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*(subject to editorial corrections)**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

HO LING MO

(Morgan LCJ, Higgins LJ and Maguire J)

MORGAN LCJ (delivering the judgment of the court)

[1] On 7 June 2013 at Belfast Crown Court before Mr Justice Weir the jury convicted the appellant of eight counts of fraud by false representation contrary to sections 1 and 2 of the Fraud Act 2006 (counts 2 – 4, 6 – 8, 14 – 15) and two counts of removing criminal property contrary to section 327(1)(e) of the Proceeds of Crime Act 2002 (counts 63 – 64). On 10 July 2013 the appellant was sentenced to three years' imprisonment on each of the counts of fraud and to three years and six months' imprisonment on each of the two counts of removing criminal property. All the sentences were to run concurrently and the total effective determinate custodial sentence of 42 months was divided into 21 months custody and 21 months on licence. The single judge granted the appellant leave to appeal against conviction. This judgment deals only with that aspect of the appeal. Mr Stern QC appeared with Mr Stanbury for the appellant and Mr Mateer QC with Mr Russell for the PPS. We are grateful to all counsel for their helpful written and oral submissions.

[2] The appellant is a solicitor who established her practice as a sole practitioner in Belfast in 2003. She specialised in work associated with the Chinese community and foreign nationals. In the indictment the appellant was charged with seventy counts which were, largely, alleged offences of fraud by false representation and consequential money laundering offences. The case was opened on the basis that the appellant defrauded the Legal Services Commission of approximately £500,000 over a three year period between 2007 and 2010. At the close of the prosecution case Mr Justice Weir withdrew thirty counts from the jury (30 – 36, 38 – 43, 47 – 62 and 65) and a further seven were withdrawn at the end of the defence case (1, 5 and 9 – 13).

The prosecution were invited to remove counts 16 – 29 but, instead, agreed to leave those counts on the books. The jury returned not guilty verdicts on 8 counts but convicted on the 10 counts the subject of the appeal. The total sum involved in the fraud convictions was approximately £4,300.

The fraud counts

[3] The fraud counts arose from eight individual claims for Legal Aid made and presented to the Legal Services Commission by the appellant through her solicitor's practice where she worked as a sole practitioner. In each instance the appellant claimed payment for services said to have been provided by way of interpreting at courthouses, in custody suites and in her solicitor's offices in University Street, Belfast. These claims were made in Legal Aid forms and were submitted with accompanying invoices in the name "Zhang Interpreting Services" ("ZIS"). It was common case that the primary case advanced on behalf of the PPS was that ZIS did not exist. Indeed the particulars of the indictment were amended at the beginning of the trial to include this allegation so as to make plain the case which the PPS were making. It is also common case that the learned trial judge in his charge advised the jury that there was clear evidence that ZIS did exist so that they could not convict the appellant on the basis that it did not exist.

[4] Count 2 concerned Hin Bin Weng who was charged in connection with the cultivation of cannabis. The claim related to interpreting services provided during his court appearances. He appeared at Coleraine Magistrates' Court on a number of occasions and the appellant represented him. The appellant made a claim for her own work and for an interpreter, supporting her claim for an interpreter with invoices from ZIS. The prosecution adduced evidence in relation to seven court hearings. On 2 March and 23 March, Joannie Davison interpreted for the Court Service. On 15 and 26 June, Jim Zhu Wang interpreted for the Court Service and on 20 July, 17 and 28 August, Fang Li Cooper interpreted for the Court Service. Each of these interpreters said they had never worked for or heard of ZIS. None said anything about an interpreter from ZIS being present although it was agreed that none of them was asked that question. The appellant explained that she had been threatened by loyalist and Chinese criminals who required her to use ZIS for her legal aid interpreting work. She maintained that she had submitted an invoice generated by ZIS for the interpreting work and that an interpreter was there on each occasion. Her case was that ZIS used three individuals with most of the work being done by Carrie McCluskey although she could not say who had carried out the work on any individual occasion.

[5] Count 3 concerned a claim for £75 for a ZIS interpreter's attendance at a bail hearing on 7 May 2009 for Yu Qui Shi. The list of bail hearings on that date showed that there was no record of this particular bail hearing. The evidence from the Home Office was that Yu Qui Shi had been removed on 6 May 2009 to Shanghai, China. The appellant maintained that the bail application had been cancelled at a late stage

and that the interpreter had attended. She had also been charged with a fraudulent claim in relation to claims for other bail applications that had not taken place in similar circumstances. She had been acquitted on those counts as it appeared that there was some confusion in the evidence of the Legal Services Commission as to whether she was entitled to be paid in those circumstances. It was suggested that there was some inconsistency in the conviction for this count and the acquittal on the other counts relating to bail claims made by her. We do not accept that there was any such inconsistency. The issue in this count was whether the jury was satisfied that the interpreter did not attend.

[6] Count 4 concerned a claim for interpretation services for the same client by ZIS for two hours on 1 May 2009 at Lisburn police station and for one hour on 2 May by telephone. Evidence was given by Tony Yu from Flex Interpreters who was present in the morning at the request of the UKBA when Yu Qui Shi was brought into the police station and that he left by 12.30. Tony Yu's presence was noted on the custody record. The appellant consulted with Yu Qui Shi at the police station at 1.11 pm. The custody record made no reference to the presence of an interpreter on her behalf. Although the custody record recorded the presence of Tony Yu at the police station it did not record his time of arrival or departure nor whether he spoke to the detainee. It also did not record the time of arrival of the appellant. The prosecution agreed that there was no evidence at all in relation to the events of 2 May except the claim for interpreting services.

[7] Count 6 related to a claim for three hours for an interpreter at Belfast Magistrates' Court on 16 December 2008. The client, Precious Oyinwura, was arrested and interviewed by police on 11 September 2008. Sgt Ogden indicated that he conducted the interview in English and no interpreter was present. The appellant's brother who was a trainee solicitor was present for the interview but did not need to intervene. The prosecution case was that there was no need for an interpreter as the client could understand and speak English perfectly. Sgt Ogden indicated that he had transcribed the interview but had been unable to make out some of what had been said. The appellant stated that she required an interpreter for a language called Igbo. She said that it had been arranged by Carrie McCluskey and she believed that it had been directed by her barrister. Her timesheets showed that she had consulted on numerous occasions without a claim for an interpreter.

[8] Count 7 related to a claim for interpreting services on two occasions for Xiao Hong Kang. Fang Li Cooper is a recognised interpreter working for NICEM and attended at Belfast Magistrates' Court as a court interpreter on these occasions between April 2010 and May 2010. She said that she had never heard of ZIS. The appellant said that an interpreter was present but she was unable to identify who it was.

[9] Count 8 concerned Badri Buava who appeared in court for allegedly being in possession of false documents. The appellant was his solicitor. The appellant made

claims for having an interpreter using ZIS invoices on 18 September 2009 and 2 October 2009. The appellant's timesheet provided that, on each of these dates, the consultation was at Belfast Magistrates Court and an interpreter was present. The prosecution called Miss Angela Hunt who has worked for NICEM, for Central Translations and for Flex. Her evidence was that she was present as a court interpreter on these dates and she said that the appellant approached her at court asking her to speak to her client in the cells at the court. Miss Hunt said she did this after the appellant told her she had asked the court for permission. She said she did not meet any other interpreter at either of the consultations that she conducted for the appellant on these two dates. The appellant explained this by saying that her own interpreter had left by that stage.

[10] Count 14 concerned Mr Abraham, a client of the appellant. He had a partner called Miss Ayesha, a qualified interpreter, who had worked for NICEM. Her evidence was there were four meetings altogether with the appellant on 16 February 2010, 2 March, 9 March and 15 March 2010. She said there was no need for any interpreter because Mr Abraham answered the appellant in English and if assistance was needed she was there to give it, although she could not remember if any assistance was needed. It was suggested to Miss Ayesha that the appellant was not happy with her interpreting because of her connection to Mr Abraham but Miss Ayesha said the appellant never said this and, under further questioning, Miss Ayesha denied that she didn't want another interpreter to know about the predicament in which Mr Abraham found himself. Her evidence was that the appellant never even asked Mr Abraham if he needed an interpreter. The ZIS invoices referred to interpreting with solicitor and client on 15 February and 2 March. The appellant's evidence was that she had arranged a ZIS interpreter on the two occasions claimed for, the interpreter came to the office but Miss Ayesha did not want the interpreter as she wished to keep their affairs private. On each occasion, the interpreter was sent away but her fees had to be claimed for as she had been booked.

[11] Count 15 related to Hui Li who was charged at Antrim Magistrates' Court with entering the UK without a passport. The appellant claimed ZIS provided an interpreter on three occasions and sent a ZIS invoice totalling £125 which covered all three dates being, 30 September 2008, 28 October 2008 and 4 November 2008, totalling £125. It transpired that Carrie McCluskey was the court arranged interpreter provided by Central Translations on 28 October 2008. Ms McCluskey was one of the three interpreters the appellant said were supplied by ZIS. Although there had been some translation material prepared by Ms McCluskey on a computer stick there was no documentary material to show that either of the other two persons mentioned by the appellant had carried out work on her behalf. The appellant could not remember who had translated for her on those occasions.

[12] The first point raised by the appellant was that the prosecution case proceeded on the basis that ZIS did not exist and therefore the claim in respect of payment for their services was false. The learned trial judge left the case to the jury

on the basis that it was for them to decide whether or not the interpretation services had in fact been provided. That was a case which the appellant submitted it was not ready to meet and that it was thereby prejudiced.

[13] We have available to us the prosecution opening. While it is undoubtedly true that the prosecution proceeded on the basis that ZIS did not exist there were at least two references in the prosecution opening at paragraphs 10 and 17 to the case against the appellant being made on the basis that by claiming that independent interpreters had provided the service she recovered the money herself. In addition, when looking at the specific counts with which we are concerned it is clear that these were opened on the basis that the interpretation had been carried out by the interpreters who gave evidence. That was the case as understood by the learned trial judge and to which he expressly referred in the legal argument on 4 June 2013 before the speeches of counsel. In our view the essence of the Crown case was that no interpretation services had been carried out in respect of these counts and the evidence for that consisted of the evidence about the non-existence of ZIS and the evidence that other persons had in fact carried out the interpretation. We do not accept that there was any variation of the prosecution case sufficient to give rise to unfairness.

[14] The next matter raised concerned whether counts 2, 7 and 15 should have been left to the jury. Essentially the evidence on each count adduced by the prosecution established that there were court arranged interpreters who carried out interpretation in court and who were unaware of ZIS. The issue on this ground of appeal was whether at the direction stage the jury would have been entitled to draw the inference that no interpreter arranged by the appellant was present. Prosecution counsel accepted in argument that these counts standing on their own did not evidence a prima facie case of fraud but made it clear that he was presenting the case on the basis that the other counts evidenced the system which it was alleged the appellant used in order to carry out the fraud. Where, therefore, the jury were satisfied that the witnesses called on other counts evidenced the system it followed that the invoices raised in those cases where fraudulently raised. The invoices raised in these cases were in precisely the same form and that was sufficient to entitle the jury to conclude that the evidential burden had shifted. We accept that there was sufficient material to justify these counts being left to the jury.

[15] The requirements of the jury direction were helpfully set out by Lord Hailsham LC in R v Lawrence [1982] AC 510 at 519.

> "A direction to a jury should be custom built to make the jury understand their task in relation to a particular case. Of course it must include references to the burden of proof and the respective roles of jury and judge. But it should also include a succinct but accurate summary of the issues of fact as to

> which a decision is required, a correct but concise summary of the evidence and arguments on both sides, and a correct statement of the inferences which the jury are entitled to draw from their particular conclusions about the primary facts."

[16] The appellant submits by reference to a review of the evidence in respect of each of the fraud counts that although the case was fairly put to the jury in respect of counts 8 and 14 the appellant's case was not adequately put on the other counts. In particular it is contended that on the remaining six counts undue emphasis was placed on the jury's assessment of the truthfulness or otherwise of the appellant.

[17] We do not accept that one can examine the charge to the jury by dissecting what has been said in respect of each and every count. Some issues are properly dealt with by examining any conflict of evidence that may arise in respect of particular matters but each case must depend on its facts. In this case the learned trial judge began his consideration of the interpreting counts by examining them as a group. He opened to the jury the evidence tending to show that ZIS existed but said that the real question was who ran it. He reviewed in detail the account given by the appellant that she had been approached by a loyalist UDA man, a Chinese accountant and a local Chinese chef. She described how Carrie McCluskey and two other people worked for ZIS. He noted her account about how she said she engaged with this group but also noted the significant sums of money which had been paid to the appellant and her family.

[18] The prosecution case was that the appellant was using ZIS invoices to fraudulently obtain sums of money from the Legal Services Commission. The prosecution contended that the account about the criminals was false. The view of the jury about this issue was clearly absolutely critical to their assessment of the truthfulness of the appellant. The learned trial judge was also careful to give them a Lucas direction in relation to lies and no criticism at all was made of his approach.

[19] We agree that there were pieces of evidence that the learned trial judge could have rehearsed such as the issues over of the reliability of the custody record and the difficulties encountered by Sgt Ogden when transcribing the interview of Precious Oyinwura. We do not accept, however, that the learned trial judge failed to adequately direct the jury on the factual issues at the centre of this case. Once the appellant gave evidence and the jury had to make some assessment as to whether she could be believed in relation to how ZIS had come about it was inevitable that that became the focus of the jury's deliberations.

[20] For those reasons we reject the appeal in relation to the fraud counts.

The money laundering counts

[21] There was no dispute that the monies obtained as a result of the fraud counts were placed into accounts held in the name of the chef named Zhang. A sum of £3556.68 was lodged in one account between 1 April 2009 and 3 September 2009 (count 63) and a total of £798 was lodged in another account in three separate lodgements between 27 October 2009 and 7 June 2010 (count 64). On 28 August 2010 the appellant accompanied Carrie McCluskey to the Republic of Ireland where a cheque for £14,000 from the account relating to count 63 was lodged. On 3 September 2010 a cheque for £80,000 was similarly lodged in respect of the account the subject of the charge in count 64. The monies appear to then have been transmitted to China.

[22] The learned trial judge directed the jury on the basis that if they concluded that either of the accounts received money which had been obtained as a result of the appellant committing any of the fraud charges they would have little difficulty in being satisfied that the appellant was concerned in transferring the money out of Northern Ireland and that when she did so she was well aware that it was criminal property.

[23] The offence under section 327 (1) (e) of the Proceeds of Crime Act 2002 (the 2002 Act) is committed if the person removes criminal property from Northern Ireland. Criminal property is defined in section 340(3) of the 2002 Act.

> "340 (3) Property is criminal property if-
>
> (a) it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and
>
> (b) the alleged offender knows or suspects that it constitutes or represents such a benefit."

[24] The prosecution case is that once a person knows or suspects that fraudulently obtained money has been placed into an account thereby increasing the balance of the account owing to the account holder the chose in action which is the entitlement of the account holder to the balance from the bank becomes criminal property. The appellant does not take issue with that proposition but submits that if there is activity on the account the jury have to make some assessment as to whether the account remains polluted. Mr Stern submitted in effect that this exercise requires the jury to determine whether there remains attributable property. He did not, however, suggest a mechanism by which the jury should approach this task.

[25] The concession that the lodgement of fraudulently obtained monies into a bank account thereby increasing the balance owing to the account holder constitutes criminal property is clearly properly made. A similar concession was approved by the English Court of Appeal in R v Fazal [2009] EWCA Crim 1697. It is clear that substantial sums were deposited and withdrawn from the accounts in the period between the deposit of the fraudulent monies and the eventual removal of the two cheques. It is also clear, however, that in the period between the deposit of the fraudulent monies and the withdrawal of the cheques both accounts remained in credit, neither of them falling below a balance of less than £870.

[26] It is plain that the lodgement of monies to either of the accounts could not affect the status of the accounts as criminal property. Any monies withdrawn from the account would also inevitably fall within the definition of criminal property but could not in our view result in altering the criminal property status of the account, at least where the account remained in credit. That is the effect of the broad definition of criminal property.

[27] Although we have analysed this matter by reference to first principles we note that our analysis accords with the views of the English Court of Appeal in R v Causey (unreported 18 October 1999) when interpreting similar provisions in the Criminal Justice Act 1988. We consider, therefore, that the learned trial judge was correct to advise the jury that if they concluded that monies fraudulently obtained by the appellant had to her knowledge been placed in both accounts and she participated in removing the cheques from each account she was guilty of the offence.

Conclusion

[28] For the reasons given the appeal against conviction is dismissed.