

IN THE MAGISTRATES' COURT OF FIJI AT SUVA  
CRIMINAL JURISDICTION

Criminal Case No. 239 of 2016

STATE

-v-

1. HANNAN WANG
2. GUANGWU WANG
3. XUHUAN YANG

**Counsel for Prosecution:** Ms. M. Khan & Ms. P. Lata for the Director of Public Prosecution  
**Counsel for the Defendants:** Mr. N. Shivam & Mr. Gosai of Neel Shivam Lawyers

**Date of Hearing:** 02/10/2017, 03/10/2017, 04/10/2017, 05/10/2017, 06/10/2017, 09/10/2017  
11/10/2017, 12/10/2017, 23/10/2017, 24/10/2017, 10/11/2017, 21/11/2017  
and 24/11/2017

**Date of Judgment:** 22/02/2019

**JUDGMENT**

**Introduction**

- [1] **HANNAN WANG** and **GUANGWU WANG** stand charged with two counts of **Money Laundering** contrary to section 69 (2) (a) and (3) (a) of the *Proceeds of Crime Act 1997*. The particulars of the first and second counts are that:

**Count 1:**

*HANNAN WANG* and *GUANGWU WANG* between the 9<sup>th</sup> day of June 2015 to the 24<sup>th</sup> day of June 2015 at Suva, in the Central Division, engaged directly or indirectly in transactions involving ANZ Bank Account No. 12339449 to the total sum of \$675, 774. 98 that are the proceeds of crime, knowing or ought reasonably

to know that the money is derived directly or indirectly from some form of unlawful activity.

**Count 2:**

**HANNAN WANG** and **GUANGWU WANG** between the 17<sup>th</sup> day of June 2015 to the 19<sup>th</sup> day of June 2015 at Suva, in the Central Division, engaged directly or indirectly in transactions involving ANZ Bank Account No. 12346956 to the total sum of \$11, 334.16 that are the proceeds of crime, knowing or ought reasonably to know that the money is derived directly or indirectly from some form of unlawful activity.

- [2] **XUHUAN YANG** stands charged for one count of **Money Laundering** contrary to section 69 (2)(a) and (3)(a) of the *Proceeds of Crime Act 1997*. The particulars of the third count are that:

**Count 3:**

**XUHUAN YANG** on the 18<sup>th</sup> day of June 2015 in the Central Division, engaged directly or indirectly in transactions involving ANZ Bank Account No. 12339449 to the total sum of \$8, 500.00 that are the proceeds of crime, knowing or ought reasonably to know that the money is derived directly or indirectly from some form of unlawful activity.

- [3] Following pleas of 'not guilty' in respect of the Counts they faced, **HANNAN WANG**, **GUANGWU WANG** and **XUHUAN YANG** were tried before this Court over the course of 2<sup>nd</sup> – 13<sup>th</sup> October 2017 and over the course of 23<sup>rd</sup> – 24<sup>th</sup> October 2017, 10<sup>th</sup> November 2017, 21<sup>st</sup> November 2017 and 24<sup>th</sup> November, 2017. The State called 11 witnesses and tendered approximately 51 exhibits to support its case against the Defendants.
- [4] On 23<sup>rd</sup> October 2017, this Court ruled that there was a *case to answer* in respect of each Defendant pursuant to section 179 of the *Criminal Procedure Act 2009*, and the Defense called three witnesses and tendered approximately 13 exhibits over subsequent trial days.

The Defence witnesses were: -

1. DEFENCE WITNESS 1 – HANNAN WANG, the first Defendant.
2. DEFENCE WITNESS 2 – ANNY GU
3. DEFENCE WITNESS 3 – LIJUN LIU.

- [5] The first Defendant testified as is his right in law. The second and third Defendants remained silent as is their right in law. No negative imputation is drawn from either course of action.

**Presumption of Innocence**

- [6] This Court reminds itself that each Defendant is presumed innocent until proven guilty.

## Burden and Standard of Proof

- [7] As Viscount Sankey observed in Woolmington v. The Director of Public Prosecutions [1935] UKHL 1,

“...throughout the web of the English criminal law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the [defendant’s] guilt beyond reasonable doubt.”

- [8] Section 57 of the *Crimes Act 2009* makes clear that the prosecution bears the legal burden of proving every element of an offence relevant to the guilt of the person charged and section 58 of the *Crimes Act 2009* makes clear that this legal burden must be discharged by the prosecution beyond reasonable doubt.
- [9] That legal burden and standard of proof applies in respect of each Defendant on each Count.

## The Charge

- [10] Section 69 (2) (a) of the *Proceeds of Crime Act 1997* provides that:

“(2) A person who...engages in money laundering commits an offence and is liable on conviction to:

- (a) if the offender is a natural person, a fine not exceeding \$120, 000 or imprisonment for a term not exceeding 20 years, or both...”

This provision is not relevant at this point in time and the Court sets it to one side.

- [11] Section 69 (3) (a) of the *Proceeds of Crime Act 1997* provides that:

“(3) A person shall be taken to engage in money laundering, if and only if—

- (a) the person engages, directly or indirectly in a transaction that involves money, or other property that is proceeds of crime...

and the person knows, or ought reasonably to know, that the money or other property is derived or released, directly or indirectly, from some form of unlawful activity.”

This is the provision that this Court must turn its mind to in determining the guilt or innocence of each Defendant on each Count.

## Elements of the Offence

### *Physical Elements to be proved Beyond Reasonable Doubt*

- [12] The physical elements of the crime are met if the prosecution is able to prove on the evidence that each Defendant on each Count:



- (i) engaged directly or indirectly in a transaction;
- (ii) that transaction involved money or property;
- (iii) and the money or the property were proceeds of crime.

[13] This Court reminds itself that proceeds of crime means property or benefit that is either:

- (i) wholly or partly derived or realised directly or indirectly by any person from the commission of a serious offence or a foreign serious offence;
- (ii) wholly or partly derived or realised from a disposal or other dealing with proceeds of a serious offence or a foreign serious offence;
- (iii) or wholly or partly acquired proceeds of a serious offence or a foreign serious offence: s. 3 and s. 4 (1A) of the *Proceeds of Crime Act 1997*.

[14] Proceeds of crime also includes, on a proportional basis, property into which any property derived or realised directly from the serious offence or foreign serious offence is later converted, transformed or intermingled; and includes, any income, capital or other economic gains derived or realised from the property at any time after the offence: s. 3 and s. 4 (1A) of the *Proceeds of Crime Act 1997*.

[15] In the clear context of section 4 (1A) of the *Proceeds of Crime Act 1997*, the word property includes "money".

[16] Further, a serious offence is an offence for which the maximum penalty prescribed by law is death, or imprisonment for not less than 6 months or a fine of not less than \$500.00; and a foreign serious offence is a serious offence against the law of a foreign country: s. 3 of the *Proceeds of Crime Act 1997*.

#### ***Fault Element/s to be proved Beyond Reasonable Doubt***

[17] The fault element of the crime is complete for each Count if the prosecution is able to prove on the evidence that each Defendant:

- (i) knew or ought reasonably to have known that the money or other property was derived or realised, directly or indirectly, from some form of unlawful activity.

[18] In law, the prosecution must prove that each defendant on each count *either*

- (i) had knowledge *i.e.* was aware that the money or other property was derived or realised directly or indirectly from some form of unlawful activity;
- (ii) or ought to have known *i.e.* ought to have been aware that the money or other property was derived or realised directly or indirectly from some form of unlawful activity.

- [19] The Court of Appeal of Fiji in **Johnny Albert Stephen v. The State**, Criminal Appeal No. AAU 53 of 2013 (unreported, 27 May 2016) per Calanchini P. observed:

[64] There is some authority for the view that in the criminal law “knowledge” includes willfully shutting one’s eyes to the truth. **Warner v. Metropolitan Police**(1969) 2 AC 256 at 279 HC.

[65] The most important matter in determining whether a person had the requisite knowledge is to carefully examine the relevant evidence and to draw an inference based on that exercise.

[66] The dictum of Lord Bridge in **Westminster City v. Caraval Grange Ltd** 83 Cr. App. R 155 at 164 it was held that:

*“...it is always open to the tribunal of fact ... to base a finding of knowledge on evidence that the defendant had deliberately shut his eyes to the obvious or refrained from enquiry because he suspected the truth but did not wish to have his suspicions confirmed.”*

- [20] It seems clear that proof of either *actual* or *constructive* knowledge that the money or property had been derived or realised, directly or indirectly, from some form of unlawful activity will suffice: see **Johnny Albert Stephen**, supra at [69].The term “unlawful activity” is defined to mean “an act or omission that constitutes an offence against a law in force in Fiji or a foreign country”: s.3 of the *Proceeds of Crime Act 1997*.
- [21] In short, the State must prove, in respect of each Defendant and in respect of each Count, that that Defendant:

- (i) engaged directly or indirectly in a transaction;
- (ii) that transaction involved money or property;
- (iii) and the money or the property were proceeds of crime;

and:

- (iv) when engaging directly or indirectly in that transaction;
- (v) the Defendant either knew or ought reasonably to have known that that money or property had been derived or realised, directly or indirectly, from some form of unlawful activity.

### **The State’s Case**

- [22] The State’s case is that the three Defendants’ managed ANZ Bank Account No. 123339449 for Chunxiao Tour Company and ANZ Bank Account No. 12346956 for Jintong Trading Company. State Counsel argue that the Defendants’ colluded to launder money *into* the two accounts.
- [23] The State’s logic is that the companies under which name each account was opened; namely, Chunxiao Tour Company and Jintong Trading Company were shell companies



that were used for the sole purpose of laundering money. They allege that the three Defendants' managed Chunxiao Tour Company and Jintong Trading Company. An investigator from ANZ Banking Corporation was of the view that money had been sent into Chunxiao Tour Company and Jintong Trading Company accounts as a result of fraudulent activity i.e. credit card skimming. Investigations by the Bank revealed multiple repetitive transactions from foreign cards that could not be supported by receipts or proper transaction details. It was a case where the Bank, having found no documents to support the transactions and being unable to contact the named account holders, mitigated risk by reversing a significant amount of the transactions that they deemed suspicious.

- [24] The registered owners of the businesses are Mamuti Aishan and Cheng Guo, neither of whom – State Counsel assert, had ever entered into Fiji.
- [25] In detail, the State alleges that the first Defendant's connection to Chunxiao Tour Company and Jintong Trading Company is proved by the fact that he paid the rent for the two office spaces rented out in the name of these companies at 160 Waimanu Road, Suva. In addition, the State alleges that his links to the ANZ accounts is proved by the fact that two draws from Chunxiao Tour Company's ANZ account had been made via Cheques cashed by him at ANZ Bank (ANZ Cheque No. 5 and ANZ Cheque No. 7). The State also relied on evidence that he had told the Police that his mobile number was 8021999 and a Ms. Annie Gu said in evidence that she received instructions from a Chinese man who telephoned her from that number.
- [26] For the sake of completion, Ms. Gu said that while she received instructions from a person speaking to her from a phone using the number that belonged to the first Defendant, that person was not the first Defendant. Regardless, State Counsel argues, it was his phone that was used.
- [27] In respect of the second Defendant, State Counsel rely on the evidence of a prosecution witness who testified that the second Defendant had identified himself as the owner of Chunxiao Tourist Company and as having been present when he had installed ANZ EFTPOS machines and conducted training for the use of those ANZ EFTPOS machines at Chunxiao Tourist Company's and Jintong Trading Company's places of business. In addition, the second Defendant cashed Cheque No. 2 and received money from the cashing of that Cheque drawn from Chunxiao Tourist Company's ANZ bank account in the sum of \$21,800.00. The second Defendant admits cashing Cheque No. 2 and receiving \$21,800.00 at Question and Answer 41 and Question and Answer 42 of his Record of Interview.
- [28] In respect of the third Defendant, the State relies on the fact that this Defendant admitted cashing Cheque No. 1 and receiving \$8,500.00 drawn from Chunxiao Tourist Company's ANZ bank account.
- [29] The State also relied on evidence given by an Investigator from the Fiji Police Force who said that the three Defendants were Directors of Yiwu International. This witness said that the Defendants' claims that the Cheques were given to them in payment for the sale of shoes and bags were suspicious because he could not find proper sale records to support that claim.

- [30] In closing, State Counsel submits “that the identities of the three Accused have been proven beyond reasonable doubt based on the ongoing submissions. The circumstances and direct evidence of PW 1, PW 9, PW 7 and PW 11 shows the first and second Accused were directly involved in managing/operating the two companies thus the unlawful transactions conducted on the two accounts were done by the three Accused”: p. 87 of the State’s Closing Submissions.
- [31] Aside from admissions made by the Defendants’ in respect of the Cheques that they individually cashed; the State’s case against the Defendants’ is largely circumstantial.
- [32] This Court reminds itself:

*You must consider all the evidence and decide what facts have been proved. From those facts you are entitled to draw proper inferences. An inference is a logical deduction from facts that have been proved. It must not be mere speculation or guesswork. It is not sufficient that the proved circumstances are merely consistent with the Defendant having committed the crime. To find the Defendant guilty you must be satisfied so as to feel sure that an inference of guilt is the only rational conclusion to be drawn from the combined effect of all the facts proved. It must be an inference that satisfies you beyond reasonable doubt that the Defendant committed the crime. If the inference to be drawn from the circumstantial evidence falls short of that standard then your opinion must be not guilty: see State v. Singh [2009] FJHC 30; HAC072.2008 (3 February 2009) per Goundar J. at [37].*

- [33] Before canvassing the Defence case, this Court reminds itself of the need to examine the evidence produced in Court to determine whether each of the elements against each Defendant on each Count has been proven beyond reasonable doubt. A submission or assertion made by Counsel, even when perfectly within their rights to make, is not evidence.

### Summary of State Evidence

#### **Mr. Abhi Ram – Prosecution Witness 1 (PW 1)**

- [34] Mr. Ram’s evidence was unchallenged. This Court makes the following observations relevant to the Companies Mr. Ram spoke of.
- [35] It is not disputed that Chunxiao Tourist Company and Jintong Trading Company were registered in Fiji on 22<sup>nd</sup> May 2015 and that the named Directors are Mamuti Aishan and Cheng Guo, respectively. It is not disputed that the registered place of business for both companies was Shop 1, Sabrina Building, Victoria Parade, Suva. Both Directors listed their residential addresses as being 92 Rewa Street, Suva.
- [36] Ms. Lijun Liu states Yiwu International Company initially operated out of Shops 1, 10 & 11 Sabrina Building, Victoria Parade, Suva in 2014, but in 2015 she shifted the shop to 134 Waimanu Road, Suva because the rent was cheaper there. The Defence tendered a Tenancy Agreement dated 1<sup>st</sup> April 2015 for the property at 134 Waimanu Road, Suva.



- [37] It is not disputed that Ms. Annie Gu acted as a consultant to a person or persons acting for Mamuti Aishan and Cheng Guo and helped in this capacity to have the businesses registered. It is also not disputed that she had assisted Chunxiao Tourist Company and Jintong Trading Company open bank accounts with ANZ; and had helped find premises at 160 Waimanu Road, Suva for both companies.
- [38] Ms. Annie Gu traded as Jingling Business, which was registered on 21<sup>st</sup> May 2013 and which provided professional consultancy for, amongst other things, business and investment in Fiji.
- [39] It is not disputed that the Defendants are Directors of Yiwu International Company, incorporated on 24<sup>th</sup> June 2014. It is further not disputed that Yiwu International Company, Chunxiao Tourist Company and Jintong Trading Company each rented premises at 134 and 160 Waimanu Road, Suva respectively in 2015.

**Mr. Abdul Raheem – Prosecution Witness 2 (PW 2)**

- [40] Mr. Raheem is an investigator with ANZ. That he is a trained and experienced fraud investigator is not a matter in dispute. That he investigated Chunxiao Tourist Company and Jintong Trading Company over June and July 2015 is also not disputed.
- [41] Mr. Raheem testified that he collected documents and CCTV footage and then analysed them. He then presented his findings in Court. Many of the documents that Mr. Raheem considered, he tendered. However, the CCTV footage he considered was not tendered and unfortunately, had not been disclosed to the Defence. Sgt. Chand testifying for the State said in evidence that the CCTV footage had been given to him for investigation purposes, not for him to disclose. The Defence did not make an application for a mistrial and seemed to have accepted and ably strategized around the non-disclosure. As such, this Court is satisfied that the Defence was not unduly prejudiced by the non-disclosure.
- [42] Mr. Raheem tendered **Prosecution Exhibit No. 5** – the Account Opening and Authority for Chunxiao Tour Company Account No. 12339449. This document was tendered not as proof of its contents but to show that it had been supplied to the Bank and the Bank acted on it to open the relevant account.
- [43] He also tendered **Prosecution Exhibit No. 5f** – A certified True Copy of the Passport of Mamuti Aishan. The passport was tendered as a means of identification. The prosecution suggested that the passport from which the identification page was derived was not a legitimate one. The bottom number on the passport did not match the Passport Number noted at the top right of the page. This Court takes judicial notice of the fact that a legitimate Fijian passport will have the top numbers on the passport match the bottom numbers on the passport and that non-matching passport numbers, while not conclusive of forgery in and of itself, will raise a red flag. However, this is not a Fijian passport; it is a passport belonging to China, a sovereign nation with its own unique passport features. No evidence was adduced in Court in respect of Chinese passports and their features. In the absence of any proof to the contrary, this Court accepts that certified true copy of Mamuti Aishan's passport at face value.



- [44] Mr. Raheem testified that a Mr. Xiaochun Wu, Commissioner for Oaths, had declared that he knew Mamuti Aishan and he signed a Statutory Declaration to that effect. This Declaration is dated 28<sup>th</sup> May 2015. He stood as an ANZ Identification Referee for Mamuti Aishan – **Prosecution Exhibit No. 5g**. The State did not tender the document as proof of the truth of its contents but merely to show that the document has been prepared and that ANZ Bank had relied on it to authorize the opening of Chunxiao Tour Company Account No. 12339449.
- [45] He tendered the ANZ Account Opening and Authority for Jintong Trading Company Account No. 12346956 and again, this document was tendered not as proof of its contents but to show that it had been supplied to the Bank and the Bank acted on it to open the relevant account.
- [46] Mr. Raheem testified that Mr. Xiaochun Wu, a Commissioner for Oaths in Fiji, stated that he knew Cheng Guo and he signed a Statutory Declaration to that effect. This Declaration is dated 28<sup>th</sup> May 2015. He stood as an ANZ Identification Referee for Cheng Guo – **Prosecution Exhibit No. 6g**. The State did not tender the document as proof of the truth of its contents but merely to show that the document has been prepared and that ANZ Bank had relied on it to authorize the opening of Jintong Trading Company Account No. 12346956.
- [47] **Prosecution Exhibit 7 and Prosecution Exhibit 8** – the Bank Statements for Chunxiao Tour Company and Jintong Trading Company were tendered as proof of the truth of its contents and was accepted by the Court on that basis. This Court accepts that the transactions noted in these statements happened on the dates and via the methods noted in them.
- [48] It is not disputed that on 11<sup>th</sup> June 2015, Ms. Annie Gu deposited \$2000.00 into Chunxiao Tourist Company Account No. 12339449 and on the same day deposited \$5000.00 into Jintong Trading Company Account No. 12346956. This Court accepts that Ms. Gu deposited these monies into these Accounts on the instructions of her client, Mr. Lingwho himself claimed to be managing the Businesses for Mamuti Aishan and Guo Cheng.
- [49] It is not disputed that the third Defendant went to ANZ Bank and cashed Cheque Number 1 dated 18 June 2015 in the sum of \$8, 500.00 drawn from Chunxiao Tourist Company Account No. 12339449. This Court accepts that the third Defendant provided his full name, passport number, date of birth and phone number when cashing the Cheque.
- [50] It is not disputed that the second Defendant went to ANZ Bank and cashed Cheque No. 2 in the sum of \$21, 800.00 drawn from Chunxiao Tourist Company Account No. 12339449. Mr. Wu provided his ID, contact number and ANZ Account number to the Bank.
- [51] It is not disputed that the first Defendant cashed Cheques No. 5 and 7 dated 22 June 2015, in the sum of \$5000.00 respectively drawn from Chunxiao Tourist Company Account No. 12339449. He provided the Bank with an identification card and the details on that card were, Mr. Raheem confirmed under cross-examination, correct in its particulars.



- [52] The evidence was that the first, second and third Defendants transacted their business at the bank in a forthright manner and showed no signs of furtiveness. In direct contrast, this Court accepts Mr. Raheem's testimony that a Mr. Hai Ming Xu cashed two Cheques in the sum of \$28,000.00 and \$45,000.00 and this Court further accepts Mr. Raheem's testimony that Mr. Xu transacted this business in a manner that seemed furtive, and in breach of ANZ protocol.
- [53] Mr. Raheem testified that ANZ Bank had a system to see how many EFTPOS transactions are processed for a particular merchant. The Bank noticed that there were many EFTPOS transactions processed for both Chunxiao Tourist Company and Jintong Trading Company. The Bank then sought receipts for each of these transactions so that they might authenticate them. Mr. Raheem further testified that credit card owners abroad had disputed EFTPOS transactions with Chunxiao Tourist Company Account No. 12339449 and Jintong Trading Company Account No. 12346956. These customers, Mr. Raheem asserts, then contacted their Banks and their Banks then contacted ANZ Bank. Customers from these foreign banks claimed that they had never travelled to Fiji, and disputed purchases on their cards which were said to have been made in Fiji.
- [54] Mr. Raheem testified that the *"fraud occurred by skimming the credit cards. We knew that the cards were skimmed because when we went to check on client's address, we couldn't find them. We couldn't find the receipts or the EFTPOS terminals. The phone numbers were all wrong numbers, they did not exist when we tried contacting the clients. We were not able to find the signatories and the clients, we saw their office was all empty, there were no EFTPOS machine or anything."* The Defence did not cross-examine Mr. Raheem on this discrete point.
- [55] It is a well-established principle that, in general, a party must challenge in cross-examination the evidence of any witness of the opposing party if he/she wishes to argue that evidence given on a particular issue should not be accepted (Browne v Dunn (1894) 6 R. 67, HL). Failure to cross-examine a witness on a particular important point may lead the court to infer that the cross-examining party accepts the witness' evidence, and it will be difficult to suggest that the evidence should be rejected.

#### **Ms. Ajeshni Mala – Prosecution Witness 3 (PW 3)**

- [56] Ms. Mala was instrumental in processing applications made by Chunxiao Tourist Company and Jintong Trading Company to open bank accounts with ANZ Bank. It is clear from her testimony that despite some red flags, the Bank decided to authorise the opening of accounts for both companies.

#### **Ms. Ronetta Fong – Prosecution Witness 4 (PW 4)**

- [57] Ms. Fong, Team Leader for Dispute Resolution and Fraud at ANZ Bank, testified that she authorized the reversal of EFTPOS transactions amounting to approximately \$711,342.10 inclusive of bank fees from Account No. 12339449 and \$11,930.70 inclusive of bank fees from Account No. 12346956 because in her considered view, those transactions were highly suspicious. She said that the card holders did not recognise any of the transactions



and the Bank did not have anything on hand to confirm that they were genuine transactions.

- [58] Ms. Fong testified that the cards had been skimmed. She testified that skimming is the illegal copying of information from a magnetic card/credit card. Card holders are not present in Fiji but their information and cards are used here. The skimmed cards were swiped at ANZ EFTPOS devices given to Chunxiao Tourist Company and Jintong Trading Company by the Bank, but the actual card holders had no knowledge of these transactions. A spreadsheet of the transactions which Ms. Fong says were the result of the "skimming" was tendered as **Prosecution Exhibit 12**. Ms. Fong testified that their records showed that cards were swiped at the ANZ EFTPOS machines given to Chunxiao Tourist Company and Jintong Trading Company for purchases ostensibly made at their shops.
- [59] The Defence did not cross-examine Ms. Fong. Failure to cross-examine a witness on a particular important point may lead the court to infer that the cross-examining party accepts the witness' evidence, and it will be difficult to suggest that the evidence should be rejected.

**Mr. Joseph Steele – Prosecution Witness 5 (PW 5)**

- [60] Mr. Steele, a Bank Teller with ANZ, cashed out Chunxiao Tourist Company Cheque No. 3 in the sum of \$28,000.00 and also cashed out Chunxiao Tourist Company Cheque No. 4 in the sum of \$45,000.00. He did it on the strength of the customer's TIN number, customer verifications undertaken by another staff member and authorizations made by the Head Teller at ANZ.
- [61] His evidence was accepted by the Defence. There was no cross-examination.

**Ms. Silika Baravilala – Prosecution Witness 6 (PW 6)**

- [62] Ms. Baravilala was a Bank Teller at ANZ in 2015. She confirmed cashing out Chunxiao Tourist Company Cheque No. 7 and she confirmed that the person who came in to cash the Cheque provided her his driving licence.
- [63] Her evidence was accepted by the Defence. There was no cross-examination.

**Mr. Eremasi Tikoduadua – Prosecution Witness 7 (PW 7)**

- [64] Mr. Tikoduadua is a Business Digital Service Consultant and in 2015 was a Business Channel Service Consultant based at Level 6, ANZ House, Suva for ANZ. He registered EFTPOS Machines for Merchants.
- [65] He testified that EFTPOS Machine recipients needed to first open a business account with the bank. Once approved, the Bank installed the EFTPOS Machine and trained the recipient on its use. The training was always conducted on site. The EFTPOS Machine would be tested on site and the owner notified of the risks and likely outcomes of a dispute on a transaction. For new businesses, the training usually took 30 minutes to



conduct. Once satisfied that the new owner understood how the EFTPOS Machine worked, they then left and reported the installation and training back to the Relationship Manager who would make a note in his or her record.

- [66] Mr. Tikoduadua recalled installing EFTPOS Machines for Chunxiao Tourist Company and Jintong Trading Company. He first took the programmed terminal, signage and manual or instructions guide/booklet for Chunxiao Tourist Company to 46 Rewa Street. No one was at the site and so he called Relationship Manager Lilly Hoi who got back to him with instructions to meet the customer at 160 Waimanu Road. The customer then took him back to the Office after identifying himself as the owner of Chunxiao Tourist Company and Mr. Tikoduadua installed the machine on site and trained the person who had identified himself as the business owner on its use.
- [67] Mr. Tikoduadua said that at the site, another person was present. Both persons were present and standing within touching distance during the training which took 30 minutes. There was a tube-light inside the premises and he could see both of their faces clearly. He said he had met the gentleman who identified himself as the owner of Chunxiao Tourist Company during a second customer visit and observed that the person usually wore tight-fitting clothes. He identified the second Defendant to be the man who had identified himself as the owner of Chunxiao Tourist Company on the day of installation. He said he had seen the second Defendant during visits he had made to Yiwu International's shop situated at 132 Waimanu Road, Suva prior to the day of installation and knew him because he and Yiwu International were customers of the Bank.
- [68] He installed an EFTPOS machine at Jingtong Trading Company's office at 160 Waimanu Road on 17<sup>th</sup> June 2015. He was met by and trained a man who identified himself as the owner of that business on that day. He said his training was easier because the same people who were present at Chunxiao Tourist Company were also present at the Jintong Trading Company Office on this day. He does not know who the owner of Jintong Trading Company and was unable to identify the person. They then received suspicious transaction reports for Chunxiao Tourist Company and then Jintong Trading Company. When they went to visit the sites on 23<sup>rd</sup> June 2015 they found the Offices and gates to the Offices closed. They reported this back at the ANZ Office and the Fraud Team took over.
- [69] He instructed ANZ staff to restrict access to the account to avoid further withdrawals from it on 24<sup>th</sup> June 2015. He confirmed in Court that during the course of investigations, he had taken Sgt. Chand of CID to 160 Waimanu Road to Yiwu International and he was able to point out the second Defendant as the person he had trained during his on site visit. He said the person he identified on that day was the same person he identified in Court at trial.
- [70] Under cross-examination, Mr. Tikoduadua confirmed that there were over 600 EFTPOS Machines in Suva and that there were only two of them responsible for looking after these machines. He went to install the EFTPOS machine at 46 Rewa Street for Chunxiao Tourist Company and found it odd that it was at a house. He also said under cross-examination that he had found all the contact information given in the form – email address and phone numbers, to be incorrect. He confirmed that after speaking to Lilly Hoi, he then travelled to 160 Waimanu Road where he met the Second Accused. He



could not recall what the Second Accused was wearing on that day. In addition, he confirmed that there had been a lady present in the room on installation and training day. The lady was present for the installation at Chunxiao Tourist Company but not at Jingtao Trading Company.

- [71] He confirmed mentioning a “Chinese lady” that he had met at the Bank in his statement to the Police. He says the lady told him she would be late but she did not arrive at all. In Court he says that he met the Chinese lady on 19<sup>th</sup> June 2017. Under cross-examination, he confirmed that he gave a detailed statement to the Police on 8<sup>th</sup> July 2015 and in that detailed statement he made no mention of the second accused. He explained that the Police had told him that he would undertake the ID after giving his statement. He maintained in Court that he knew the Second Accused from previous visitations and that he had identified the Second Accused after giving his statement.
- [72] He confirmed having referenced identifying a short Chinese man in a statement he gave on 3<sup>rd</sup> August 2015. He agreed that he did not make mention of the Second Accused during his first statement and confirmed that he went with Sgt. Satish Chand on 3<sup>rd</sup> August 2015 to identify the Second Accused. He went with Lily and Amy on 23<sup>rd</sup> June 2015 to retrieve the ANZ EPTPOS machines he had installed but could not because the premises were locked. He did not check with the 2<sup>nd</sup> accused even though his shop was only a few meters away. Under cross-examination, he confirmed that he was able to identify the 2<sup>nd</sup> accused because he had seen video footage of the 2<sup>nd</sup> accused at the Bank. He confirmed that Sgt. Satish had not shown him the video but that he had seen it at the bank.
- [73] It was clear from his evidence that communication was a problem during the installation process. He said that during the training he demonstrated the steps that needed to be taken and he took it that the persons present understood him because they smiled.
- [74] Under re-examination, the Prosecution asked him why he mentioned the video recording. He said it only came to his mind then. He confirmed that he knew the 2<sup>nd</sup> accused prior to installing the EFTPOS machine. He also confirmed that he did not speak much with the men at the site because it was clear to him that they had a limited grasp of the English language.
- [75] This Court will need to carefully consider whether the Prosecution evidence shows that the money that the first, second and third Defendants’ withdrew from Account No. 12339449 were proceeds of crime within the meaning of **section 3** and **section 4 (1A)** of the **Proceeds of Crime Act 1997**.

**Mr. Salesi Cama – Prosecution Witness 8 (PW 8)**

- [76] Mr. Cama is an Assistant Immigration Officer. He testified that there was no travel history for Passport G65136216 for Mamuti Aisaan and Passport G45124985 for Chang Xinjiang. That is, there is no official record of their having entered or left the country. He testified that the fact that the numbers at the top and bottom of the passports did not match indicated that there was something wrong with these passports.

- [77] Under cross-examination, Mr. Cama confirmed that he only conducted checks using the top numbers on the passports, not the bottom numbers. He confirmed that there might be an official entry for the passports if the bottom numbers had been entered instead of the top numbers.
- [78] Under re-examination, he confirmed that he was confident there had been no entry because in addition to the passport numbers check, he also ran the persons' surnames and dates of birth and other details through their database.

**Ms. Aradhana Singh – Prosecution Witness 9 (PW 9)**

- [79] Ms. Singh was employed by GP Hari & Company at 160 Waimanu Road in 2015. GP Hari & Company owned and rented out properties including the property at 160 Waimanu Road, which was a commercial property with 18 tenants. In April 2015, GP Hari & Company advertised 2 office spaces for rent for \$250.00 and \$165.00 a month respectively. A month later, on 25<sup>th</sup> May 2015 a woman named Annie Gue came to her office to enquire about the 2 office spaces for rent. Ms. Gue said she represented a person who wished to rent out the spaces. Annie then returned the next day and told her she was representing new expatriate business owners. Annie came with 2 men, one of whom Ms. Gue introduced as the Manager of both companies. She said his name was Su. Ms. Gue simply said that the other man was a friend and that he did not speak much English.
- [80] Ms. Singh said that Ms. Gue gave her passport copies and immigration documents for the owners of the business and asked her to prepare a tenancy agreement. When Ms. Singh asked Ms. Gue where the owners were, she was told that they had returned to China. The deposit Ms. Gue said was paid by one of the men who came with Ms. Gue on that day. Ms. Singh did not specify who paid the deposit on this day.
- [81] Ms. Singh did say that the second man came back to the store two more times. He returned with the signed tenancy agreement a week later and took the keys for the premises and on 23<sup>rd</sup> June 2015, he came back to pay the rent which had fallen due on that day. Ms. Singh said that Ms. Gue had introduced this man to her as "Ken." She testified that she had seen "Ken" in a small retail shop along the same street. She said she had seen him at least 10 to 15 times. She first identified "Ken" at a photograph ID conducted by the Police at CID Headquarters and she identified him again in Court as the first Defendant.
- [82] Under cross-examination, Ms. Singh agreed that she knew that neither Su nor Ken were the owners of the property. She also agreed that in the Tenancy Agreement she had written the words "Xu", "Manager" and a phone number. The word "Ken" was then written by her underneath that.
- [83] Under re-examination, Ms. Singh said that the photo-booklet she was shown had 5 – 6 photographs in it.

**Mr. Xiaochun Wu – Prosecution Witness 10 (PW 10)**

- [84] Mr. Wu is a Commissioner for Oaths, appointed in 2010. He attained citizenship here in 1977. Mr. Wu said that he had certified passport pages for Mamuti Aishaan and Guo



Cheng based off of original passports that were shown to him. He did not actually see the passport holders at the time he certified their passport copies. When shown the ANZ ID Reference Forms, Mr. Wu said that Mr. Mamuti Aishaan signed that document before him. However, Mr. Guo did not sign the ANZ ID Reference Form pertaining to him.

- [84] Under cross-examination, Mr. Wu confirmed that Mr. Guo had signed a Westpac ID form before him. He confirmed that both persons would have had to have been in Fiji and present before him for him to have witnessed the forms in question.
- [85] Under re-examination, Mr. Wu said he was unsure why Mr. Guo had not signed the ANZ ID form for him but he was adamant that they would have to have been physically present before him because he would not have signed the document had it been brought to him by a third party.

#### **Sgt. Satish Chand – Prosecution Witness 11 (PW 11)**

- [86] Sgt. Chand was the Investigating Officer in respect of the case. He tendered Mr. Wang Hannan's Record of Interview, Mr. Guangwu Wang's Record of Interview and Mr. Xuhuan Yang's Record of Interview.
- [87] This Court disregarded, as inadmissible, any exculpatory material contained in the Records of Interview tendered before it.

#### **The Defense Case & Evidence**

- [88] This Court bears firmly in mind the principle that the Defendants are presumed innocent until proven guilty and that the legal burden to prove guilt in this case rests with the State and never shifts.
- [89] The Defence case was that none of the Defendants had any financial or managerial input into the business affairs of either Chunxiao Tour Company or Jintong Trading Company; and that all three Defendants had legitimate purposes for cashing the Cheques that they had cashed.

#### **Mr. Hannan Wang – Defence Witness 1 (DW 1)**

- [90] Mr. Wang testified that he, his co-Defendants' and Ms. Liu Lijun were Directors of Yiwu International. His role was to deliver and check on stock that came in from China. He would also check on money deposits for the business. Due to the fact that his English was poor, Mr. Wang did not deal or meet with customers directly, unless they were Chinese customers. Ms. Liu dealt predominantly with their customers. Mr. Wang testified that he understood he was in Court facing charges of money laundering because his company had wholesaled goods to two other Chinese companies. He testified that Ms. Liu had dealt with the customer from those companies. Mr. Wang prepared the goods after the orders were placed with Ms. Liu. He said that the customer would come by the store and pick up the goods he had ordered in a pick-up van. Mr. Wang would load the goods into that van.

- [91] He recalled that the customer paid their company four Cheques for the four occasions he had purchased goods with their company. He testified that once Ms. Liu received the Cheques she would either hand it over to him or the other two Directors to run over to the Bank to cash. He recalled cashing two Cheques that Ms. Liu had given him and he said that after he had cashed those Cheques at ANZ he had brought the money back and had handed it over to Ms. Liu.
- [92] Mr. Wang confirmed that the customer representing the two stores had come on four other occasions to purchase small items and enquire about pricing or other products. Mr. Wang confirmed under oath that he did pay rent for the two Office spaces after they were initially leased. He explained that he did so because the customer from Chunxiao Tourist Company had asked him to do so. He said he paid rent only once and he had agreed to do so because that customer was a fellow businessman and fellow Chinese national who earlier that day had made a large purchase from his company. The customer had asked him to pay the rent because he had just learnt that it was due that day and he (the customer) had to travel up to Nadi. The first Defendant agreed because it was not a very large amount and the other person had promised to reimburse him. He was never actually reimbursed that amount.
- [93] Under cross-examination, Mr. Wang confirmed that his co-Defendants as co-Directors had cashed ANZ Cheque No. 1 and ANZ Cheque No. 2 respectively. He agreed that they were cash cheques. He explained that if the Cheques had been written to the company it would take 3 to 4 days to clear. Since it was a large order, the company requested cash cheques so that they would cash them on the same day. This, he testified, was to avoid customers running away and in addition, he explained it would be a hassle to chase after them if the cheques did not clear. He explained that he would hand over all the monies he received from Cheques that were cashed and if he needed money he would ask Ms. Liu and she would then hand cash over to them.

#### **Ms. Annie Gu – Defence Witness 2 (DW 2)**

- [94] Ms. Annie Gu testified under oath. Ms. Gu's testimony is that she assisted in the startup of Chunxiao Tourist Company and Jintong Trading Company. It was accepted by the State and the Defendants that that was her role. Nothing nefarious is imputed against her. She runs an agency to help foreign investors register their businesses legitimately in Fiji by providing them with the requisite documentation and lodging the requisite documentation after it has been, presumably, read and considered and signed by the foreign investor. She says she liaised with a person named Ling. Ling then got the documentation needed to establish the companies signed by the Directors named in each company's Certificate of Registration. Ling also accompanied her to ANZ Bank and made arrangements with Lily Hui to have EFTPOS machines installed. After receiving word that he needed Office space in order to receive authority to have EFTPOS machines for their businesses, Ling directed Ms. Gu to find him Office space. Ms. Gu then secured the premises at 160 Waimanu Road for Ling's companies. Ms. Gu said that the three Defendants' had not been involved in the registration process for the two companies and in addition, they had had nothing to do with the opening of the accounts at ANZ Bank.
- [95] When it was put to her that she was trying to protect the first Defendant by testifying as she did, Ms. Gu unequivocally denied that assertion. She said that she did not want to



spoil her name, that she intended to stay long in Fiji, and that it was their business not hers.

[96] Ms. Gu testified that Mr. Ling had paid the rent on the first occasion.

**Ms. Lijun Liu – Defence Witness 3 (DW 3)**

[97] The Defence also called Ms. Lijun Liu, a Director of Yiwu International Company. Ms. Liu testified that the Defendants were shareholders of the company. The company makes a profit. In 2015, she moved the company to 134 Waimanu Road because the rent of \$2300.00/month was much cheaper than the \$11, 500/month rent she was initially paying at Shop 1, Sabrina Building. She testified that she was in Court because she had been in business with Jintong Trading Company and Chunxiao Tourist Company and because three of her co-Directors and co-shareholders had been charged. She testified that the Manager of these companies had come to her company and had ordered and bought goods. His name, she said, was Ling. Ling came to her shop many times – sometimes to buy, and at other times to visit and say hello. When he bought items, he paid her by Cheque. In total she received four Cheques from him. She gave these Cheques to whichever Director/shareholder was free to run to the bank to cash it. Once cashed, they brought the cash to her because she was the responsible one and she ran the business.

[98] Ms. Liu testified that they received Cheques for an ultimate total of \$40,300.00 and had invoiced Chunxiao Tour Company and Jintong Trading Company on different dates and at different times for goods amounting to \$40,300.00. To prove that they were a legitimate trading business, the Defence tendered Customs Entries for containers of goods that the company had imported for sale in Fiji and for which it had paid Customs duty before release. These Customs documents were tendered as part of the Defence case. Over 6<sup>th</sup> August 2014, 4<sup>th</sup> September 2014, 8<sup>th</sup> October 2014, 11<sup>th</sup> February 2015, 21<sup>st</sup> February 2015 and 13<sup>th</sup> March 2015, Yiwu International Company imported and received over approximately 4757 kg of shoes, clothes, handbags, watches, beddings, electric items, and other miscellaneous knick knacks for the shop.

[99] It is not disputed that Ms. Lijun and Mr. Wang were in a domestic relationship at the time of her testimony.

**Analysis of the Evidence**

***Physical Elements proved Beyond Reasonable Doubt***

[100] The State has proven beyond reasonable doubt that Mr. Wang Hannan, Mr. Guang Wu Wang and Mr. XuHuan Yang engaged directly in transactions that involved money that were proceeds of crime.

[101] Mr. Wang confirmed in evidence that he had cashed Cheque No. 5 and Cheque No. 7. He received \$10, 000.00 from *Chunxiao Tourist Company ANZ Account No. 12339449*.

[102] Mr. Guang Wu Yang admitted to the Police that he had cashed ANZ Cheque No. 2. He received \$21, 600.00 from *Chunxiao Tourist Company ANZ Account No. 12339449*.

- [103] Mr. XuHuan Yang admitted to the Police that he had cashed ANZ Cheque No. 1. He received \$8,500.00 from *Chunxiao Tourist Company ANZ Account No. 12339449*.
- [104] These facts were not disputed by the Defence at trial. By their own admissions, each of the Defendants engaged directly in transactions involving money.
- [105] This Court is satisfied beyond reasonable doubt that the monies contained in *Chunxiao Tourist Company ANZ Account No. 12339449* at the time of the withdrawals were proceeds of crime within the meaning of **section 3** and **section 4 (1A)** of the *Proceeds of Crime Act 1997* in that they were monies partly derived or realised directly by unknown persons from the commission of a serious offence; the serious offence being at the very least *General Dishonesty – Causing a Loss by Deception* contrary to **section 324** of the *Crimes Act 2009*. The maximum prescribed penalty in law for that offence is 5 years imprisonment. The uncontested evidence of Mr. Raheem and Ms. Fong that a significant portion of the monies that went into *Chunxiao Tourist Company ANZ Account No. 12339449* were the direct result of credit card skimming point inexorably to this conclusion.

#### *Fault Elements not Proved Beyond Reasonable Doubt*

- [106] However, this Court is not satisfied that Mr. Wang Hannan, Mr. Guangwu Wang and Mr. Xuhuan Yang *knew* or *ought reasonably to have known* that the monies they were withdrawing had been realised directly or indirectly from some form of unlawful activity.
- [107] This Court has cumulatively examined the strands that the State adduced to prove that Mr. Wang Hannan, Mr. Guang Wu Wang and Mr. XuHuanYang knew or ought reasonably to have known that the monies in the ANZ Bank Accounts had not been derived from a legitimate source. They do not inexorably point to the conclusion the State would have this Court draw. Taken together, the evidence the State relies on is insufficient to prove beyond reasonable doubt that the Defendants knew or ought reasonably to have known that the monies they had withdrawn came from or had intermingled with money derived from unlawful activity.
- [108] Moreover, this Court believes Mr. Wang Hannan's and Ms. Lijun's testimony, their personal relationship notwithstanding, that a representative of Chunxiao Tourist Company purchased goods wholesale from them and paid for those purchases via cash cheques. This Court believes Mr. Hannan's testimony that he loaded goods for this customer and cashed the Cheques at Ms. Lijun's instructions. This Court believes Ms. Lijun's and Mr. Wang's testimony that Ms. Lijun dealt with customers, received payments and directed her co-Directors to do the heavy lifting and undertake important bank runs while she stayed back to look after the shop. This Court accepts that that is what happened in respect of the Cheques that the second and third Defendants' cashed. This Court accepts that Ms. Liu was for all intents and purposes chief financial controller for Yiwu International. It makes sense that in that capacity Ms. Liu would deal directly with a customer who, Chinese national or not, bought large quantities from their shop.
- [109] This Court accepts that Mr. Wang Hannan paid rent for the premises leased from GP Hari & Company for Chunxiao Tourist Company and Jintong Trading Company on 23<sup>rd</sup> June



2015. He proffers an explanation for doing so that this Court finds reasonable and believes.

- [110] This Court accepts that Mr. Tikoduadua saw the second Defendant during the time he installed an EFTPOS Machine at the office space for Chunxiao Tourist Company. This Court does not accept that it was the second Defendant who identified himself as the owner of the company. Mr. Wu and Ms. Gu make it clear that they dealt predominantly with a third party who represented the owners of Chunxiao Tourist Company and Jintong Trading Company. This Court believes that there is a reasonable possibility that something may have been lost in translation that day. According to Mr. Tikoduadua, neither men were fluent in English. In re-examination, he confirmed that he did not engage in conversation with them because it was apparent to him that they did not understand English very well.
- [111] The Court is also open to the reasonable likelihood that time and distance from the event in question may have warped Mr. Tikoduadua's recollection of events from that day and in particular, which person he had actually had that conversation with. When Mr. Tikoduadua and his Team came to look for the EFTPOS Machines and transaction records at the offices of the companies believed to have been involved in fraudulent activity on 23<sup>rd</sup> or 24<sup>th</sup> June 2015, he did not walk the few meters needed to seek out the second Defendant at 134 Waimanu Road. It defies logic to believe that upon walking up to the Chunxiao Tourist Company office at 160 Waimanu Road, Suva and finding it denuded of all property not too long after he had first installed a machine there, Mr. Tikoduadua did not immediately think to go to Yiwu International to find the person he knew to be the owner there. Yet, not long after that, in August 2015, after having had the benefit of watching CCTV footage in which the second Defendant is seen cashing a Cheque for \$21,800.00 from Chunxiao Tourist Company's ANZ account, Mr. Tikoduadua is able to confidently lead Sgt. Chand to 134 Waimanu Road, Suva.
- [112] This Court finds that Mr. Tikoduadua is an honest but mistaken witness in respect of who it was who had identified himself as the owner of Chunxiao Company on that day.
- [113] Aside from the fact that he cashed Cheque No. 1, there is nothing linking the third Defendant to either Chunxiao Tourist Company or Jintong Trading Company.
- [114] This Court finds that there is an innocent explanation for the first and second Defendants' presence at 160 Waimanu Road at the office spaces for Chunxiao Tourist Company and Jintong Trading Company and for Mr. Wang Hannan's role in paying rent for Ling on or around 23<sup>rd</sup> June 2015. Minority communities will often band together and work to help make life a little easier for themselves and each other. Minority expatriate or migrant communities will predominantly be focused in integrating and succeeding in a foreign land. There will be a sense of common striving. Networking must be an invaluable part of that journey. But at the end of the day, a spirit of general cooperation and goodwill does not mean that the expatriate Chinese community, or indeed any community in Fiji, runs as a pack. In Fiji, still, as with all countries founded on the English system of criminal justice, one cannot be found guilty by mere association.

**Conclusion**

- [115] The evidence points overwhelmingly to Mr. Hannan Wang's, Mr. Guangwu Wang's, and Mr. Xuhuan Yang's innocence and this Court dismisses the charge of Money Laundering as per Counts 1, 2 and 3 of the Charge against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants respectively.
- [116] Hannan Wang (1<sup>st</sup> defendant), Guangwu Wang (2<sup>nd</sup> defendant) and Xuhuan Yang (3<sup>rd</sup> defendant), you are all acquitted forthwith.
- [117] 28 days to appeal.



  
Waleen M George  
**Senior Resident Magistrate**

Dated at Suva this 22<sup>nd</sup> day of February, 2019.