

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 17.10.2013

THE CROWN COURT IN NORTHERN IRELAND

SITTING AT BELFAST

REGINA

-v-

PAUL WU PU MO

RULING

WEIR J

[1] The twenty eight charges against this defendant, Wu Pu Paul Mo, are each of converting criminal property contrary to Section 327(1)(c) of the Proceeds of Crime Act 2002. The particulars of each offence allege that he converted criminal property by purchasing bankers drafts from monies held in one of five accounts in his name, the drafts being, in almost every case, drawn in favour of Hon Yau Cheung, the sole exception (Count 28) being a draft drawn in favour of Siu Ling Mo, who is the sister of the defendant and the wife of Mr Cheung. The drafts are alleged to have been purchased on diverse dates beginning on the 8th of August 2003 and ending on the 2nd of July 2010.

[2] The facts as alleged by the prosecution are not significantly in dispute. The defendant is a man who, during the period in question, worked in Chinese food establishments. He earned between £15,000 and £20,000 per annum, yet between the 2nd of June 2003 and the 24th of August 2010 a large sum was lodged to his five bank accounts in the form of cash, the total being rather more than £800,000 according to a chart, Exhibit KW 3, put in evidence by the prosecution. The prosecution has opened the case and proceeded on the basis that the jury should infer, from the defendant's relatively modest income, and the large amounts, and very large total, of the cash lodgements that this money can only have been derived by this defendant from crime. An attempt was also made to prove, by reference to a large photograph album showing

opulent furnishings, ornaments, personal clothing and effects at the defendant's home that he was living a criminal lifestyle. This endeavour failed when a prosecution witness agreed in cross-examination that most of the valuable items shown in the photographs were either his property or gifts from him to the defendant with whom it appears the witness has been friendly for some thirteen years.

[3] It is trite to observe that the offence of converting (or otherwise dealing with) criminal property is not committed unless that property is first proved to have been "criminal" at the date of the conversion (or other act). The defendant was interviewed on a number of occasions by police and three of those interviews in edited form and a summary of a fourth interview have been put in evidence by agreement. They do not establish that the property was "criminal". The defendant admitted lodging the money and then buying the drafts in the name of his brother-in-law and sister. He did not say who had given him the money to lodge. It was put to him that the total amount of the value of the drafts in favour of Mr Cheung almost matched the amount of the lodgements. He denied a suggestion that he was the "banker" and said he was "the helper". He agreed that he had attributed some of the cash lodgements that he had made to the friend, the friend's mother and a second friend, and that he had used one of the five accounts which was held jointly with a third friend. His explanation for using their names was that he liked seeing them written down on the descriptive entry on the bank statements.

[4] However, it appeared at the very end of the prosecution case during the evidence of Detective Constable Coles, the Investigating Officer, that the prosecution does not and did not at the commencement of this trial believe that these monies when lodged were indeed the proceeds of criminal conduct on the part of this defendant. Police may have been aware of the true position since at least the interview of the 25th of August 2010 when they suggested to the defendant (in our interview number 2) that he was the banker, rather than someone who had himself made the criminal property. It was however established by Mr Jonathan Connolly, Junior Counsel for the Defence, who has conducted the trial in an exemplary manner in the absence throughout of his Senior Counsel, that the prosecution had reached a written understanding with Mr Cheung as to the agreed basis of Mr Cheung's plea of guilty entered prior to the commencement of this trial in which he is a defendant as is his wife, Siu Ling Mo who also pleaded guilty before the trial commenced. That document was not disclosed to the defence team of Mr Mo in this case although I consider that it plainly ought to have been. In the event, no harm was done because fortunately Mr Mo's advisors came to learn of it by other means and were able to put its terms to Detective Constable Coles, who accepted their accuracy. Those terms are as follows:

"Hon Yau Cheung pleads guilty to a single count of removing criminal property from the UK to be added to the existing indictment.

There are presently a number of counts on the indictment concerning bankers' drafts purchased from various Northern Ireland based bank accounts held in the name of Wu Pu Paul Mo. There was a single count of removing criminal property against Hon Yau Cheung for each draft, and a corresponding count of converting criminal property for Wu Pu Paul Mo. All of those counts have been replaced with the above mentioned new count, the subject matter of which is the same, namely the single count is concerned with those same bank drafts.

The offending took place by the following means. Cash lodgements were made to Mo's accounts, that money having been sourced by Hon Yau Cheung. Wu Pu Paul Mo then arranged for the purchase of bankers drafts from those Northern Ireland banks. All of those drafts were made payable to Hon Yau Cheung, save one that was made payable to his wife Sui Ling Mo. Hon Yau Cheung secured the removal of those drafts from the UK to be lodged in foreign bank accounts to which he had access, including the Bank of China.

The prosecution accept that when taking the total amount of money converted and removed from the UK by the said drafts, the estimated tax liability that would have been due on that amount would have been in the region of £300,000, based on an approximate tax rate of 40%.

The prosecution accept the basis of plea put forward by the defence that criminality making the said bank draft monies criminal property, was a failure to declare the monies to HMRC for the purposes of tax assessment.

Hon Yau Cheung confirms as part of his plea that he has no interest in the cash that was seized from his home at 15 Garvey Manor, Lisburn, and therefore will not contest the PSNI application to forfeit the said monies. That application will be made by the PSNI in the Magistrates Court.

Hon Yau Cheung also agrees that the benefit amount for the purposes of the consequential confiscation application, which he confirms he has sufficient funds available to pay, is £300,000. He will consent to a confiscation order in those terms in due course. The prosecution application will be for an order in which the benefit amount is £300,000."

[5] From these agreed terms it may readily be seen that the prosecution has at all material times accepted that all the cash amounts lodged to this defendant's accounts were earnings of Mr Cheung which he did not declare to HMRC for the purposes of tax assessment. The present defendant then arranged the purchase of the bank drafts, thereby returning Mr Cheung's money to him and, in the one case, to his wife Siu Ling Mo.

[6] It was therefore not correct for the prosecution to seek to make the case that any of these monies were derived by this defendant from his own criminality. At all material times the prosecution well knew, and had acknowledged in writing, that these were all the earnings of Mr Cheung.

[7] I have earlier stated the obvious, that unless the property is "criminal property" at the time of the act alleged, in these cases the dates of conversion of bank deposits into drafts, no crime has been committed. The prosecution has adduced no evidence in this trial as to the date of making of any false or under declaration of tax by Mr Cheung. There was evidence from a Mr Baker of the modest self-declared earnings of Mr Cheung and Miss Mo, but there was no evidence as to when those self-assessments were made, nor were there any documents in relation to that question put in evidence. Crucially, there was absolutely no evidence that any of them had been made to HMRC prior to the purchase of any of the drafts the subject of these counts. I add for completeness that there was no evidence that the present defendant ever knew anything about Mr Cheung's earnings or his tax affairs and Mr Cheung's admissions in the agreed basis of plea document are not evidence against this defendant.

[8] It is clear as a matter of law, and the authorities are unanimous, that the property dealt with must be criminal property at the time of the dealing. See, among many other authorities to the same effect, R v Loizou [2005] 2 Criminal Appeal Reports 618. Where, as the prosecution has here accepted, the monies lodged came from Mr Cheung and went back to him in drafts and were the undisclosed to the Revenue fruits of his legitimate business activities then those profits cannot become criminal property merely by virtue of a failure to disclose their existence. They only become so when the Revenue is cheated by false declaration of income. See for example R-v-K (1) [2007] 2 Criminal Appeal Reports 10 at para 25 where Dyson LJ observed:

"We agree the profits made from trading in legitimate goods without declaring the profits to the Revenue... do not become criminal property simply by reason of the failure to declare profits. The profits are not of themselves illegal or criminal property: They are the product of a business carrying on a lawful trade."

And in R-v-Gabriel [2007] 11 at para 21, Gage LJ observed:

"We recognise that the failure to declare profits for the purposes of income tax may give rise to an offence but that does not make the legitimate trading in goods an offence of itself."

[9] Plain it is that the profits of Mr Cheung were at some time the subject of under-declarations, but the prosecution has made no effort to establish by evidence when any of those under-declarations was made, much less to prove that the monies in this defendant's accounts had been, at the time of his purchasing any of the twenty eight drafts, the subject of under-declarations so as to have changed the legitimate trading profits of Mr Cheung into criminal property. The prosecution has therefore not established prima facie, or at all, that any of the 28 counts involved the conversion of what was criminal property.

[10] A good many other authorities were helpfully referred to by counsel in the course of argument which, had time permitted, I would have discussed here in some detail but I consider that the applicable principles are adequately dealt with by the authorities which I have referred to above and by the passages cited from them.

[11] I accordingly conclude that the first limb of the Galbraith test has been failed in that the prosecution has not called evidence to support the essential ingredient that the property converted into drafts was at the time of any such conversion criminal property. Accordingly I rule that the case ought not to proceed further.

[12] That is the basis upon which I made my ruling yesterday. However, I also added then that I considered it unfair to the defendant that he should be prosecuted on the basis that his own dishonesty had led to the accumulation of the monies lodged to his accounts and that the jury be asked to infer that these monies were criminal property because he could not have come by them honestly by reason of his modest income. That case has been advanced by the prosecution in the face of its knowledge, and written acknowledgment, that the source of the monies was quite other and that they were not acquired by any dishonest conduct on the part of this defendant or indeed by their

creator, Mr Cheung. For the prosecution to invite the jury to infer a state of affairs which it knows to have no basis in fact is, in my estimation, unconscionable and unfair. The justification advanced in argument for this course by Mr Mateer QC is that the prosecution has no option but to approach the matter thus because it cannot prove in this trial where the money came from. I do not consider that to be a justification for advancing a prosecution on a false basis that is highly prejudicial to the present defendant, namely that this large amount of money was the ill-gotten proceeds of some unspecified or undiscovered criminal activity by him.

[13] The prosecuting authority is not obliged to conduct a prosecution by any means and especially so if those means are likely, even if unintentionally, to create a false impression in the mind of the jury as to the true facts known to the prosecution, an impression which is likely to be highly prejudicial to the defendant in the eyes of the jury from whom the true facts are concealed. The plea of expediency is no sufficient justification for such a course. I consider that to allow this prosecution to continue against this defendant would be highly prejudicial to him and an abuse of the process of the court. Accordingly, on that ground also, I would stay these proceedings.