

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court of Fiji]

CRIMINAL APPEAL NO. AAU0169 of 2016
[High Court Case No. HAC 088 of 2010]

BETWEEN : JOHNNY ALBERT STEPHENS
Appellant

AND : THE STATE
Respondent

Before : Hon. Mr Justice Daniel Goundar

Counsel : Appellant in Person
Ms J Prasad for the Respondent

Date of Hearing : 7 December 2017

Date of Ruling : 26 January 2018

RULING

- [1] This is a timely application for leave to appeal against conviction only and bail pending appeal.
- [2] Following a retrial in the High Court at Suva, the appellant was convicted of two counts of money laundering contrary to section 69 (3) of the Proceeds of Crime Act 1997. Count one alleged that the appellant on 6 August 2009, received money amounting to \$17,420.90 and disposed of the same, that is the proceeds of crime knowing or ought to have reasonably known the said \$17,420.90 is derived directly or indirectly from some form of unlawful activities. Count two alleged that the appellant on 25 September 2009, received money amounting to \$21,440.56 that is the proceeds of crime knowing or ought

to have reasonably known the said \$21,440.56 is derived directly or indirectly from some form of unlawful activities. The learned trial judge agreed with the assessors' majority opinions and convicted the appellant on both counts. On each count, the appellant was sentenced to 3 years' imprisonment with a non-parole period of 2 years, to be served concurrently.

- [3] At trial, the appellant was represented by counsel. He elected not to give evidence. His defence was that he did not know or could not have reasonably known that the monies he received into his bank account were derived from some form of unlawful activities.
- [4] The prosecution case was that the appellant was part of a scheme involving a foreign national who had targeted Westpac bank customers and stole funds from their accounts using fraudulent electronic methods. The stolen funds were deposited into the appellant's personal bank account with his consent. The funds were siphoned off from the bank account gradually.
- [5] The grounds of appeal were filed by the appellant in person. He has also filed detailed submissions in support of his grounds of appeal, which I have read and considered.
- [6] The first complaint is that learned trial judge failed to define the fault element of money laundering in the summing up. The fault element of money laundering has two limbs. The prosecution is required to prove that the accused knew or ought to have reasonably known that the property he received or disposed was tainted or proceeds of some form of unlawful activities. The prosecution relied upon both limbs of the fault element in the present case and that is how the trial judge directed the assessors to consider the fault element in paragraph 13 of the summing up:

“In addition to the above physical acts, the prosecution must make you sure that the accused, at the time he was performing the above physical acts, knew or ought to reasonably know, that the money was derived or realised directly or indirectly

from some form of unlawful activity. So, in the context of this case, if the accused knew or ought to reasonably know that the money coming into his Westpac Bank Account were derived or realised directly or indirectly from some form of unlawful activity (for example, theft or fraud), then he is liable for money laundering. This is the mental element or fault element of the offence.”

- [7] Both limbs of the fault element of money laundering were defined using plain language for the assessors in the summing up by the learned trial judge. The question whether the element ‘ought to have reasonably known’ required further elaboration is a question of law alone. Leave is not required for this question.
- [8] The second complaint is that the learned trial judge misdirected or unfairly directed the assessors on the appellant’s caution interview. The impugned direction is contained in paragraphs 28-33 of the summing up. The learned trial judge told the assessors that the appellant had confessed to crimes alleged against him in his caution interview and that if they accept his confession was true, then they will have to find him guilty of the charges.
- [9] When the appellant’s caution interview is read as a whole, he clearly denied having knowledge that the funds that he received into his personal bank account were derived from some form of unlawful activities. The admissibility of the caution interview was not challenged at the trial. The record of interview was admitted into evidence with the consent of the appellant. If the appellant had confessed to the offence of money laundering, then he would have disputed the admissibility of his confession and not consented to its admissibility. It is arguable that the learned trial judge had misdirected on the appellant’s caution interview by telling the assessors to consider that the appellant had confessed to the charged offences in his caution interview, resulting in a miscarriage of justice.
- [10] In paragraph 38 of the summing up, the learned trial judge told the assessors that counsel for the appellant in his closing address admitted that the funds received into the appellant’s accounts were proceeds of crime. The appellant submits that the learned trial

judge unfairly imputed his counsel's erroneous admission on him. The appellant's case was that he did not know that the funds he had received into his bank account were proceeds of crime. The direction in paragraph 38 is arguably unfair.


[11] The other complaints relate to sufficiency of evidence. Some of them are misconceived. The only issue for the trial court was whether the appellant knew or ought to have known that the funds he had received into his bank account on the two occasions were derived from some form of unlawful activities. The learned trial judge relied upon both the appellant's confession and the circumstantial evidence to convict the appellant. As I have said earlier, the appellant did not confess to money laundering in his caution interview. The direction that the appellant confessed to money laundering is arguably a misdirection. The question whether there has been a miscarriage of justice is a matter for the Full Court to consider.

[12] At this stage the appeal is arguable, but I am not satisfied that the appeal meets the threshold of high likelihood of success for the appellant to be granted bail pending appeal. There is no exceptional circumstance to grant bail. So far the appellant had served one third of his sentence.

Orders

1. *Leave granted.*
2. *Bail refused.*




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Hon. Mr. Justice Daniel Goundar
JUSTICE OF APPEAL

Solicitors:

Appellant in Person

Office of the Director of Public Prosecutions for the Respondent