

## HKSAR v L.H.K.

### Facts

In March 2001, police officers executed a search warrant at the defendant's residence in Mongkok (Hong Kong, China). They were looking for the defendant's elder brother and his girlfriend, who were suspected of money laundering and migrant smuggling. The police found, in four locked drawers of a wardrobe, 25 Japanese passports, 97 unlawfully obtained Chinese passports, and a false China mainland immigration stamp. It was ascertained that the Japanese passports had either been lost by their owners or stolen. Nothing related to the defendant was retrieved, except for an undated envelope addressed to him, originating from Turkey, which contained 24 of the unlawfully obtained Chinese Public Affairs passports. There were, however, a considerable number of documents, which referred to the defendant's brother (period 1999-2000). Two sets of keys were found to the room in which the wardrobe was and to the wardrobe itself. One set was kept in a drawer in the defendant's bedroom, and the other was found on a computer desk in the living room. In the defendant's room were found a number of bank passbooks. It was later determined that the defendant had opened and/or operated several HSBC accounts from 1995 to 2000. Millions of HKD and thousands of USD had been deposited, transferred or withdrawn. Transfers and deposits had been made both to the accounts of the defendant's wife, brother and brother's girlfriend.

The defendant was convicted on (i) two counts of dealing with property known or believed to represent the proceeds of an indictable offence (migrant smuggling); (ii) two counts of possessing unlawfully obtained travel documents. An appeal followed.

### Elements of success

- 'Follow the money' approach
- No exclusive reliance on testimonial evidence

### Challenges

- Evidence (proving constituent elements of migrant smuggling, although unnecessary *in casu*)
- Unavailability of migrants' testimony

### Background

Suspicious of involvement of the defendant's brother in the smuggling venture that led to the death of 58 irregular migrants in a container, in Dover (England, United Kingdom) in June 2000. See *infra* under "Investigation".

### Key issues

- ❖ Evidence
- ❖ Asset tracing

### Investigation

Authorities relied much on testimonial and documentary evidence as well as the outcome of searches and seizures.

The defendant initially maintained that the forged passports had been placed in his flat by his brother, who had told him they were “fake”. He later altered the statement in terms that he would “*know nothing about the passports*”. He also declared that the money in his (the defendant’s) bank account was for margin trading in foreign exchange, for a friend. The defendant declared that, following a conversation with his brother, he suspected the latter to be involved with the death (in June 2000) of 58 irregular migrants, who had died in a container in Dover, England, one reason being that they all came from a place near his home town in China. In addition, his brother had asked him to transfer the money paid into his accounts to that of his brother’s girlfriend. Accordingly, the defendant inferred his brother must have obtained that money by illegal means because he had told him that “*there was a lot of money to be made by arranging for people ‘to go to other places’*”. The defendant insisted that his brother had a key to the house and the location where the fraudulent documentation had been found.

## Reasoning

On appeal, the defendant argued that he did not believe, nor did he have reasonable grounds for believing, that the funds handled were proceeds of crime. There would be no sufficient evidence to conclude otherwise.

To the contrary, there was considerable evidence to ground the conviction in first instance, in its entirety: (i) cash deposits in June and July 2000; (ii) money transfers; (iii) location of passports, (iv) defendant’s declarations to the police.

The defendant’s handling and use of his brother’s very substantial sums of cash between June and September 2000 - given his knowledge of the brother’s limited resources and what his brother had told him re financial opportunities deriving from ‘helping people to go other places’ - pointed directly to a link between the passports, migrant smuggling and money laundering.

Regarding the money laundering charges, there is no need to prove the specific conduct of the underlying offence (*in casu*, migrant smuggling) and, therefore, no need for a court to identify such specific conduct. Rather, only the type or category of the crime must be proved. \*

## Verdict/Decision

Appeal dismissed – conviction upheld.

## Opinion

This case illustrates the importance of ‘following the money’ in complex investigations as are those relating or connected to migrant smuggling. Parallel financial investigations are usually critical in ensuring successful prosecutions. In addition, given the voluminous profits often linked to organised and systematic migrant smuggling, it is likely that this crime type be usually linked to money-laundering activities, in the perpetrators’ effort of evading the attention of authorities.

## Notes

\* See *HKSAR v. Li Ching* (1997) and *HKSAR v. Wong Ping Shui* (2000))