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CACC84/2003

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

CRIMINAL APPEAL NO. 84 OF 2003

(ON APPEAL FROM DCCC 465 OF 2002)

BETWEEN

HKSAR Respondent

and

LAM HEI KIT Applicant

Before : Hon Ma CJHC, Stuart-Moore VP and Jackson J

Date of Hearing : 12 December 2003

Date of Judgment : 9 January 2004

J U D G M E N T

Jackson J (giving the judgment of the Court) :

1. On 7 February 2003, the applicant was convicted after trial in the District Court by Deputy Judge Tong Man of two offences of dealing with property known or believed to represent the proceeds of an indictable offence and two offences of possessing unlawfully obtained travel documents. He did not give evidence, or call witnesses, in his defence at trial.

2. He was sentenced to concurrent terms of two years' imprisonment in respect of the first two offences and to concurrent terms of three years' imprisonment in respect of the 3rd and 4th offences. Two years of the sentence imposed in respect of the 3rd offence was ordered to be served consecutive to the concurrent terms imposed in respect of the first two offences with the result that he is to serve a total of four years' imprisonment.

3. The applicant appeals against his conviction in respect of each of the four offences.

4. The charges, and the particulars of those charges, facing the applicant at trial were these :

"

1st Charge
Statement of Offence

Dealing with property known or believed to represent the proceeds of an indictable offence, contrary to section 25(1) and (3) of the Organized and Serious Crimes Ordinance, Cap. 455.

Particulars of Offence

LAM Hei-kit, on the 5th day of July 2000, in Hong Kong, knowing or having reasonable grounds to believe that property, namely a cheque numbered 536304 made payable to CHENG Suen-ping in an amount of $1,780,000.00 Hong Kong currency, and drawn against an account numbered 259-234946-001 maintained in the name of LAM Hei-kit at the Hang Seng Bank Limited, in whole or in part, directly or indirectly, represented the proceeds of an indictable offence, dealt with the said property.

2nd Charge
Statement of Offence

Dealing with property known or believed to represent the proceeds of an indictable offence, contrary to section 25(1) and (3) of the Organized and Serious Crimes Ordinance, Cap. 455.

Particulars of Offence

LAM Hei-kit, on the 20th day of September 2000, in Hong Kong, knowing or having reasonable grounds to believe that property, namely the sum of $120,000.00 United States currency deposited into his bank account numbered 534-168737-833 at the Hongkong and Shanghai Banking Corporation Limited, in whole or in part, directly or indirectly, represented the proceeds of an indictable offence, dealt with the said property.

3rd Charge
Statement of Offence

Possession of unlawfully obtained travel documents, contrary to section 42(2)(c)(i) and (4) of the Immigration Ordinance, Cap. 115.

Particulars of Offence

LAM Hei-kit, on the 12th day of March 2001, at Flat D, 6th Floor, San Kwong Building, 2J-2Q, Sai Yeung Choi Street South, Mongkok, Kowloon, in Hong Kong, had in his possession unlawfully obtained travel documents, namely 25 People's Republic of China Passports for Public Affairs and 72 People's Republic of China Passports.

4th Charge
Statement of Offence

Possession of unlawfully obtained travel documents, contrary to section 42(2)(c)(i) and (4) of the Immigration Ordinance, Cap. 115.

Particulars of Offence

LAM Hei-kit, on the 12th day of March 2001, at Flat D, 6th Floor, San Kwong Building, 2J-2Q, Sai Yeung Choi Street South, Mongkok, Kowloon, in Hong Kong, had in his possession unlawfully obtained travel documents, namely 25 Japanese Passports."

It might perhaps be noted that in the particulars to charges 1 and 2 the 'indictable offence' is not specified.

The prosecution's case at trial

5. At about 6 a.m. on 12 March 2001 police officers went to the applicant's home in Mongkok with a search warrant. They were apparently looking for the applicant's elder brother Lam Hei Kwong and his girlfriend Cheng Suen Ping whom they suspected were involved in offences of 'money laundering' and 'people smuggling'. On searching the applicant's premises the police found, in four locked drawers of a wardrobe, 25 Japanese passports and 97 unlawfully obtained Chinese passports, and a false Mainland immigration chop. The Japanese passports had either been lost by their owners or had been stolen from them. The applicant was at home with his wife, mother, sister and son at the time of the police raid.

6. The bedroom in which all of the passports were found was apparently used as a storeroom. The Japanese passports were wrapped in newspaper and contained in a plastic bag and the other passports were contained in envelopes. Nothing in the wardrobe, where the passports were found, contained any reference to the applicant save that there was a brown undated envelope apparently addressed to him and originating from Turkey, which envelope contained 24 of the unlawfully obtained Chinese Public Affairs passports. There were, however, in the drawers of the wardrobe a considerable number of letters and documents which referred to Lam Hei Kwong and to his former wife and to his daughter which were addressed to them in 1999 and 2000 at a Tsuen Wan address. There were two sets of keys to the room in which was the wardrobe and to the wardrobe itself, one set was kept in a drawer in the bedroom used by the applicant and his wife, and the other was found on a computer desk in the

living room. That latter set was identified by the applicant who gave it to a police officer to enable him to unlock the wardrobe.

7. In the bedroom used by the applicant and his wife were found a number of bank passbooks. Subsequent police enquiries relating to those passbooks revealed that the applicant had opened one HSB account on 14 October 1998, and one HSBC foreign currency account on 23 October 1995 and that his wife, Wu Siu Ling, had opened one HSBC account on 15 July 2000. Between 21 June and 25 July 2000, numerous deposits were made into these accounts. Between 21 June and 30 June 2000, there were nine cash deposits (totalling HK$1,786,285.50) made into the applicant's HSB account by or on behalf of Lam Hei Kwong. On or about 5 July 2000, the applicant drew a cheque on his HSB account in the sum of HK$1,780,000.00 which was paid into a joint account held by his elder brother Lam Hei Kwong and his girlfriend Cheng Suen Ping. This transaction was the subject matter of the first charge of which the applicant was found guilty.

8. Between 14 and 25 July 2000, there were 11 cash deposits (totalling some US$80,000.00) made into the applicant's HSBC foreign currency account. Between 15 and 24 July 2000, there were eight cash deposits (totalling some US$40,000.00) made into his wife's newly opened HSBC account. That sum of US$40,000.00 was transferred to the applicant's account on 26 July 2000. A sum of US$122,000.00 in that account was put on time deposit for one month and on 20 September 2000, the applicant transferred US$120,000.00 from his HSBC Forex account to an account in the name of Cheng Suen Ping at the same bank. This

transaction was the subject matter of the 2nd charge of which the applicant was found guilty.

What the applicant told the police

9. At the time of the police raid on 12 March 2001 and upon his arrest the applicant told a police officer that the passports found in the search had been placed in his flat by his brother Lam Hei Kwong who had told him that they were 'fake'. He also said that the money in his (the applicant's) bank account was for margin trading in foreign exchange for a friend of his.

10. The applicant was subsequently questioned about those matters in interview. At trial, objection was taken to the admissibility of both what he said upon his arrest and in interview and, following upon a *voire dire*, the judge ruled that such was admissible. In essence, and among other things, what the applicant said in interview was that Lam Hei Kwong had brought some passports to his flat at a time between June and September 2000. As a result of what Lam Hei Kwong told him the applicant believed that his brother was engaged in 'human smuggling' activities and, accordingly, he told his brother not to keep the passports in his flat. The applicant also said that he had received from his brother by express mail from overseas, 10-20 airline tickets, which he kept for him. He said that following a conversation with Lam Hei Kwong he suspected that his brother was involved with the deaths (in June 2000) of 58 illegal immigrants, who had died in a container in Dover in England, one reason being that they all came from a place near his home town in China. In addition the applicant told the police that his brother had asked him to transfer the money paid into his accounts to that of his brother's girlfriend

and that he (the applicant) came to realize that his brother must have obtained that money by illegal means because his brother had told him that there was a lot of money to be made by arranging for people 'to go to other places'.

11. In respect of the possession charges (charges 3 and 4) the applicant told the police (*inter alia*) that his brother had a key to his flat and thus access to the room and wardrobe in which the passports were found; that none of the items found in that wardrobe belonged to him (the applicant); that he had not seen the Japanese passports prior to the police raid; that he did not know how some of the Chinese passports had come to be concealed in his flat and that he had not seen his brother put them into the wardrobe; that he was unable to say if the Chinese passports found there by the police were the same passports as those he had seen sometime between June and September 2000 in his brother's possession, and that he himself (i.e. the applicant) had not knowingly received any passports by mail although he had received some air tickets from overseas.

12. What the applicant told the police about the timing of these events (*inter alia*) was this :

(a) that it was only after his brother had deposited the US dollars into his account that he had seen his brother with passports which he suspected were false, and that it was only then that he suspected that the US dollars might be the proceeds from smuggling illegal immigrants. Albeit that he did not say whether his suspicion was aroused before or after he had transferred the US dollars to his brother's girlfriend's account, it is perhaps implicit in what he did say that such suspicion

arose after he had transferred the Hong Kong dollars to that account on 5 July 2000 (Charge 1);

and

(b) that his brother had come to his home a few days after he (the applicant) had learned of the 'Dover incident' from a television broadcast and that on that occasion he had asked his brother if he had been involved in it. His brother told him to guess about that.

Since that occasion his brother had not deposited any money into his (the applicant's) bank accounts and his brother had seldom come to his flat. It was (so he said) for those reasons that he had not pursued the question of his brother's involvement in the 'Dover incident' and that he did not know that passports were being stored in his home.

The grounds of appeal

13. The amended perfected grounds of appeal against conviction settled by Mr Marash SC for the applicant read as follows :

> "(1) In relation to Charges 3 and 4, the learned Deputy Judge erred in finding that the Applicant was in possession of the forged passports found in the premises at Flat D, 6/F, Sun Kwong Building, 2J-2Q, Sai Yeung Choi Street South, Mongkok.
>
> (2) In relation to Charges 1 and 2, the learned Deputy Judge failed in his Reasons for Verdict properly to identify the conduct of Lam Hei Kwong, ….. which [conduct] the applicant believed, or had reasonable grounds to believe, would have constituted an indictable offence if it had occurred in Hong Kong, as required by sections 25(1) and 25(4), Organized and Serious Crimes Ordinance, Cap. 455 ('OSCO')

(3) There was no evidence that any of the conduct that the applicant believed, or had reasonable grounds to believe, his elder brother had committed, constituted an indictable offence, if it had occurred in Hong Kong.

(4) The learned Deputy Judge erred in applying the standard of proof in his Reasons for Verdict when he stated that, 'by the time the defendant helped his elder brother to transfer the funds, and very likely by the time he saw the elder brother handling the so-called forged passports, he should have already learned about the Dover incident and should thus be equipped with knowledge'.

(5) There was no, or insufficient, evidence for the learned Deputy Judge properly to conclude that the applicant believed, or had reasonable grounds to believe, at the time that he dealt with the moneys he transferred to the bank account of Cheng Suen Ping on 5 July 2000 and 20 September 2000, that they directly or indirectly represented the proceeds of conduct, which [would have amounted to] an indictable offence if [such conduct] had occurred in Hong Kong.

(6) That, in view of the foregoing and in all the circumstances generally, the convictions of the applicant on charges 1-4 are unsafe and unsatisfactory."

14. Before coming to the substance of those grounds of appeal and the respondent's answer to them, we set out a 'skeleton' response to them settled by Mr Lee which is as follows :

"**Against Ground 1**

(1) The applicant contends that there was insufficient evidence to prove the point of time when Lam Hei Kwong brought the 'forged' passports to his premises, and told him about their 'forged' nature. It is argued that that could have been any time during 'June to September'. It is also argued that they may not be the same batch seized by the Police on 12 March 2001.

The real issue

(2) The real issue here is whether there was sufficient evidence capable of supporting the finding that the Applicant had possession of the passports subject of the respective charges, and with knowledge of their illegal nature, on 12 March 2001. It is

submitted that there was ample evidence capable of supporting such a finding.

(3) Four categories of evidence are relevant to the real issue, and point unambiguously to convictions :

(A) evidence of knowledge from Lam Hei Kwong

(B) evidence on how the passports reached his premises

(C) evidence on the day of seizure

(D) evidence of his assistance to Lam Hei Kwong in money laundering on two occasions before 12 March 2001.

(4) It is submitted that the 'exculpatory statements' were inherently improbable, or inconsistent with other cogent evidence, or both. The Learned Judge was well entitled to apply *R v. Sharp* in the manner he did, and to attach no weight to such exculpatory statements.

Against Grounds 2 & 3

(5) There is no legal burden on the Prosecution to prove the existence of the specific conduct of the underlying offence, whether as an element of the actus reus, or as part of the mens rea:

(6) As there is no legal requirement to prove the commission of the conduct of the underlying offence known to the Applicant or believed by him on reasonable grounds, there cannot be any duty cast upon the trial Judge to identify such specific conduct. Section 25(4) of OSCO was simply not engaged. There is also no legal duty on a trial Judge to state each and every step of his reasoning leading to the verdict:

Against Grounds 4 & 5

(7) There was ample evidence capable of supporting the finding that the Applicant knew, or had reasonable grounds to believe, before or at the time of dealing with the monies on 5 July and 20 September, that the monies had originated from illegal human smuggling activities:

(8) On all the evidence, the tribunal of fact was well entitled to infer that he had knowingly assisted Lam Hei Kwong in laundering the proceeds. There was in fact a substantial degree of complicity between the Applicant and his elder brother Lam Hei Kwong in relation to the latter's human smuggling activities.

and

(9) Given the ample evidence well capable of proving each and every element of the offences, there is nothing unsafe or unsatisfactory regarding the verdicts."

The applicant's argument in relation to the possession charges

15. If we have understood the very lengthy argument of Mr Marash correctly it seems to us that what it amounts to is this :

(a) that leaving aside what the applicant verbally told the police on 12 March 2001 there was insufficient evidence to prove that the applicant knew that the passports were in his flat, and that even if he did have that knowledge, there was insufficient evidence to prove that he was 'in possession' of the passports; and that what he did say to the police on 12 March (which was post-recorded and which was that the passports had been placed in his flat by his brother who had told him that they were 'fake') should not be looked at in isolation from what he subsequently told the police in interview which was, in effect, that the passports were nothing to do with him;

and

(b) that the judge erred in placing no weight on that exculpatory explanation given by the applicant in his interviews with the police.

16. It is, we think, implicit in what Mr Marash says (and indeed Mr Lee appears to confirm our understanding of this) that the prosecution's allegations were inextricably entwined in the sense that part of the evidence relied upon by the prosecution in seeking to prove the possession charges was the very evidence which led to the money

laundering charges. And thus, it must follow, the appeal against conviction in respect of the possession charges should not be considered in isolation from the 'money laundering' convictions.

The applicant's argument in relation to the OSCO charges

17. Mr Marash argues that it was incumbent upon the trial judge in reaching his verdict to consider whether the specific conduct of the applicant's brother (whatever that conduct may have been), as opposed to its general nature, was known to the applicant himself. And that it is only if the applicant was aware of that specific conduct and that such amounted to an indictable offence had it occurred in Hong Kong, could he be guilty of these offences. Mr Marash says that the judge simply failed to address that matter.

18. As his argument proceeded Mr Marash then submitted that the judge had applied the wrong standard of proof by suggesting what it was that the applicant 'should' or 'ought' to have known or believed from the facts as he understood them to be, as against what he 'did' know or believe, and that therefore the judge fell into error when he found as a fact that the applicant had transferred the US dollars on 20 September 2000 with the knowledge requisite to establish the offence.

Additional matters complained of by the applicant

19. Mr Marash submits that in addition to, or in expansion of, those matters complained of above, the judge :

> "(a) erred in stating that what the applicant said in his interviews proved that he had 'knowledge' of his brother's

illegal immigrant smuggling business when in fact the applicant said he had 'suspicion';

(b) undertook no analysis of whether the fact that the applicant 'got' the keys to the drawers meant that he was in possession of the passports in the storeroom;

(c) erred in stating the applicant received air-tickets from courier companies on more than one occasion;

(d) added to the above two errors the fact that the applicant helped transfer the funds to Cheng using his own account. The fact that he openly used his own account with no attempt to hide the transfer, points more to innocence than guilt. In so doing, the judge merely recited the actus reus of the money laundering charges; and

(e) then wrongly drew the 'irresistible inference' that Lam was offering to help [his brother in his brother's] illegal business and was thus guilty of all the charges."

The arguments on behalf of the respondent

20. In his written submissions Mr Lee for the respondent seeks to deal with those matters (A) to (D) set out in paragraph 14 above. In respect of each of them he recites at some length what the applicant said to the police and no purpose is served by our repeating that here.

21. Suffice it to say that Mr Lee invites us to conclude from a reading of those extracts (*inter alia*) the following :

(a) that the applicant's brother had brought at least the Chinese passports to his home before the 'Dover incident' was reported in Hong Kong on 20 June 2000 or shortly thereafter, and that he had been told by his brother that those passports were forged or were false;

(b) that the judge was fully entitled to infer that the applicant spoke to his brother about the 'Dover incident' not later than

early July 2000, and that he did that because his brother had brought the passports to his (the applicant's) home not later than early July;

(c) that there was clear evidence that at least the Chinese passports had been brought to the applicant's home by his brother in June 2000, and the judge was fully entitled to infer that the applicant had opened the envelope containing the 24 Chinese passports;

(d) that there was ample evidence giving rise to the inference that the 24 Japanese passports had been delivered to the applicant's home on or around 4 July 2000 at the latest;

(e) that the evidence regarding the applicant's 'possession' of the passports on 12 March 2001 was overwhelming, given what he told the police at that time and given where they were and who had access to the room where they were kept,

and

(f) that the fact and method of the applicant's use of his brother's very substantial sums of cash between June and September 2000, given his knowledge of his brother's limited resources and what his brother had told him, pointed directly to a link between the passports, 'human smuggling' and money laundering.

22. Mr Lee submits that (in relation to the 'possession' offences) the applicant not merely suspected but knew full well between June and September 2000 that the monies deposited into his bank accounts by his brother were monies related to the 'smuggling of people', and that that

knowledge provided solid support for the inference regarding his possession of the passports at his home on 12 March 2001.

23. Mr Lee goes on from there to submit that the judge was perfectly entitled to reject the 'exculpatory' parts of what the applicant told the police in interview, he applying to himself the direction suggested in *R. v. Sharp* [1988] 1 WLR 7 and attaching little, if any, weight to them given that they were "not made on oath or affirmation; were not repeated on oath or affirmation and were not tested by cross-examination".

24. As to the 'money laundering offences' Mr Lee argues that :

(a) there is no need to prove the specific conduct of the underlying offence and therefore no need for a tribunal to identify such specific conduct : only the type or category of the crime need be proved. In support of that proposition Mr Lee refers us to *HKSAR v. Li Ching* [1997] 4 HKC 108 and *HKSAR v. Wong Ping Shui* [2000] 1 HKC 600 which was affirmed by the Appeal Committee of the Court of Final Appeal in FAMC1/2001;

(b) there was ample evidence against the applicant to show his knowledge or belief of a cross-border crime of 'people smuggling' which involves Hong Kong not least because of the storing of the passports here, the sending of the air tickets to Hong Kong and the money laundering activities here,

and

(c) the test for determining "having reasonable grounds to believe" is well-settled. In this regard Mr Lee refers us to *HKSAR v. Shing Siu Ming & Others* [1997] 2 HKC 818 and

HKSAR v. Yam Ho Keung, CACC 555/2001 and he argues that in the present case the judge's use of the words "he should already have learnt" in reference to the applicant should be read in the light of all of the evidence and the standard of proof ultimately referred to, and in fact applied, by the judge. Putting it another way the words 'he should already have learnt that …..' equate to the words 'I infer that …..'.

The judge's findings

25. It is quite apparent from what we have said in paragraphs 15-19 (inclusive) above, that Mr Marash takes issue with what he calls the 'methodology' adopted by the judge apparent from his Reasons for Verdict and, in the course of argument he (Mr Marash) has referred us to the judgment in *The Queen v. Sheik Abdul Rahman Bux and others* [1989] 1 HKLR 1 which, in turn, refers to the case of *R. v. Chan King Man* [1980] HKLR 105 in which these passages appear :

> "It was contended ….. that a district judge's statement of his reasons for verdict prepared in pursuance of s. 30 of the District Court Ordinance was comparable to a judge's summing-up to a jury. I do not agree with this view. The district judge's only statutory duty is to record a short statement of the reasons for the verdict. There is no duty cast upon him to state the whole of the law applicable to the case or to review the whole of the evidence. Of course, if he chooses to state his views of the law, or any aspect of the law applicable to the case, and that view is held to be wrong, the position is precisely the same as when a judge misdirects a jury on a matter of law. Similarly, if he chooses to review the evidence at length and it is clear from his statement that he has substantially misapprehended or misunderstood the true nature of that evidence, or any important part of it, it may well be that it would be open to an appellant to attack his conclusions on the facts before this Court. But it must be remembered that the district judge is himself the jury. He has heard the whole of the evidence and he is not duty bound

> to set down precisely what he accepts, what he rejects and what weight he attaches to every piece of evidence, or the arguments of counsel on the evidence, or the whole of the workings of his mind in arriving at his conclusion.
>
> Of course, to the extent to which he chooses to discuss the evidence, to that extent does he disclose how 'the mind of the jury' was working; and an appellate court is therefore in a stronger position to review his conclusions than it is in regard to a jury verdict. But an appellate court would not, except in the most exceptional circumstances, interfere with a finding which depended on the credibility of a witness; and, when the district judge draws inferences of fact, which inferences depend not only on an examination of documents and facts which are not in dispute but also depend partly on the credibility of witnesses and facts which were very much in dispute, then I think an appellate court should act with the greatest caution before interfering with the district judge's findings if, having regard to the whole of the evidence, such findings appear reasonable."

26. The relevant parts of the judge's Reasons for Verdict in the present case about which Mr Marash complains are as follows :

> "26. I am also aware that the notebook entry, … and the videotapes, … and transcripts thereof, … and certified translation, … all contained mixed statements made by the defendant. As the defendant had elected not to give evidence, I have directed myself in the terms of R v Sharp [1988] 1 WLR 7, in that both the inculpatory and exculpatory material are evidence to be considered by myself acting as a jury, and it is me who shall determine where the truth lies. The task before me is what weight I should attach to the defendant's statement made in those documents. The inculpatory part of those statements was the defendant's account of how he had become suspicious of Lam Hei-kwong's source of money were from smuggling of illegal immigrants and that he had brought forged passports to his house on prior occasions. However, even for such so-called inculpatory parts of his statements it is obvious they do not represent the whole truth. For example, he said in the first video interview … how Lam Hei-kwong had brought a number of Chinese passports to his home at a time between June and September 2000, and that he suspected that the passports were forged, hence he asked his elder brother to take those passports away. Then, near the end of the first interview, he explained how he became suspicious over the money transferred to his account after he had already helped his brother to handle the

same. It was because he saw news on the television reporting on the suffocation of a batch of Fujian illegal immigrants in England. He asked his brother if he was involved in the incident. His brother's reply was telling the defendant to think about it himself. He then became suspicious. However, it is common ground that the Dover incident in which the 58 Chinese illegal immigrants suffocated to death was reported in Hong Kong on 20 June 2000, while all the transfers of funds as shown on the two annexures of the Admitted Facts, says that all the transfers to and from the defendant's account took place after that date. I also notice that the transfers out of the funds in Charge 1 and Charge 2 respectively took place on 5 July and 20 September 2000. Hence by the time the defendant helped his elder brother to transfer the funds, and very likely by the time he saw the elder brother handling the so-called forged passports, he should have already learned about the Dover incident and should thus be equipped with knowledge.

27. All in all, after I have considered all the statements made by the defendant under caution, I am of the view that the defendant was simply trying his best to exculpate himself by fabricating stories. I attach little weight on the defendant's various statements, save and except where the statement goes to prove that the defendant had knowledge of the operation of the elder brother's illegal immigrant smuggling business. This knowledge coupled with the fact that he had got the keys to the drawers in which the passports were found, the fact that air tickets from overseas were sent to him via courier companies on more than one occasion, and the fact that he helped his elder brother and Cheng Suen-ping to transfer funds with his own account, the only irresistible inference to be drawn from such facts must be that the defendant was offering help to his elder brother's illegal business by at least assisting in fund transfer as detailed in Charges 1 and 2, and by keeping those unlawful passports in Charges 3 and 4. Indeed, as the elder brother did not live on the defendant's premises and seldom went there, why should such a large number of unlawfully obtained passports be placed there? Why the air tickets will have to be sent to the defendant at his premises in couriers' bags? And finally, why the defendant would be entrusted with such large amounts of transfers as detailed in Charges 1 and 2? In my judgment, the answer to these questions is also the conclusion to reach the irresistible inference reached.

28. In the end, I have no reasonable doubt at all that the defendant is guilty of all four charges in this case. I convict him of the same accordingly."

27. His specific grounds for complaint about the judge's reasons are as follows — and here we set out what Mr Marash referred to as his 'additional and opening comments' :

> "This is the methodology the learned Deputy Judge used to discredit [the applicant's] statements in his video interviews as to when he was aware of his brother's activities, which led the Deputy Judge to place 'little weight on the defendant's various statements, save and except where the statement goes to prove that the defendant had *knowledge* of the operation of his elder brother's illegal immigrant smuggling business.'
>
> The judge found that [he] lied about the timing of when he acquired such knowledge in relation to the time when he handled the moneys remitted to him on 5th July and 20th September 2000.
>
> However, the only way in which the Deputy Judge could pin down 'the lie' was by reference to the first publication of the news of the Dover deaths on 20th June 2000.
>
> The Deputy Judge made no finding that [the applicant] had become aware of that news before the 5th July 2000 or 20th September 2000; he found, by the time he helped his brother to transfer the funds and ***very likely*** by the time he saw the elder brother handling the so-called forged passports, he ***should have already learned*** about the Dover incident and should thus be equipped with knowledge.
>
> The Deputy Judge used the wrong test of probability to discredit [the applicant], which inevitably flowed into his decision to convict [him] as the only issue in the case was his credibility. He concluded that 'the defendant was simply trying his best to exculpate himself by fabricating stories.'
>
> This appeal is not principally about whether there was sufficient evidence to convict [the applicant] (though it is submitted that there was not): it is the way in which the judge went about convicting him as demonstrated by the passages [in his Reasons for Verdict].
>
> Having discredited [the applicant's] statements in his interviews, in the next passage, the learned Deputy Judge assumes that he had *knowledge* of the operation of his elder brother's illegal immigrant smuggling business. There is no mention in the [Reasons] of any contrast between suspicion and knowledge.

> The Deputy Judge made no reference to any portion of any of [the applicant's] interviews upon which he relied to find that he had knowledge as distinct from suspicion. [The] interviews could not really be split up into individual answers as to the state of his awareness. The interviews had to be read together and the overall effect of them was that [the applicant] did not deal with the moneys at a time he had knowledge of the source of the funds being from people smuggling. It was impossible to identify the time he reached the state of knowledge to pass the test for conviction laid down in section 25A, as being before he handled the sums on either 5th July or 20th September 2000. The Deputy Judge 'wrote off' Lam's explanations in those statements as lies due to his aforementioned error regarding the date when the Dover incident was mentioned in the media. Hence, his reliance upon only the incriminating parts of [the applicant's] statements was also flawed.
>
> The judge then went on to *couple this knowledge* with three other matters, which led him to convict.
>
> (a) One of those matters was the very actus reus of the money laundering charges, i.e. that he dealt with the money. That could not assist in deciding the state of his knowledge at the time he did so.
>
> (b) The second matter the Deputy Judge referred to was that [the applicant] had received air tickets via courier companies on more than one occasion. This was an error of fact — there was only one occasion on which he said he had received such tickets and there was no other evidence that he had done so. The judge did not identify the timing of the incidents.
>
> (c) The last matter referred to was that [the applicant] had the keys to the drawers where the passports were found. The judge gave no independent consideration as to how possession of the keys could, on the facts of the case ….. lead to a conclusion that he possessed the passports.
>
> The rhetorical questions at the end of the Reasons for Verdict are easily answered and achieved nothing by way of support for the Deputy Judge's conclusion."

Conclusions

28. Our minds have been much exercised by the very able arguments of Mr Marash, particularly as regards what he describes as the

judge's flawed methodology. We accept what he says about this appeal being principally about "the way in which the judge went about convicting [the applicant] as demonstrated by the passages [in his Reasons for Verdict]".

29. However we find ourselves unable to accept the submission of Mr Marash that there was insufficient evidence upon which to convict the appellant of all charges and, with respect, that submission (or so it seems to us) has about it an air of unreality, given the compelling evidence before the court of the cash deposits in June and July 2000; of the money transfers; of the location of the passports and of what the applicant told the police.

30. However the judge may have reached the verdicts which he did reach, it seems to us that he could not, on the evidence presented to him, have come to any other view given that we accept Mr Lee's submissions on matters of law.

31. Whilst we accept Mr Marash's criticisms of the judge's reasons for verdict limited to those relating to apparent expressions regarding the burden of proof; to one factual error and to the rhetorical questions which he, perhaps unhappily, posed; and whilst we treat that criticism as in itself fully justifying our decision to grant leave to appeal and to treat the application for leave as the hearing of the appeal, we consider that no miscarriage of justice has occurred and accordingly by

applying the proviso in section 83(1) of Cap. 221 we dismiss the appeal.

(G. Ma)	(M. Stuart-Moore)	(C.G. Jackson)
Chief Judge	Vice-President	Judge of the Court of First Instance

Mr Daniel Marash SC leading Ms Osmond Lam instructed by M/s Louis K Y Pau & Co for the Applicant

Mr Robert LEE, SADPP and Ms Catherine Fung, SGC of the Department of Justice for the Respondent