you ever heard of the KOICA Programme?
- A: No, I have never heard of that programme.
- Q 38: The KOICA Programme is a programme between Antigua and Barbuda and the Republic of Korea whereby Antigua receives diplomatic aid in the area of \$50,000.00 US to \$100,000.00 US per year. Have you ever heard of any such programme between Antigua and Barbuda and the Republic of Korea?
- A: No.
- Q 38: You said that you were the Minister of Foreign Affairs between March and December 2004. Could you tell me the protocol to follow when the Government of Antigua and Barbuda receives donations from foreign countries?

A: That was [a] matter that was handled by the Permanent Secretary. I didn't get involved with that. That was an operational matter.

Q 55: This bus is licensed and insured in your name. Did you at any time make any form of declaration to the Integrity Commission in respect of this bus?

A: No. Never and that is because I never considered myself the beneficial owner. I was always a trustee. I never considered it an asset that belongs to me.

[129] Towards the end of the interview, Mr. Lovell told the officers:

"But just to make it clear. I have never held the bus in my custody at my home. I have never seen or held the key in my hand. I have never used the bus for personal benefit. I have never profited in any way. I was merely doing good for my community."

Matters Arising From the Interviews

[130] Arising from the interviews were matters which directly point to the case for the Defendants, as well as matters which give rise to other questions. The major matters were:

- i. What was the role of Ambassador Dr. John Ashe in the acquisition of the buses and what was the content of his communication to the Defendants about the buses?
- ii. How did the person or persons at the Transport Board know to contact the Defendants about the buses which were in the Board's custody?
- iii. Why did the person or persons at the Transport Board contact the Defendants, when it was the same Transport Board that cleared the buses after they arrived in Antigua and Barbuda in the name of the Ministry of Foreign Affairs?
- iv. Why did the Transport Board facilitate the registration of the buses in the names of the Defendants given the names of the Defendants did not appear as the consignee?
- v. What is the consequence of the Defendants' not taking control of the keys of the buses, or driving the buses, or having the buses parked at their premises? Were those non-actions sufficient to displace the other things they did that are consistent with ownership, such as pay for the licensing, insurance and maintenance of the buses?
- vi. And in relation to the KOICA Programme:
 - a. Was it plausible that the Defendants, who were Ministers of Government did not know of such a programme? And
 - b. According to the police, the KOICA Programme ranged between \$50,000.00 US and \$100,000.00 US a year. Each Daewoo bus was valued at \$218,520.00 EC, which amounted to \$655,560.00 EC for the three buses, or the equivalent of almost \$242,000.00 US. What

is the significance of the increase, ranging from two-and-a-half times (at the highest end) to five times (at the lowest end), of the yearly KOICA assistance being expended in a single shipment?

- [131] (The Diplomatic Note of 19th July, 2007 from the Koran Embassy identified two police cars, the three buses and 2-3 scholarships in addition to the US\$50,000.00 in items or technical support as the projects from the Korean Government for Antigua and Barbuda.)

Ambassador Ashe's Absence

- [132] The interviews with the Defendants were conducted between the 27th January, 2016 and the 6th February, 2016. Sergeant Proctor acknowledged that Ambassador Ashe died on the 27th June, 2016.
- [133] Officer Proctor was cross examined about his lack of follow-up with Ambassador Ashe, as the Defendants named the Ambassador as being the originator of the donations.
- [134] Sergeant Proctor said that the Ambassador may have been out of the State. The Officer did not have any notes that he attempted to reach Dr. Ashe. Sergeant Proctor said that he would not try to reach a potential witness via WhatsApp. Officer Proctor accepted that he did have Dr. Ashe's email in the document provided by the Third Defendant. The Officer said that while it would have been possible to contact the Ambassador via email to make arrangements to speak, he did not send any email correspondence to Dr. Ashe. Officer Proctor said he could not "specifically recall" seeking the assistance of the Ministry of Foreign Affairs to reach the Ambassador.
- [135] Senior Superintendent Michael accepted that "Mr. Ashe was a very important witness in this matter." He said that: "Mr. Ashe was a very difficult man to get in touch with." Officer Michael said that efforts were made to communicate with Ambassador Ashe through the Ministry of Foreign Affairs. He did not have any records to show that any such contact was made by the Police with the Ministry, because; "If there was a verbal communication there will be no notes."
- [136] The Director of Audit also said that he neglected to speak with Ambassador Ashe.
- [137] Mr. Murdoch was pointed to the earlier Memorandum from Ambassador Ashe to the Prime Minister allocating the first two buses, which is a Memorandum that was copied to him in which the Ambassador said: "Please do not hesitate to contact me if you have any questions". Mr. Murdoch said he would have attached "more credence if the Memo had come from Minister Cort." With reference to the email from Ambassador Ashe which the Third Defendant said in the police interview he got a copy from Mr. Murdoch, Ambassador Murdoch said: "I don't recall having received it. Even if I had, I suspect I would have ignored it."

A Confirmation?

- [138] The email from Ambassador Ashe to the Permanent Secretary which the Third Defendant said Mr. Murdoch gave him a copy of was titled: "Confirmation of ownership of Korean bus." It was dated the 18th June, 2008. It read:

"I wish to confirm that the bus donated by the Government of Korea (South Korea), and currently in possession of the Honourable Wilmoth Daniel, was based on a request made by

me to the aforementioned government. The bus is therefore owned by Minister Daniel and is intended to be used for transportation purposes for his constituency.”

- [139] Mr. Murdoch denied giving the email to Mr. Daniel. Mr. Murdoch stated that the first time he saw the correspondence was when the police showed it to him during the course of the investigation. Mr. Murdoch accepted that the two email addresses on the document were the email addresses he used at the time and that it was not copied to anyone else.

Mission Audit

- [140] Director of Audit, Mr. Dean Evanson testified about the audit he did of the Antigua and Barbuda Permanent Mission to the United Nations in 2015 at the request of the Cabinet. He prepared a report for the Cabinet and a copy of the report was tendered as 'DE-1'. He went beyond the scope of the original Cabinet request in his audit of the Mission and reported on five buses that were received from Korea prior to 2009. Mr. Evanson said that his predecessor in office could not get an accounting for the buses.
- [141] Mr. Evanson said that he examined documents both in Antigua and Barbuda and in New York.
- [142] When the Director of Audit went to New York, he did not speak with the head of the country's Mission to the United Nations, Ambassador Ashe. He accepted the description suggested to him that the relationship between the Ambassador and himself was strained.
- [143] Mr. Evanson found documents at the Ministry of Foreign Affairs concerning the three buses being consigned to the Ministry. The Director of Audit did not find out how the three buses came to be registered in the names of the three Defendants. He made no queries of Mr. Murdoch as to how that happened.
- [144] The Director of Audit agreed with Counsel Mr. Simon, Q.C that consignment and ownership are not the same thing. He did not find any documents from the Korean Government saying that the buses were owned by the Antigua and Barbuda Government and all the documents that he found were annexed in the Audit Special Report that was tendered in this case. Mr. Evanson was asked whether it was not true that from the documents he found he could determine consignment of the buses to Antigua and Barbuda, but not ownership; he did not provide an audible answer.
- [145] Mr. Evanson said the first time he was seeing the correspondence from Ambassador Ashe to Mr. Murdoch regarding the bus being owned by the Third Defendant, was when he was shown it in Court.
- [146] The concessions made by Mr. Evanson directly contradicted his expressed view in the audit that the buses were donated to the Government of Antigua and Barbuda.

Queries

- [147] There are questions and issues which the forum of fact may pose and resolve at the appropriate time. Those are not for the Judge of law to consider at the close of the Crown's case. They however identify the live issues that would have to be resolved.

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- [148] Ambassador Murdoch said that the allocation of the buses was left up to the Transport Board. Could this be accepted as being accurate?
- [149] The former manager of the Transport Board, Harry Josiah, claims that it was Ambassador Murdoch who gave the instructions regarding the assignment of the vehicles. But that information was obtained from a third party – Mr. Warner. This was not said directly to Mr. Josiah, neither was it said in the presence of any of the Defendants.
- [150] When Senior Superintendent Michael was being cross examined, he said he asked Mr. Jarvis at the Transport Board who it was that directed the buses be given to the three accused. The Officer was told it was the Ministry of Foreign Affairs. Mr. Michael said that PS Murdoch confirmed to him what was said by Mr. Jarvis. In re-examination, Officer Michael said that: “Mr. Jarvis told me instructions came specifically from Mr. Murdoch. He [Mr. Murdoch] confirmed it.” When asked specifically whether Mr. Murdoch said: “I gave authorization for the three buses to be given to the three Accused.” The witness said “No.” Although Mr. Michael spoke directly with Mr. Murdoch, the conversation was not admitted for the truth of its contents, but for the fact that a conversation took place.
- [151] If the approval of the consignee of a vehicle was required to register a new vehicle, and the buses were consigned to the Ministry of Foreign Affairs, Attention Mr. Colin Murdoch, Permanent Secretary, was the assent of the consignee given to register the buses in the names of the three Defendants? If so, who gave that assent?
- [152] Ambassador Murdoch also said that between 2008 when the buses arrived and 2016 when the investigation got underway, he never saw the buses. Is that plausible?
- [153] Ambassador Murdoch said that it was in 2016 that he saw for the first time an email that was addressed to him and copied to another of his email addresses sent in 2008 from Ambassador Ashe concerning the Third Defendant’s ownership of the bus. He acknowledged that he used both email addresses in 2008. The email was not copied to anyone else. The Third Defendant said he got a copy of the email from Ambassador Murdoch. It would be for the forum of fact to determine: Could Mr. Daniel claim be believed that the source of the email was Mr. Murdoch? Should Mr. Daniel be believed?
- [154] Correspondence from Ambassador Ashe, going back to 2006, show that he wrote to the Prime Minister, Ministers of Government and the Permanent Secretary about how the buses were to be allocated. Ambassador Ashe in his correspondences indicated that if there was any query to get back to him. There is no evidence that anyone did so.
- [155] Ambassador Ashe in his Memorandum of the 11th of October 2005, when addressing the first two buses, expressly mentioned: “[I]t should be noted that South Korea will be competing against Samoa for a seat on the International Criminal Court in elections to be held in the UN General Assembly in January 2006, and they have requested our support.” Was this an understanding of, as Ambassador Ashe seem to suggest in his Memorandum, ‘buses for vote’? And if so, does that ‘understanding’ support the Crown’s case that the buses were intended for the Government? Or does the ‘understanding’ indicate that Antigua’s UN Ambassador had a wide discretion as to who would get the buses once he could deliver the vote South Korea desired?
- [156] Mr. Murdoch said that he was Ambassador Ashe’s boss and that the Ambassador did not have any authority to allocate the buses. However Mr. Murdoch never said anything to Dr. Ashe about the

Ambassador exceeding what authority he had. How is Mr. Murdoch's inaction to be interpreted? Was it a tacit acceptance of Ambassador Ashe's authority?

- [157] Does the acknowledgment by Ambassador Murdoch that the Ministry of Foreign Affairs role ended once the buses were received, sent to the Transport Board and an acknowledgement sent to the Korean Embassy, support the view that the Ministry was merely the consignee?
- [158] The matters to be considered at this point however are concerned only with whether the Crown has made out that any offence was committed and it could have been the Defendants who may have committed the offence. In other words, whether the prosecution has established that there is a prima facie case. The Privy Council in **Ellis Taibo v The Queen** (1996) 48 WIR 74 (PC), applied **Galbraith**, holding that once there was credible material, even though the Prosecution's case "was thin, perhaps very thin," the judge "was not only entitled but required to let the trial proceed." The consideration is whether there was evidence upon which a reasonable jury could be satisfied that a defendant is guilty of the offence.

Submissions

- [159] Ms. Weeks, Q.C on behalf of the First Defendant provided written submissions and authorities. Those submissions were elaborated upon in oral argument. Mr. Hamilton, Q.C for the Second Defendant and Mr. Simon, Q.C for the Third Defendant also provided authorities to ground their oral submissions.
- [160] Mr. Sullivan responded on behalf of the Crown and provided authorities.

Embezzlement Challenge

- [161] The Defendant's challenge to the embezzlement charges were twofold:
- a) There was no recital of: "being employed in the public service of Antigua and Barbuda" in the particulars on the indictment, in keeping with the description of the offence in the **Larceny Act**.
 - b) Ministers of Government are not employed in the public service.

Missing Words

- [162] The Crown does not doubt that the words "being employed in the public service" do not appear on the indictment. The Crown however contends that Ministers are in fact employed in the public service.
- [163] What is the effect and consequence of the failure to detail the elements of the charge? Counsel for the First Accused submits that this is fatal to the charge. Ms. Weekes' submission was:
- i. There must be certainty in a criminal charge for an accused to know exactly what case he is expected to meet;

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- ii. The failure to include a fundamental element of the offence means that the count is defective;
 - iii. Although the Crown could in circumstances that are just, apply for an amendment, it was now too late to fairly do so and in fact the Crown has not done so;
 - iv. A Judge in those circumstances is entitled to quash the charge on the indictment and ought to do so because the flaw is fatal.

[164] The Prosecutor stated that the Crown can apply for an amendment at any time before the end of the case, “provided it does not do injustice to the Defendant.” Mr. Sullivan however did not make any application for the embezzlement Counts to be amended.

[165] The applicable law is contained in the **Indictments Act** Cap 123 of the Laws of Antigua and Barbuda. Revised Edition 1992. It provides:

“Where, before trial or at any stage of a trial it appears to the court that the indictment is defective the court shall make such order for the amendment of the indictment as the court thinks necessary to meet the circumstances of the case, unless, having regards to the merits of the case the required amendments cannot be made without injustice.”

[166] Section 20 (2) (b) of the **Larceny Act** makes it quite clear what are the elements of the offence. The absence of the specified words inscribed on the indictment ought not to mislead the Defendant as to the case he has to meet. The charge as drafted can be read and understood as including the words “being employed in the public service” as it is a sine qua non of the offence of embezzlement in the Antigua and Barbuda legislation.

The Public Service

[167] The term “the public service” is not defined in the **Larceny Act**. Counsel for the Defendant relied on **The Antigua and Barbuda Constitution Order 1981**, Cap. 23 of the Laws of Antigua and Barbuda, Revised Edition 2009, for assistance as it is the supreme law of the land.

[168] The ‘Interpretation’ provision of **The Constitution** at section 127 (2) (a) states:

“In this Constitution references to an office of the public service shall not be construed as including – references to the office of ... Prime Minister or any other Minister...”

[169] Mr. Sullivan on behalf of the Crown pointed to the opening three words: “In this Constitution”. He submitted that the exclusion is confined to **The Constitution** itself.

[170] The Crown relied on the case of **Williams v R** (1986) 29 WIR 129 as well as **Walter v R** (1980) 27 WIR 386. The Prosecutor also referred to the English case of **R v Cosford and Others** [2013] 3 All ER 649 which reviewed the terminology “public officer” as it appears in **R v Bembridge** (1783) 3 Doug 327, 99 ER 679; **Henley v Lyme Corp** (1828) 5 Bing 91, 130 ER 995; and **R v Whitaker** [1914] 3 KB 1283.

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- [171] Both Mr. Arthur Williams and Mr. George Walter were charged with and convicted of the common law offence of misbehavior in public office. Mr. Williams was a Minister of Government in Saint Vincent and the Grenadines; Mr. Walter was the Premier of Antigua and Barbuda. The Court of Appeal in both cases held that the Appellants in fact held public office.
- [172] Mr. Sullivan noted that the provisions in both countries were identical with regard to the critical terms:
- “public office” means any office of emolument in the public service...
- “public officer” means a person holding or acting in any public office....
- “the public service” means, subject to the provisions of this section the service of the Crown in a civil capacity in respect of the government of Antigua and Barbuda.
- [173] The Crown pointed to what Moe, JA said in Williams, at p 133:
- “...the meaning ascribed to ‘public officer’ at common law as enunciated in R v Whittaker [1914] 3 KB1283, i.e. ‘a person who discharges any duty in the discharge of which the public are interested, more clearly so if he is paid out of a fund by the public’, is not inconsistent with the meaning of the term set out in section 105 (1)... to apply the common law and hold a Minister of Government to be a person in public office would not be applying a provision inconsistent with the Constitution... we hold that in this case, the Appellant, at the material time being a Minister of Government, was a person in public office.”
- [174] In Walter, Peterkin JA said at p 388:
- “We are more inclined to follow the ratio in the case of R v Whittaker (1972) 18 WIR 379... In this case the term ‘public officer’ was said to be the one who discharges any duty in which the public are interested and more particularly if he receives payments from public money.”
- [175] Counsel for the Defendants position differs fundamentally.

Employed in the Public Service

- [176] First, the Defendants are saying that the term “employed” – which in the legislation appears immediately before the public service - has a specific meaning.
- [177] Secondly, section 100 (1) of the **Antigua and Barbuda Constitution Order 1981** states:
- “...the power to appoint persons to hold or act in offices in the public service (including the power to make appointments on promotion and transfer and to confirm appointments), the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Public Service Commission.”
- [178] Ministers of Government, such as the Defendants were at the relevant time, are appointed – and disappointed - in accordance with section 69 of the Constitution. Subsection 3 provides for them to be appointed “by the Governor-General, acting in accordance with the advice of the Prime Minister.” In those circumstances, it was submitted, Ministers of Government are not Public Service employees.

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- [179] Thirdly, the Defendants relied on the learning in **Yaw v Correia** (1975) 64 WIR 144. In that case, the definitions of “public office”, “public officer” and “in the public service” in the Guyana Constitution were identical to those in the Antigua and Barbuda Constitution. Chancellor Luckoo in his judgment said:

“These definitions are in accord with what was said in a number of cases in which the question as to what constitutes a public officer was considered. In *Headley v Lyme Corporation* (1828) 5 Bing 91, CJ said at p 107: -

‘Then what constitutes a public officer? In my opinion everyone who is appointed to discharge a public duty, and receives a compensation in whatever shape, whether from the Crown or otherwise, is constituted a public officer.’

‘It seems to me that all these cases establish the principle that if a man takes a reward – whatever be the nature of the reward, whether it be in money from the Crown, whether it be in lands from the Crown, whether it be in lands or money from any individual – for the discharge of a public duty, that instant he becomes a public officer.’” (p 147, letter c – e).

- [180] **Yaw v Correia** dealt with the creation of a public office. Chancellor Luckoo looked at - whether an office with a sufficient degree of permanence and continuity was established independent of the holder; if the person was appointed in accordance with the constitutional provision establishing the Public Service Commission; whether it was an office of emolument; and if it involved service with the Government in a civil capacity. Chancellor Luckoo said all those had to be answered in the affirmative:

“...there must be an office (a) held by a person appointed by or on behalf of the Public Service Commission, (b) to serve the State, (c) for an emolument: all of which must be duly satisfied before the person serving could be regarded as a public officer.” (p 152, letter e – f).

- [181] The Eastern Caribbean Court of Appeal in a matter arising out of the Commonwealth of Dominica, **Charles Savarin v John Williams** Civil Appeal No: 3 of 1995, (a case decided nearly ten years after **Williams** and more than fifteen years after **Walter**), had cause to examine the pith and substance of just who is employed in the context of “the public service.” Mr. Savarin was General Manager of a State corporation; was elected to Parliament; his election was challenged on the grounds that he was disqualified because he held office in a branch of the public service.

- [182] The Court of Appeal held that the scope of the Constitutional meaning of the terms such as ‘public office’, ‘public officers’ and ‘the public service’ had to be looked at in the context of the provision of the Constitution dealing with the public service, which covers things like the Public Service Commissions, the Police Service Commission and the Public Service Board of Appeal. Those provisions cover things such as the appointment of persons to hold office, how they are to be removed and confers on the officers a right of appeal. Their Lordships found that:

“...by virtue of the Constitutional meaning so circumscribed, a person cannot be said to be holding or acting in an office or appointment in a branch of the Public Service of Dominica

unless he was appointed to hold the office and is removable therefrom by or in accordance with the advice of the appropriate Constitutional Commission.”

- [183] The public service provisions and definitions contained in Constitutions of the Commonwealth Caribbean are in pari materia. One can therefore substitute in the judgment the name of the country, ‘Antigua and Barbuda’, for ‘Dominica’.
- [184] How can a person be said to be employed in the public service if that person is not appointed by any of the appropriate Commissions; is not subject to the direction or control or disciplinary action of any one of the Commissions; and has no recourse to appeal any action of the appropriate Commission – including termination?
- [185] It would seem that by virtue of being “employed in the public service” will vest in that employee concomitant rights and protections. One crucial protection would be the right to appeal any termination by the Public Service Commission that the employee considers to be unlawful. None of the Defendants had any access to an Appellate procedure if he or she was terminated as a Minister by the Prime Minister.
- [186] Sir Vincent Floissac, CJ, in delivering the judgment in Charles Savarin said:
- “I start with the basic principle that the interpretation of every word or phrase of a statutory provision is derived from the legislative intention in regard to the meaning which that word or phrase should bear. The legislative intention is an inference drawn from the primary meaning of the word or phrase with such modifications to that meaning as may be necessary to make it concordant with the statutory context. In this regard, the statutory context comprises every other word or phrase used in the statute, all implications therefrom and all relevant surrounding circumstances which may properly be regarded as indications of the legislative intention.”
- [187] There is a distinction and a difference between the cases of Williams and Walter that were cited by the Crown on the one hand and the three Defendants on the other. The cases of Williams, Walter and most of the authorities referred to by the Crown addressed the interpretation of a public officer in the context of the common law offence of misbehavior in public office. Here, Mr. Lovell, Dr. Quinn and Mr. Daniel are charged with a statutory offence, which specifically states: “being employed in the public service of Antigua and Barbuda.” It is the Public Service Commission that employs persons to work in “the public service.” The term “being employed” has meaning. The Defendants were not “employed in the public service” even though they received emoluments from the public purse. The legislators must have intended to be specific as to whom they were referring in section 20 (2) of the **Larceny Act** when they stated: “being employed in the public service of Her Majesty or being a member of or employed in the police force.” If the legislators intended the provision to apply to everyone, they would have simply omitted the qualifying requirement. The legislators, it appears, did not intend to cast the net as widely as everyone who received an emolument as described in Henley; but confine it to those legitimately employed in the public service, which is through the Public Service Commission.

Conversion Challenge

[188] There were some preliminary challenges to the charges of conversion:

- 1) The indictment referred to an offence contrary to section 21 (d) of the **Larceny Act**. But there is no such section in the **Act**. It properly ought to have been section 21 (1) (d).
- 2) With regard to the conversion charge against the Second Defendant, Dr. Quinn, the bus was identified by the VIN ending 1556. The bus with the VIN ending 1556 was in fact the bus registered in the name of the first defendant, Mr. Lovell. The bus for the other offenses for which the Second Defendant is charged has the VIN ending 1555.
- 3) At no time did the Crown apply for any amendments to be made to correct those errors.

[189] Counsel did not strenuously press those matter, relying instead on addressing the substance of the conversion charge.

[190] To prove the offence of conversion, the Crown must show that:

- i. The particular Defendant was entrusted with property;
- ii. The property was entrusted to the particular Defendant for safe keeping or a particular purpose;
- iii. The particular Defendant converted the property to his or her own use or benefit or to the use and benefit of some other person;
- iv. The conversion was fraudulent and dishonest.

Whose Property?

[191] The essence of the allegation is that: the Daewoo buses were the property of the Government of Antigua and Barbuda; they were entrusted to each of the Defendants either for safe keeping or a particular purpose; the Defendants converted the buses to his or her own benefit; and the action was fraudulent and dishonest.

[192] The evidence of conversion the Crown is relying on is the act of registering, insuring and licensing of the buses in the names of the Defendants. In the Crown's view, that act is presumptively fraudulent and dishonest.

[193] On the other hand, the Defendants are saying that there is no evidence that any of the buses was ever registered, or insured or licensed in Antigua and Barbuda in anyone else's name besides theirs.

The Defendants absolutely doubt that the Government of Antigua and Barbuda was ever the owner of any of the buses. The only role played by the Government, was through the Ministry of Foreign Affairs in facilitating the consignment of the buses to the country, from the Government of South Korea. The bus was a gift to the community they represented as Members of Parliament and while they acted as de facto trustees of the buses and the buses were operated for the benefit of others, the operation of the buses for the benefit of the community was always in keeping with their role.

- [194] The preliminary (if not fundamental) question to be answered is: Who owned the buses – were the Daewoo buses the property of the Government of Antigua and Barbuda?
- [195] The Crown is seeking to rely on a series of inferences to prove ownership. Generally, it is for the forum of fact to make a finding with regard to inferences and if all of the inferences lead to one inescapable conclusion, then the forum of fact may act on it.
- [196] The circumstances the Crown could rely on are: that there was a programme of assistance between the Government of Korea and the Government of Antigua and Barbuda; among the things gifted by the Government of Korea were the buses; the buses were consigned to the Ministry of Foreign Affairs by the Korean Embassy; they were landed in Antigua and Barbuda as Diplomatic Cargo and there is no evidence of any duty being paid; they were cleared from the Customs at the request of the Ministry of Foreign Affairs by a representative of Transport Board, which is a statutory body; the buses were stored at the Motor Pool, which is a Transport Board facility. When all of these things are considered, the Crown is saying that the buses must belong to the Government.
- [197] It is the same reasoning that informed the Director of Audit, who said he could not find any documentation whatsoever at the United Nations Mission about the buses. In the witness box, he said he found no documents regarding who owned the buses – even though his report concluded that the buses belonged to the Government. He was unable to say that being the consignee of the buses and being the owner are one and the same thing.
- [198] According to Mr. Sullivan, the vehicles belonged to the Government of Antigua and Barbuda, even though legal title was never registered in the Government's name. Mr. Sullivan said that the vehicles were sent from the Republic of South Korea to the Government of Antigua and Barbuda. He said the Antiguan government had a possessory title that could only be defeated by someone who had a better title than the Government – and that was not the Defendants. The vehicles after being cleared from the customs were locked up at the Motor Pool. There was no lawful allocation of title to anybody. Mr. Sullivan relied on the Diplomatic Note 'MP-31' dated 11th March, 2016 from the Korean Embassy to support his position. It said that the buses "...were in fact donations as part of the Grant Aid given by the Republic of Korea to Antigua and Barbuda."
- [199] There were witnesses for the Crown – Ambassador Murdoch and Mr. Spencer – who said that negotiations with the Koreans for the buses commenced with Mr. Spencer and Ambassador Ashe. The buses were intended to be used for community purposes. Dr. Ashe was to be the contact person with the Koreans. There was documentary proof that from the very beginning Dr. Ashe determined the allocation of the buses. Dr. Ashe confirmed in writing the allocation of at least one of the three buses – the one to the third defendant, Mr. Daniel. For the buses to leave the Motor Pool, according to the present General Manager Mr. Jarvis and the General Manager at the time, Mr. Josiah, the documentation would have had to be in order, including compliance with customs.

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- [200] The Crown's own witness testified affirmatively that the buses did not belong to the Government. That if the buses belonged to the Government, there was a particular process that would have to be used in order to get the change of ownership effected.
- [201] The Prosecutor submitted that it was up to a jury to believe some of what a witness said, none of what a witness said, or all of what a witness said. But the testimony of the witnesses for the Crown in that regard was not doubted nor challenged. It would be a most unusual direction to ask a jury to disregard uncontested testimony and in its place substitute it with their opinion.
- [202] Another point raised by the Defendants is: the offence of conversion involves treating as one's own, the property of another that was entrusted for safe keeping or a particular purpose. Therefore:
- 1) Who was it, for and on behalf of the Government, that entrusted the buses to the Defendants?
 - 2) For what purpose was it entrusted?
 - 3) When and where did this entrusting occur?
- [203] According to the former Prime Minister, there was no Cabinet decision with regard to the buses. He was satisfied that Ambassador Ashe was acting in accordance with what was intended.

Corruption Challenge

- [204] Antigua and Barbuda **Prevention of Corruption Act**, No. 21 of 2004 entered into force on the 1st March, 2005. The then Honourable Attorney General and Minister for Legal Affairs, Mr. Justin L. Simon, Q.C. by Statutory Instrument 2005, No. 5 by publication in the Gazette appointed that date for the **Act** to come into operation.
- [205] Nine months after the commencement of the **Prevention of Corruption Act** on the 14th December, 2005 the **United Nations Convention Against Corruption** ('UNCAC') entered into force. Antigua and Barbuda acceded to that treaty on the 21st June, 2006. **UNCAC** at article 19 states:
- "Each State party shall consider adopting such legislative and other measures that may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining undue advantage for himself or herself or for another person or entity."
- [206] Neither the **Prevention of Corruption Act** nor **UNCAC** seek to define 'corruption'.
- [207] Modern anti-corruption legislation addresses a wide range of violations to include offences like bribery, extortion, embezzlement, money laundering, nepotism, lobbying, the misuse of Government's power and the like. Contemporary legislation may give a statutory formulation to aspects of the common law offence of 'misbehavior in public office'. Early legislation include the English **Corrupt Practices Prevention Act 1854** with the focus on bribery of voters.
- [208] An offence under section 3 (1) (h) of the **Prevention of Corruption Act** as noted earlier, is where a person:

“...improperly uses for his benefit or that of a third party, any property belonging to a public body to which he has access as a result of or in the course of the performance of his functions as a public official.”

[209] The only definition in the **Act** that is relevant here states:

“public body means any of the following -

- (a) the government or Barbuda Council;
- (b) a Ministry or Department of Government;
- (c) the House of Representatives or the Senate...

[210] The **Act** does not define ‘improperly’. In the context of what the legislation stands for, the plain English synonyms of wrongfully, erroneously, badly or inappropriately seem to capture the spirit of the section.

[211] When the Crown applied for and was granted an amendment to the indictment at the commencement of the case to substitute the previous charge with the current charge, the Prosecutor identified the elements of the corruption offence as being: each Defendant:

Improperly used;

- i. For himself or herself or a third party;
- ii. Property of a public body;
- iii. To which the Defendant had access (as a Minister of Government);
- iv. In the course of performing his or her duties.

[212] The Crown’s case is that the Defendants improperly used the buses either for themselves or for a third party. The buses were the Government’s property. The Defendants were Government Ministers. By virtue of serving in the Government, the Defendants got access to the buses. Access to the buses was gained in the course of performing his or her duties.

[213] The Defendants accept that they were Ministers of Government. They were also Parliamentary Representatives. The buses did enter into their custody, care and control by virtue of the fact that they were Parliamentary Representatives; it was not because they were Ministers or Members of Cabinet that the buses entered into their custody, care and control. They deny that the buses were the property of any public body. They also deny that the buses fell under their Ministerial responsibility or that they gained access to the buses in the course of their Ministerial duties.

[214] The critical considerations revolve around the issue of ownership of the buses, which was considered in the charges relating to conversion, and connected to that, whether there is any evidence of improper use.

[215] Counsel for the Second Defendant suggested that **Jagdeo Singh v The State** [2005] UKPC 35 (PC) may be of some assistance in assessing the corruption charge. In **Jagdeo Singh** the Privy Council

over-turned a conviction of a lawyer who was convicted of two counts of corruption under the law of the Republic of Trinidad and Tobago. That case was most helpful in terms of the directions to be given by the Judge to the forum of fact at the next stage of this matter, rather than the considerations at the 'no case' stage. It was decided on the Good Character Direction with regard to credibility and propensity.

[216] According to Mr. Spencer, the buses were intended to be used in the community. The evidence from the Crown's witnesses was that the buses were in fact used in that manner. In the recorded interviews the three Defendants gave, they stated what the purpose and use of the vehicles were. The police officers who recorded interviews from the Defendants said they had no reason to doubt or disbelieve the Defendants.

Findings

[217] In relation to Count One, Four and Seven that deal with embezzlement:

- 1) The omission in the framing of the indictment of the words "employment in the public service of Antigua and Barbuda" is not fatal. In the circumstances of this case, the omission ought not to have misled the Defendant or caused any undue prejudice.
- 2) A Minister of Government in Antigua and Barbuda is not in the "employment of the public service" of Antigua and Barbuda in the context of this case and so the Defendants cannot properly be tried for an offence contrary to section 20 (2) (b) of the **Larceny Act** as it currently stands.
- 3) The no case submission with regard to those Counts - One, Four and Seven is accordingly upheld.

[218] In relation to Counts Two, Five and Eight that deal with conversion:

- 1) The failure to properly identify the subsection the Defendants were charged under, that is stating section 21 (d) of the **Larceny Act**, instead of section 21 (1) (d) was not such a fundamental breach in the circumstance of this case;
- 2) The error of misidentifying the VIN of the bus the second defendant, Dr. Quinn, is accused of converting ought not to have caused her substantial prejudice and the typographical or editorial error is one that could be remedied.
- 3) The Crown has failed to prove elements of the offence, including that the bus was entrusted by the Government to any of the Defendants; or that the Defendants converted the bus for his own use or benefit; and a fortiori, that there was any fraudulent and dishonest conversion.
- 4) On the express evidence of the purpose for which the buses were requested, the authorization to Ambassador Ashe to allocate the buses, the fact of the first time

licensing of the buses in the respective names of the Defendants, ownership of the buses was never vested in the Government.

- 5) In the circumstances the no case submission in relation to Counts Two, Five and Eight is upheld.

[219] In relation to Counts Three, Six and Nine:

- 1) The Crown has not established that the buses were owned by a public body.
- 2) There is no evidence to support improper use of the buses.
- 3) In the circumstances the no case submission in relation to Counts Three, Six and Nine is upheld.

[220] Given the finding that the Government was not the owner of the buses and the Defendants did not act fraudulently in respect of the buses, in the (unlikely) event that the Defendants can be considered to be public servants for the purposes of the section in Counts One, Four and Seven, then the 'no case' submission would have been upheld on the basis of the Crown's failure to prove an essential element of the offence.

[221] The 'no case' submissions are accordingly upheld on all counts of the indictment. A formal verdict of 'not guilty' is therefore returned on all counts on the indictment.

Colin Williams
High Court Judge

By the Court
Registrar