CACC 101/2014

**IN THE HIGH COURT OF THE**

# **HONG KONG SPECIAL ADMINISTRATIVE REGION**

# **COURT OF APPEAL**

# CRIMINAL APPEAL NO. 101 OF 2014

# (ON APPEAL FROM DCCC NO. 860 OF 2011)

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BETWEEN

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| HKSAR | Respondent |
| and |  |
| YEUNG KA SING, CARSON  (楊家誠) | Applicant |
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Before : Hon Lunn VP, Macrae and McWalters JJA in Court

Dates of Hearing : 11 and 12 March 2015

Date of Judgment : 13 May 2015

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|  | J U D G M E N T |  |
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Hon Lunn VP (giving the Judgment of the Court) :

The applicant sought leave to appeal against his convictions on 28 February 2014, after trial by District Court Judge Douglas Yau on five charges of dealing with property known or believed to represent the proceeds of an indictable offence in five different bank accounts, in the overall period 2 January 2001 and 31 December 2007, contrary to section 25(1) and (3) of the Organized and Serious Crimes Ordinance, Cap. 455 and the total sentence of six years’ imprisonment imposed on him in consequence on 7 March 2014.

The applicant was sentenced to six years’ imprisonment on Charges 1 and 2; five years’ imprisonment on Charges 3 and 5; and 2 years’ imprisonment on Charge 4. All the sentences were ordered to be served concurrently. Accordingly, the total sentence imposed on the applicant was six years’ imprisonment.

At the hearing we reserved judgment in respect of the application against conviction and said that having delivered that judgment, if necessary, we would hear the parties in respect of the application in respect of sentence.

*The Charges*

The five charges, as particularised in the written Prosecution Opening[[1]](#footnote-1), alleged dealing by the applicant in the total amount of monies deposited into each of the five bank accounts in the respective periods, commencing on different dates in the year 2001 and concluding on different dates in the year 2007. Three of the bank accounts were in the name of the applicant, of which he was the sole signatory, whereas two of the bank accounts were in the name of his father, of which accounts the applicant and his father were signatories. Two of the bank accounts in the name of the applicant were with the Wing Lung Bank, a savings account (Account A) and a current account (Account B). Both of the bank accounts in the name of his father were with the Wing Lung Bank, a current account (Account D) and a savings account (Account E). The third bank account in the name of the applicant, a savings account (Account C) was with HSBC.[[2]](#footnote-2) The amounts of money stipulated as having been dealt with by the applicant in the respective accounts were:

Charge 1– Account A, $347,310,098 (by 406 deposits);

Charge 2–Account B, $254,303,959 (by 384 deposits);

Charge 3–Account C, $31,188,121 (by 53 deposits);

Charge 4–Account D, $6,659,000 (by 17 deposits); and

Charge 5–Account E, $81,826,428 (by 103 deposits).

The total amount of money deposited was $721,287,600.

*The Trial*

There was no dispute at trial that the deposits into the five bank accounts in the respective periods came from different sources; including cash deposits from known and unknown third parties, cheque deposits by the applicants and by third parties and by way of transfers between bank accounts. The prosecution did not seek to identify the predicate offences and did not rely on the first limb of *mens rea*, namely knowing.[[3]](#footnote-3)

*The prosecution case*

It was the prosecution case that the applicant was a man of modest means, as was his father. The applicant reported a taxable income of $335,229 in the financial year 1997, no income for the period 1999-2003 and a total loss $1,650,000 in the three financial years 2004-2006. The applicant’s father declared a total of $167,283 of salary as a caretaker in the three financial years 1997-1999. Having operated a vegetable stall in the three financial years 2004-2006, he claimed a total profit of $6,880. The prosecution contended that the deposit of a total of over $721 million in the five bank accounts in the respective periods was not commensurate with the declared taxable income of the applicant and his father.

Of the deposits to the five bank accounts, the prosecution pointed to the fact that the 437 deposits were in cash and amounted in total to $97,518,367. No less than $40,100,000 of those cash deposits were made up by 21 deposits of $1 million and more. A total of $62,450,000 was deposited in a period of several weeks in late December 2004 and January 2005 by way of 10 cash cheques drawn on the account of Sociedade de Jogos de Macau SA (“SJM”), a casino in Macau.

Further, it was the prosecution case that the five bank accounts were used as a “repository for funds”. First, on the basis that, after having been deposited, some of the monies were transferred out in a very short period of time. Secondly, on the basis that the opening and closing balances for each of the bank accounts during each of the years 2001 to 2007 were almost identical.[[4]](#footnote-4)

Notwithstanding that there were five charges, the judge noted of the presentation of the prosecution case that it, “was presented as if the court was considering the entirety of the funds deposited into the five counts …. and the way the data as set out and analysed in the prosecution expert reports corresponded with that approach.” [[5]](#footnote-5)

*The defence case*

Unusually, the applicant was permitted to give evidence after having called 11 witnesses as to the facts and two expert witnesses, Mr  Ian Robinson and Mr  Mark Pulverenti, in the defence case. The factual witnesses spoke to the applicant’s business activities, including his trading in securities, participation in commercial ventures in Hong Kong and the Mainland and his activities as a gambler.

In his evidence, the applicant denied that he had dealt with monies in the accounts in the name of his father, which were the subject of Charges 4 and 5. Dealings in those accounts were those of his father, as were the monies.[[6]](#footnote-6) The applicant accepted that the dealings in the three accounts that are the subject of Charges 1-3 were his dealings, as were the monies. They were not the proceeds of “ill gotten gains”.[[7]](#footnote-7) He denied that he had ever dealt in property or money that he believed, suspected or thought might be the proceeds of crime.[[8]](#footnote-8)

The evidence called in the defence case was put forward to explain the provenance and nature of the monies held in the five bank accounts. In particular, the structure of the applicant’s evidence-in-chief was to provide an account of the legitimate provenance of the various tranches of money deposited into the three accounts the subject of Charges 1-3.

*Grounds of Appeal against Conviction*

Multiple grounds of appeal against conviction are advanced on behalf of the applicant by Ms Montgomery QC.

*Duplicity*

By ground 1A it was submitted that, given the multiplicity and the different provenance of deposits in each of the five bank accounts, all five charges were bad for duplicity.[[9]](#footnote-9) The common law exceptions to the overriding requirement that each offence be the subject of a separate count, namely of a continuing activity or a general term deficiency, did not arise. The charges gave rise to unfairness. In consequence, the applicant was placed in a position in which it was impossible to defend the charges.

*The reasonable grounds to believe test*

By ground 1, it was submitted that the judge had erred in applying a two-stage test in his consideration of whether or not the applicant had reasonable grounds to believe that the money derived from the proceeds of an indictment of offence.[[10]](#footnote-10) In their judgments in *Pang Hung Fai v HKSAR*, delivered subsequent to the applicant’s trial, the Court of Final Appeal found that test to be erroneous.[[11]](#footnote-11) The judge’s application of the wrong test was a material error of law and/or material irregularity. First, the judge failed to consider whether the applicant himself had “grounds” to believe, rather he had regard to an objective person. Secondly, he considered objective “facts” rather than “grounds”, the latter being the outcome of the applicant’s thoughts or intentions. Thirdly, he failed to make sufficient findings as to the applicant’s actual state of mind or belief.

*Repository of funds*

By grounds 2A and 3, it was submitted that the judge erred in finding that the five bank accounts were used as a “repository of funds”, in particular by having regard to the fact that the opening and closing balances were of the respective accounts were relatively similar. Even if the judge’s finding was correct, he was not entitled to conclude that “was one of the reasonable grounds to believe” that the funds dealt with by the applicant in the accounts were the proceeds of an indictable offence. Only conduct of the applicant before or at the time of dealing with the monies, not what happened afterwards, could be reasonable grounds for the applicant to believe that the monies with which he dealt were the proceeds of an indictable offence.

*Neptune Club and Massive Resources Ltd*

Of the deposits made into one or other of the five bank accounts, said by the applicant to have been made by or at the behest of Lin Cheuk Fung and Cheung Chi Tai in relation to his investment and that of his father intoNeptune Club and Massive Resources Limited, it was submitted that the judge had erred in finding that the applicant had reasonable grounds to believe that they were the proceeds of an indictable offence*.* First, since the judge was unable to make a finding as to the reasons for those deposits, there was no evidential basis to make that finding. Secondly, given the judge’s findings[[12]](#footnote-12), the applicant might have been found guilty in respect of his dealing with those monies on the basis of their “inappropriate” rather than “illegal” provenance. Thirdly, where the provenance of the monies dealt with by the applicant was the applicant’s own misconduct, the applicant could only be found guilty on the “knowing” limb of *mens rea*, so that proof was required of the underlying predicate offence. Fourthly, the judge failed to give any weight to the applicant’s belief of the propriety of those deposits and erred in having regard to the fact that the payments were made by or on behalf of “bosses of a VIP room and a casino in Macau” [[13]](#footnote-13).

*Cash deposits*

By ground 7 it was submitted that the judge erred in finding that there was no “cash generating business that would generate the kind of cash that was deposited” [[14]](#footnote-14). The judge erred in having regard to that finding “as a key basis of his findings of guilt of all five charges.” [[15]](#footnote-15) There was evidence that the applicant’s share trading activities generated large amounts of cash transactions. Significantly, about $60 million of the total of $97.5 million deposited as cash into the five bank accounts in the overall period was deposited in 2001.[[16]](#footnote-16) That coincided with trading activities in the security accounts of more than $1.5 billion. Further, it was contended that the judge had made no finding that the applicant had reasonable grounds to believe of any particular deposit in cash, or cash deposits in general, that they were the proceeds of an indictable offence.

*Gold Wo*

By ground 8, it was submitted that the judge erred in determining of the dealings between the applicant, his father and Ms Yu in respect of Gold Wo shares, that there were reasonable grounds to believe that “the money involved in the transactions represented wholly or in part directly or indirectly proceeds of an indictable offence”.[[17]](#footnote-17) The judge erred in making that determination in reliance on his earlier finding that the absence of a written agreement between the parties was because the parties “did not want Ms Yu’s involvement to be known” and given his finding that he did not know why her involvement was concealed. Her involvement was not concealed, given the existence of written instructions from both the applicant and his father to transfer monies to her account with Hooray Securities. If the impugned transaction was the payment to Ms Yu of $64.35 million, and not the other payments, at most that related to prospective criminal conduct and not to dealing in the proceeds of an indictable offence and was not an offence.[[18]](#footnote-18)

*SJM cheque deposits*

By grounds 9 and 10, it was submitted that the judge erred in finding that the 10 cash cheques drawn on the account of SJM deposited into the Wing Lung Bank accounts of the applicant (Charge 1) were not the applicant’s gambling winnings.[[19]](#footnote-19) That finding was not consistent with his finding that the applicant was “an avid gambler on baccarat” in the Macau casinos, notwithstanding that he had gone on to say that he was unable to say “whether he was always winning or as to how much his winnings amount to”.[[20]](#footnote-20) Furthermore, since the judge said that he did not know the “real reason for those deposits” [[21]](#footnote-21) there was no evidential basis to find that the applicant had reasonable grounds to believe that those monies were the proceeds of an indictable offence.

*The bank accounts of the applicant’s father*

By ground 11, it was submitted in effect that the judge had erred in determining that the applicant had dealt with monies in accounts D and E. In reaching that conclusion he had regard to part only of the evidence relevant to the wealth of the applicant’s father, namely that he operated a vegetable stall at very modest levels of profit. He erred in allowing that evidence to play an unduly significant part in his assessment of the applicant’s father’s background, abilities and wealth. The judge failed to have regard to the unchallenged evidence of Mr Yang Wu Jun (DW 6), the general manager of a hotel in Dongguan in the period 1991-1994, of which the applicant’s father together with the applicant had been the bosses.[[22]](#footnote-22) Further, the judge had made no finding that the applicant’s father was not the owner of the monies generated by the substantial trading activity in the securities accounts held in the name of the applicant’s father.

*Proof of the predicate offence*

Finally, by ground 12 it was submitted that it was necessary for the prosecution to prove the predicate offence. The prosecution had not done so. It was acknowledged that was not a matter that could be canvassed in this Court, because this Court was bound by the judgments of the Court of Final Appeal in *Oei Hengy Wiryo v HKSAR* [[23]](#footnote-23) to the contrary. However, it was contended that, having regard to the recent judgments of the Court of Final appeal in *Li Kwok Cheung, George v HKSAR* [[24]](#footnote-24)and in *Pang Hung Fai v HKSAR* [[25]](#footnote-25), the point was wrongly decided.

*The respondent’s submissions*

*Duplicity*

For the respondent, Mr Caplan QC, submitted that Charges 1-5 were not duplicitous. No application had been made at trial that the charges were duplicitous. Each of the five charges reflected conduct which was to be regarded properly as having a common purpose so that it was part of the same criminal enterprise, namely money-laundering.[[26]](#footnote-26)

He pointed out that in England and Wales, rule 14.2(2) of the Criminal Procedure Rules permits multiple incidents of offending to be included in a single charge in certain circumstances. He acknowledged, however, that a single charge may not be appropriate where what is in issue differs between the individual incidents. The *Practice Direction (Criminal Proceedings: Further Directions)*[[27]](#footnote-27) provided that, in the appropriate circumstances, such an approach is justified in various offences, including money-laundering. He invited the court to note that reference was made to the Practice Direction in the judgment of the Court of Appeal of England and Wales in *R v Middleton*.[[28]](#footnote-28)

Mr Caplan said that the prosecution case was made clear by the Particulars of Offence of each of the charges, together with the written prosecution Opening and the expert reports served on the defence in advance of trial. The applicant dealt with the monies deposited in the respective accounts as the principal offender as part of a continuing activity. There were no identifiable victims. The defence case, certainly in respect of Charges 1-3, was that there was a legitimate provenance of the monies deposited into those bank accounts. The applicant, sometimes supported by a defence witness(es), advanced different explanations for different deposits or groups of deposits. Mr Caplan submitted that even if the charges had been presented in multiple separate counts, the defence advanced by the applicant would have been the same. There was no unfairness to the applicant so that the trial itself was unfair.

*Reasonable grounds to believe*

Mr Caplan accepted that the judge had adopted the two-stage test articulated by this Court in *HKSAR v Pang Hung Fai*, which the Court of Final Appeal had said distracts the decision maker. However, he submitted that the judge’s analysis of the evidence and his findings demonstrated that he did consider the matters required of him, namely the matters set out in the formulation in the judgment of Litton PJ in *Seng Yuet Fong v HKSAR*, approved by the Court of Final Appeal in *Pang Hung Fai,* that“the accused had grounds for believing; and there was the additional requirement that grounds must be reasonable. That is, that anyone looking at those grounds objectively would so believe.” In particular, the judge had regard to:(i) what was known to the applicant; (ii) whether a right-thinking member of the community would consider the transaction in all the circumstances amounted to reasonable grounds to believe that the monies were the proceeds of an indictable offence; and (iii) whether the applicant himself had reasonable grounds to so believe. Further, the judge considered the applicant’s testimony, making multiple findings that he lied in evidence. Also, the judge had regard to the applicant’s asserted belief or perceptions and its reasonableness in regard to a particular transaction.

It was submitted that the judge did not make an error in failing to determine the true nature of the dealing in any particular transaction. There was no requirement for the court to determine that the monies were the proceeds of an indictable offence, only that there were reasonable grounds to so believe.

*The repository point*

Mr Caplan submitted that the judge made his general finding about the similarity of the opening and closing balances of the various bank accounts as part of multiple specific findings in respect of the individual charges. When considering whether the applicant had the requisite belief at the time of his dealing with the money the judge was entitled to have regard to his actions before and after those dealings.

*Other grounds*

The respondent took issue with all the other grounds of appeal against conviction advanced on behalf of the applicant. In particular, issue was taken with the submissions that, in the various transactions where the judge determined that he was unable to find the real reason for the deposit of monies dealt with by the applicant, the judge was precluded from making a finding that the applicant had reasonable grounds to believe that the monies were the proceeds of an indictable offence.

*A consideration of the submissions*

*Duplicity*

Although the applicant was represented by leading counsel, Mr Harris SC, throughout the 55 days of trial in the District Court, no objection was made to any of the charges on the basis that they were duplicitous. For her part, Ms Montgomery submitted that, although no formal application had been made, in effect that was the nature of a complaint raised by Mr Harris during the evidence of Mr Sutton.[[29]](#footnote-29) In fact, Mr Harris’s request of the judge was:[[30]](#footnote-30)

“ …that the prosecution be directed to particularise in writing precisely what they say are the badges of money laundering such as to give this defendant reasonable grounds to belief.”

In that context, he complained of what he contended were “new matters being alleged against us which formed no part of the prosecution opening and formed no part of the expert reports”, identifying them as being “the coincidence of the opening of the Hooray account with bank account E” [[31]](#footnote-31) and the “circular nature of the payments”, which matters, he asserted, were on the prosecution case as developed “a badge of money laundering”.[[32]](#footnote-32) In conclusion, Mr Harris submitted that:

“ We are entitled to know in advance what the charge is and upon what evidence the prosecution seem to rely. And that is of particular importance … in this type of charge where there may be a tactical onus on the defence to explain … . [Prosecuting counsel] must know at the moment what facts he anticipates he will rely on in his assertion that there were reasonable grounds to believe and we ask, please, to be told what they are.” [[33]](#footnote-33)

The trial judge refused the request for particulars, saying “the prosecution case is particularised in the form of the expert reports and his evidence explaining the reports”.[[34]](#footnote-34)

Mr Caplan contended that this exchange was absolutely beside the point. And rightly so. Read in context, Mr Harris’s request was not about the duplicity of the charges at all. Rather, it was that certain, discrete matters were being raised by the prosecution for the first time mid-trial. There was no suggestion that the charges were duplicitous. To the contrary, when counsel for the prosecution said he had been relying only on factual matters arising from his opening and from the expert reports, and would continue to do so, Mr Harris said:[[35]](#footnote-35)

“ If it’s the case that [prosecution counsel] is content to confine himself to the hallmarks of money laundering contained in his opening, then I’m content and I don’t require anything further in writing. But as long as it’s understood … that new matters are out of order, subject of course to relevance and legal argument later on, *then* *I can’t complain that I don’t know what case I face*. So the point in a way falls away.” (Italics added.)

Although no application was made by the defence that the charges were duplicitous or that, thereby, the defence was embarrassed or prejudiced in presenting its case, a number of other applications were made by the defence during the trial on the basis of prejudice to a fair trial. Applications were made twice, but rejected by the judge, for a stay of proceedings on the basis that a fair trial was not possible, given the absence of documentary records and the failure of the police to investigate the case properly.[[36]](#footnote-36) Further, the judge rejected an application that the evidence of Mr Sutton, a forensic accountant called on behalf of the prosecution as an expert witness, be excluded on the basis of the prejudicial effect that might flow from the opinions that he had expressed in his reports that the transactions in the five bank accounts bore the hallmarks of money-laundering.[[37]](#footnote-37)

Whilst no issue was taken with the fact that the complaint of duplicity was raised for the very first time in this Court, Mr Caplan invited the Court to have regard to that fact in considering the true gravity of what were contended to be the panoply of problems that confronted the applicant and the conduct of the defence in the face of the duplicitous charges.

Further, it is to be noted that the issue of duplicity was not argued in the original Perfected Grounds of Appeal against Conviction settled by Mr M K Wong SC, filed with the Court on 12 August 2014, or in the Amended Perfected Grounds of Appeal settled by Mr Plowman SC, filed with the Court on 12 November 2014. This ground of appeal was added only in the Re-Amended Perfected Grounds of Appeal filed with the Court on 26 November 2014, namely only after the delivery of the judgment of this Court in *HKSAR v Salim* on 14 November 2014.[[38]](#footnote-38)

*The ambit of the charges*

As noted earlier, the Particulars of Offence of the charges averred that the impugned conduct had occurred in a period of about six years in the overall period 2001-2007, in which period there were multiple deposits to each of the five bank accounts. Each of the charges concerned the aggregate amount of deposits in the respective periods. The deposits were by way of cash, cheques or transfer. Some of the depositors or remitters were known, others were not. For, example, there were 406 deposits into the bank account the subject of Charge 1. Of the approximately $159 million deposited by cheques in 103 transactions, other than the $1.2 million drawn on cheques on accounts in the name of the applicant or his father, the identity of all the other 19 persons and/or entities on whose accounts the cheques were drawn was known. About $27.9 million in cash was deposited in 196 transactions. The identity of those depositors was not known. About $159 million was deposited by way of transfer from the accounts of eight known entities and/or persons, including the applicant and his father, in 93 transactions.[[39]](#footnote-39)

The form and content of an indictment in Hong Kong is governed by the Indictment Rules, Cap. 221C. Rule 2(2) provides that:

“ Where more than one offence is charged in an indictment, the statement and particulars of each offence shall be set out in a separate paragraph called a count, and rules 3 and 4 of these Rules shall apply to each count in the indictment as they apply to an indictment where one offence is charged.”

Accordingly, a count may not allege more than one offence. However, one offence may consist of one activity even though more than one physical act may be involved.[[40]](#footnote-40) In his speech in *DDP v Merriman*, Lord Morris addressed that issue in the context of rule 4 of Schedule 1 of the Indictments Act, which was in materially the same terms as rule 2(2),

and said:[[41]](#footnote-41)

“ In my view, such questions when they arise are best answered by applying common sense and by deciding what is fair in the circumstances. No precise formula can usefully be laid down but I consider that clear and helpful guidance was given by Lord Widgery CJ in a case where it was being considered whether an information was bad for duplicity: see *Jemmison v Priddle* [1972] 1 QB 499, 495. I agree respectfully with Lord Widgery that it will often be legitimate to bring a single charge in respect of what might be called one activity even though that activity may involve more than one act.”

In his speech, Lord Diplock said of the rule against duplicity, incorporated in rule 4, that it:[[42]](#footnote-42)

“ …has always been applied in a practical, rather than in a strictly analytical, way for the purpose of determining what constituted one offence. Where a number of acts of a similar nature committed by one or more defendants were connected with one another, in the time and place of the commission or by their common purpose, in such a way that they could fairly be regarded as forming part of the same transaction or criminal enterprise, it was practice, as early as the 18th century, to charge them in a single count of an indictment.”

In the Common Law, two exceptions were developed which permitted the bringing of a single count even though the offending activity occurred on two or more occasions, namely cases of a general deficiency and those which constituted a continuous offence.

In the judgment of this Court in *HKSAR v Salim*[[43]](#footnote-43), McWalters JA considered the applicability of the principle identified in *Merriman*, and the two exceptions to it, in the context of charges of ‘money laundering’ by deposits into various bank accounts. On 10 February 2015 the Appeal Committee of the Court of Final Appeal granted the prosecution leave to appeal on the points of law of great and general importance certified by this Court.[[44]](#footnote-44)

The prosecution case was that the aggregate of deposits made in the bank accounts, opened separately by the two applicants respectively, were the monies with which they had dealt, contrary to section 25(1) of the Organized and Serious Crimes Ordinance, Cap. 455. Of their criminal conduct, McWalters JA said:[[45]](#footnote-45)

“ Here, the conduct of the applicant is the aiding and abetting of the principal offenders to deal with property whilst possessed of a certain *mens rea* in respect of that property. However, there is no evidence that the applicants knew what kind of dealings would take place in relation to the accounts or the source of the monies that made up those dealings or how or in what circumstances those monies had been obtained. The prosecution case was essentially as follows:

1. by opening bank accounts for others to use the applicants must have known that those accounts would be used for the purpose of dealing with property. That is the *actus reus* of the offence; and
2. from the conduct of the applicants in travelling to a foreign jurisdiction solely for the purpose of opening bank accounts for others to operate, the *mens rea* element of having reasonable grounds to believe that these dealings would involve property that was the proceeds of an indictable offence is proven.

The prosecution presented its case as though the charge was a conspiracy to money launder. But, it was not. On this Charge Sheet each offence is a substantive offence and in respect of each dealing the *mens rea* element must be proven.

Here, the actual form of each dealing is the receipt of monies. No act by the unknown principal offenders is relied upon in relation to the accounts; their actions take place beforehand when by fraudulent representations held out to various victims, those victims are induced to deposit monies into the accounts. There is no positive act of dealing by the unknown principal offenders. They simply wait for the money to be deposited.”

Having quashed one of the counts on which the 2nd applicant had been convicted, on the basis that the judge erred in finding ‘dealing’ proved by a withdrawal, not by a deposit of monies, the Court quashed the remaining counts, determining that the judge erred in convicting the applicants on the other counts on the basis that they had aided and abetted another person(s) to deal with the stipulated property. At no time during the trial had the judge informed the parties that he was considering accessorial liability as an alternative basis of criminal liability, so that the parties had no opportunity to address the Court on that issue.[[46]](#footnote-46)

The issue of whether or not the charges were duplicitous was addressed by this Court in its consideration of whether or not to order a re-trial of the 2nd applicant, the 1st applicant having served his sentence and having been discharged. Having cited the authors of *Archbold Hong Kong* 2014 [[47]](#footnote-47), McWalters JA said that there were three situations in which a charge based on different criminal acts was permissible:[[48]](#footnote-48)

“ The first is where different acts, viewed realistically, form only one transaction…….(and) acts chargeable as a general deficiency and acts constituting a continuous offence.”

In his consideration of the one transaction exception, having had regard to the speeches of Lord Morris and Lord Diplock in the House of Lords in *DPP v Merriman* and Lord Widgery CJ in *Jemmison v Priddle,* McWalters JA cited various examples of factual situations in which the exception was held to obtain, concluding “in order to be the same offence it will usually be necessary that the target of the defendant’s criminal acts is the same victim.[[49]](#footnote-49) Of the general deficiency exception, McWalters JA said “…it should not normally be used where the occasions on which each criminal act occurred and the property … can be identified.” [[50]](#footnote-50) Of the one continuous offence exception, McWalters JA cited [[51]](#footnote-51) the observations of Kennedy LJ in *Barton v DPP* [[52]](#footnote-52), in which he said, “It arises where individual transactions are known but where there are many transactions of the same type, frequently individually of small value, against the same victim and it is convenient in order to reflect the overall criminality to put them together in one … count …”.

In determining that the charges were duplicitous, McWalters JA said:[[53]](#footnote-53)

“ We do not see how this activity, spanning as it does a period of some two and a half months and involving different receipts on different occasions from different victims can be said to be one offence. We are of the view that this conduct cannot be brought within the *Jemmison v Priddle*, *Merriman* exception.

For completeness’ sake, we should say that nor, in our view, can it be brought within the general deficiency or continuous act exceptions. The former exception requires that the occasion of the individual criminal acts be incapable of identification and both require that the victim be the same. Here, each dealing, that is, each deposit of monies into the various bank accounts, can be identified and each deposit is made by a different victim.”

In *Barton v Director of Public Prosecutions*, the Divisional Court dismissed an appeal that an Information, upon which the appellant had been convicted, was duplicitous in that it alleged the theft of a total of £1,338 from the till of Buxton Opera house on 94 occasions in the period of one year. In the judgment of the Court, Kennedy LJ noted that the prosecution case had been set out in a schedule in which the date and each of the amounts of money taken had been stipulated. Having noted of alternative ways of prosecuting the misconduct, that the bringing of 10 Informations reflecting the theft of an aggregate amount of less than £200 would not have reflected the overall criminality and that the bringing of 94 Informations would have been oppressive, he said:[[54]](#footnote-54)

“ The defendant had no specific explanation to offer. This is not a case where she had put forward a specific answer to some of the alleged takings and not to others, and that then specific answers needed to be considered separately.”

In the result, he concluded that “there was no discernible prejudice or unfairness to the appellant in regarding this as a continuous offence within the principles set out in the authorities…”.

*England and Wales*

It is clear from the helpful explanation provided to the Court by Ms Montgomery of the history of the developments in England and Wales of the Criminal Procedure Rules and the related Practice Direction that care has to be taken in having regard to subsequent authorities from that jurisdiction. The Indictment Rules 1971 were revoked by the Criminal Procedure (Amendment) Rules 2007. The Criminal Procedure (Amendment) Rules 2005, as amended, made provision for new rules in respect of both the form and content of an indictment, so that by rule 14.2(2) provision is made that:

“ More than one incident of the commission of the offence may be included in the count if those incidents taken together amount to a course of conduct having regard to the time, place or purpose of commission.”

It appears that those changes were a response to concerns expressed in the judgment of the Court of Appeal delivered by Hooper LJ in *R v Ali* [[55]](#footnote-55)of the difficulties faced by the prosecution in bringing substantive charges of money laundering, rather than a charge of conspiracy.

“ Why then could the prosecution not charge the substantive offences? The answer Mr Bethel gave was that each delivery of money would be a separate offence and would have to be charged separately, given the rule against duplicity: see rule 4(2) of the Indictment Rules 1971..”

That led Hooper LJ to suggest that consideration be given to amending rule 4(2)[[56]](#footnote-56).

The related Criminal Practice Direction provided:[[57]](#footnote-57)

“ 14A.10 Rule 14.2(2) of the Criminal Procedure Rules allows a single count to allege more than one incident of the commission of an offence in certain circumstances. Each incident must be of the same offence. The circumstances in which such a count may be appropriate include, but are not limited to, the following:

1. the victim on each occasion was the same, or there was no identifiable individual victim as, for example, in a case of the unlawful importation of controlled drugs or of money laundering;
2. the alleged incidents involved a marked degree of repetition and the methods employed or in their location, or both;
3. the alleged incidents took place over a clearly defined period, typically (but not necessarily) no more than about a year;
4. in any event, the defence is such as to apply to every alleged incident without differentiation. *Where what is in issue differs* *between different incidents, a single ‘multiple incidents’ count will not be appropriate,* though it may be appropriate to use two or more such counts according to the circumstances and to the issues raised by the defence.” [Italics added.]

In *R v Middleton*, the Court of Appeal of England and Wales noted that the trial of the applicants on counts that included ‘money laundering’ counts was governed by the Criminal Procedure Rules 2005.[[58]](#footnote-58) In the judgment of the Court, Wilkes J noted that the Criminal Procedure Rules Committee considered that, in formulating rule 14.2(2) of the Criminal Procedure Rules and in giving guidance in the Practice Direction, they were doing no more than codifying the existing law and went on to approve of the surmise of the editors of *Archbold* that the Committee had in mind the speech of Lord Diplock in *Merriman* at page 607 C. The Court found that the two counts of which the appellants were convicted after trial were not duplicitous[[59]](#footnote-59) and that it was legitimate for the Crown to have proceeded on counts which alleged “general deficiency” [[60]](#footnote-60) and that in so proceeding there was no unfairness to the appellants.

The counts alleged that the appellants had converted criminal property on multiple occasions, for the purpose of avoiding prosecution, for a period of just over three years (Count 1), contrary to section 49(1)(b) of the Drug Trafficking Act 1994, and for just over two years (Count 2), contrary to section 327(1)(c) of the Proceeds of Crime Act 2002. Given that it was the prosecution case that every financial transaction by Mr Middleton in the stipulated period was the conversion of the proceeds of drug trafficking there was no dispute that if each discrete offence was identified there would be “hundreds, indeed thousands” of offences.[[61]](#footnote-61) In reaching its conclusion, the Court said that it would have been “unduly oppressive and onerous for the prosecution to have identified each and every individual transaction as separate counts” .

As Ms Montgomery pointed out, it appears that the Court in *Middleton* was not referred to the earlier judgment of a differently constituted court in *R v R* [[62]](#footnote-62). In that case, in the context of a consideration of substituting convictions for conspiracy to commit acts of money laundering, which had been quashed, with the substantive offences, in the judgment of the Court of Appeal of England and Wales Hughes LJ, as Lord Hughes was then, rejected the submission of the prosecution that substantive offences of money laundering, contrary to section 49(2) of the Drug Trafficking Act 1994 [[63]](#footnote-63) and section 93(2) of the Criminal Justice Act 1988 should be regarded as “activity offences”. Rather, he noted: [[64]](#footnote-64)

“ The statutory language is quite different. An offence is committed with each conversion or removal of money. Different considerations may apply to different transactions….”

It is to be noted, that the word “dealing” is defined in section 2 of the Organized and Serious Crimes Ordinance as including:

* (a) receiving or acquiring the property;
  1. concealing or disguising the property….;
  2. disposing of or converting the property;
  3. bringing into or removing from Hong Kong property;
  4. ………”

It is to state the obvious to note that the Criminal Procedure Rules and the Practice Direction issued in England and Wales do not apply in Hong Kong. Nevertheless, it is instructive to note that the Rules and the Practice Direction provide that, in determining whether or not it is appropriate to permit different incidents to be the subject of one count, attention is directed to the question of whether what is in issue differs between the different incidents. If what is in issue differs, it will not be appropriate to subsume multiple incidents in one count. That is a matter to which Kennedy LJ alluded as being relevant to the issue of discernible prejudice or unfairness to the appellant in his judgment in *Barton v Director of Public Prosecutions*.[[65]](#footnote-65)

*Conclusion*

*Charge 1*

Given the obviously different provenance of the multiple deposits of money in the bank account the subject of Charge 1 over a period of six years the charge was patently duplicitous. We are not satisfied that those multiple acts, occurring over that considerable lengths of time, fall to be regarded as connected with one another by a common purpose, so that they are to be regarded as a common transaction or criminal enterprise. Similarly, that conduct does not fall within the exceptions of a general deficiency or continuous conduct. As noted earlier, about $158 million of the monies deposited by cheque into that bank account was deposited by no fewer than 19 different persons and/or entities. Moreover, about $27.9 million had been deposited in cash in 196 transactions by unknown depositors. The issues likely to arise were likely to be different. For example, the payment of about $37.5 million from an account in the name of the applicant with Hooray Securities in September 2001 to that bank account was on its face a transaction of an entirely different nature from the deposits into the same bank account more than three years later in the period of several weeks in December 2004 and January 2005 of 10 cash cheques drawn on the account of SJM to a total value of about $62.5 million.

*Charges 2-5*

The same observation applies to the deposits to the other bank accounts. The bank account the subject of Charge  2 received deposits of about $44.7 million in cash in 162 transactions, in respect of which only one depositor was identified; five identified persons and/or entities deposited about $34.9 million in cheques in 15 transactions. The bank account the subject of Charge 3 received deposits of about $13.3 million in cash in 18 transactions, in which only the applicant was identified as one of the depositors. The bank account the subject of Charge 4 received cash deposits of about $4.2 million in 10 transactions, in which only one of the depositors was identified. Finally, the bank account the subject of Charge 5 received cash deposits of about $7.3 million in 51 transactions together with cheque deposits of about $73.6 million in 40 transactions drawn on the bank accounts of 17 identified persons and/or entities. For the same reasons, we are satisfied that these charges were duplicitous.

*Prejudice to the defence*

The trial having proceeded, without any objection whatsoever from the defence, on what we have found to be duplicitous charges, it falls to this Court to consider whether, in consequence, there was prejudice to the applicant, such that his trial was not fair.

As noted earlier, in advance of the trial the prosecution provided the defence with the comprehensive reports of Mr Sutton and Sgt Kwan. They provided not only a collation of the data in respect of transactions in the five bank accounts but also in related securities accounts, together with an analysis of identifiable transactions connected with particular deposits. So, for example, in his second report Mr Sutton described in some detail the circumstances leading to the payment of around $37.5 million and about $10.4 million from the account of Hooray Securities to the bank accounts of the applicant and his father respectively in September 2001.[[66]](#footnote-66)

In the event, in the defence case the applicant advanced a consistent overall explanation for his dealing in the monies, namely that the transactions were legitimate and that he did not know or have reasonable grounds to believe that the monies were the proceeds of an indictment offence. In doing so he advanced many different specific explanations for his dealing with different specific sums of money.

As is apparent from the judge’s very lengthy summary of the defence case, in addition to the evidence of the applicant, two forensic accountants were called as expert witnesses, Mr  Pulvirenti and Mr Robinson, together with 12 witnesses to the facts. The broad thrust of that testimony was to provide a legitimate explanation for the provenance of the monies deposited in the five bank accounts and to refute the expressions of opinion adverse to the applicant given by Mr Sutton. The headings under which the judge summarised the applicant’s testimony speak eloquently to the structure of the defence case, including:

1. *Income and profits*

The Hair Salons;

Investment with Yeung Chung in the Dongguan hotel;

Richfield;

Wealthy Villas;

The defendant’s share trading; and

Individual securities trading companies.

1. *Specific transactions*

Gold Wo;

The Kanstar deal with Chim Pui Chung;

Gambling in casinos;

The SJM cheques of $62 million odd;

Abba Chan; and

Dealings with Cheung Chi Tai and Lin Cheuk Fung-Neptune Club and Massive Resources.

It is clear that in doing so, the defence was addressing the broad thrust of the prosecution case as to the propriety of the constituent parts of the aggregate deposits of money stipulated in the Particulars of Offence of each of the charges. So, for example, although the deposit by Hooray Securities Ltd of about $37.5 million into the Account A (Charge 1) was the only deposit of money by cheque to that account from Hooray Securities Ltd, the applicant testified at some length and in some detail as to the overall circumstances giving rise to the payment.[[67]](#footnote-67) The applicant did likewise in respect of the 10 SJM cheques [[68]](#footnote-68) and other groups of related transactions.

It follows that we are satisfied that there is force in Mr Caplan’s submission that, although the charges included within each of them multiple incidents relied on by the prosecution in proof of the respective charge, the differentiation between the various incidents was not only readily apparent to the defence and the judge but also addressed separately by each of them in turn. So, even if the prosecution had been required to condescend to stipulate multiple individual counts, the defence case would have remained the same. Similarly, we are satisfied that the defence advanced to meet that case would have remained the same. Accordingly, we are satisfied that although the charges were duplicitous, no prejudice was caused thereby to the applicant.

*The judge’s analysis and findings*

There is no dispute that in reciting his findings in respect of each of the charges that the judge referred to the overall evidence, and in particular the number of deposits into the respective bank accounts over the particular six-year period.[[69]](#footnote-69) However, it is clear that the judge analysed and made findings in respect of each individual transaction and/or tranche of dealings before addressing the verdicts in respect of each of the charges.[[70]](#footnote-70) Although the judge found that many of the applicant’s explanations for the various transactions were lies, in some instances he accepted the explanation. For example, of the explanation that monies deposited into Account A and Account B by Abba Chan or companies related to him were the repayment of an investment in his movie business or loans to him [[71]](#footnote-71) the judge said, “I find that it may very well be the case”.[[72]](#footnote-72)

The judge said that he decided the verdicts based on those findings.[[73]](#footnote-73) So, for example, earlier he made his findings in respect of the Hooray Securities payments to the applicant’s bank account and that of his father arising out of the Gold Wo share transactions.[[74]](#footnote-74) Then, he made his findings in respect of the 10 SJM cash cheque deposits to the applicant’s bank account. Next, he made his findings in respect of the payments that the applicant alleged were repayments in respect of his investment in Neptune Club and Massive Resources.[[75]](#footnote-75) Of those payments, the judge noted specifically that:[[76]](#footnote-76)

“ *the material time* to consider was when the money was being deposited into the defendant's bank account.” [Italics added.]

Of the large deposits of cash into the bank accounts, he found that “there was no correlating cash generating business that either the defendant or Yeung Chung were involved”.[[77]](#footnote-77)

*The judge’s verdicts*

It was in those circumstances, that the judge determined his verdict in respect of Charge 1. In doing so, he adverted to his findings: first, the cash deposits;[[78]](#footnote-78) secondly, the 10 SJM cheques;[[79]](#footnote-79) thirdly, the approximately $37.5 million payment by Hooray Securities; and fourthly, the payments which the applicant claimed were re-payments through various individuals and entities of his investment in Neptune Club and Massive Resources[[80]](#footnote-80), which evidence the judge had rejected. Then, the judge said:[[81]](#footnote-81)

“ …the defendant was aware of all the transactions in relation to account A. I find that the defendant himself knew that dealings in cash transactions would be more difficult to trace than those by way of checks. I find that there were no cash generating business that would generate the kind of cash that was deposited into account A. I find that the overall almost identical amount of deposits and withdrawals in the account shows that the account had been used as a repository of funds. I find that for the reasons already given above, the deposits from SJM were not the defendant’s gambling winnings. I find that the dealings in the Gold Wo shares, for reasons given above was arranged so as to conceal the involvement of Ms. Yu Xiao Mei. These are all facts known to the defendant at the material times.”

*The bank accounts as a repository of funds*

Immediately before embarking upon his determination of the verdicts in respect of each of the charges the judge noted that, although there were five separate charges, “the movements of funds in the accounts do not stand entirely isolated from each other” and that the applicant was a signatory of all the bank accounts and “had control over their usage”.[[82]](#footnote-82)

Then, the judge went on to note of the five bank accounts that each “has opening and closing balances that are relatively similar”. Of that fact, the judge stated that Mr  Sutton had said that was “an indication that the accounts had been used as a repository of funds”.[[83]](#footnote-83) No reference has been provided to the Court of Mr Sutton expressing that opinion, either in his testimony or in his report, and the Court was unable to find such a reference. Insofar as Mr Sutton referred to the term ‘repository of funds’ in his written report, he did so in the context of the pattern of the movement of funds in and out of one or other of the bank accounts, rather than in respect of their opening and closing balance.[[84]](#footnote-84) Nevertheless, as the judge noted earlier,[[85]](#footnote-85) it is clear that the prosecution put its case on the basis that the similarity of the opening and closing balances in each of the bank accounts suggested that each account was used as a repository of funds. Certainly, that was the submission made in the written closing speech of the prosecution.[[86]](#footnote-86) However, Mr  Reading did not provide any reasons for his submission that the mere fact “strongly suggests” that was the case.

Of the significance of the fact that there were similar opening and closing balances in each of the bank accounts, the judge said:[[87]](#footnote-87)

“ I find that regardless of what this fact is labelled, any reasonable person seeing *how huge amount(s) of money had gone through the accounts the way they had over the years* *would find the fact that in each of the account the ending balance always almost matches the opening balance extremely strange, and would conclude that* *it was one of the reasonable grounds to believe* that the funds that had been dealt with by the defendant in the account over the years represented wholly or in part, directly or indirectly proceeds of an indictable offence.” [Italics added.]

For his part, the judge did not condescend to provide any reasons why it was that he found that a reasonable person would find, together with the other circumstances he noted, the fact of matching opening and closing balances in each of the five bank accounts “extremely strange” and, more importantly, that a reasonable person would conclude that it was one of the reasonable grounds to believe that the monies were the proceeds of an indictable offence. No doubt, from the bare fact that the opening and closing balances in each of the accounts were similar it was to be inferred that the bank accounts were used to receive monies, which were then remitted elsewhere. To that extent, clearly the bank accounts were each used as a repository for funds. But, why was that one of the reasonable grounds to believe that the monies were the proceeds of an indictable offence? In the judge’s analysis, the answer lay in the context of the other factors to which he made reference, namely the “huge amount of money” that had gone through the accounts and “the way they had” over the years.

It is to be noted that there was no dispute that the applicant maintained bank accounts other than bank accounts A-C. Deposits from and remittances to those accounts and accounts A-C were made by bank transfer.[[88]](#footnote-88) Similarly, there was no dispute that the applicant had accounts with many securities firms from and to which deposits and remittances respectively were made and received by cheque and bank transfer.[[89]](#footnote-89) Indeed, the judge noted that deposits of about $121 million had been made from the accounts in the securities firms into the five bank accounts.[[90]](#footnote-90) For his part, Mr  Sutton identified deposits of about $119 million from the securities firms to the five bank accounts and remittances of about $78.5 million made to the accounts in securities firms from the bank accounts.[[91]](#footnote-91)

Without having regard to the balances in the other bank accounts of the applicant, or the manner in which they were utilised, or to the holdings in the accounts in the securities firms held in the name of the applicant it seems to us that there was an absence of context for any real significance to be attached to the fact that the opening and closing balances almost matched in the five bank accounts.

In his determination of the verdicts in respect of each of the charges, the judge stipulated the difference between the aggregate of the deposits and the aggregate of the withdrawals in the respective bank accounts in the period stipulated in the Particulars of Offence of each charge [[92]](#footnote-92) and made a finding that, “the overall almost identical amount of deposits and withdrawals in the account shows that the account had been used as a repository of funds”.[[93]](#footnote-93)

It is clear, in context, that in using the term “overall” the judge was referring to the aggregate of the deposits and the aggregate of the withdrawals in the period stipulated in the Particulars of Offence, namely a period of more than six years.

One complaint made on behalf of the applicant is that, in consequence of the duplicitous nature of each of the charges, in having regard to the “overall” position in making his determination, the judge erred. He did so in having regard retrospectively to the net effect of multiple acts of deposits and withdrawals of money in the overall period, rather than focusing on an individual act of dealing with monies by receipt into the respective bank account at the moment of receipt. In considering whether or not the applicant had reasonable grounds to believe that the monies, with which he dealt in any particular transaction, were the proceeds of an indictable offence, attention was to be focused on that moment in time.

As noted earlier, in his analysis of the significance to be attached to the fact that the opening and closing balances “always almost matches”, the judge identified other evidence, namely “how huge amount(s) of money had gone through the accounts the way they had”, which when all were considered together were one of the reasonable grounds to believe that the monies were the proceeds of an offence. Although the judge did not identify the matters he had in mind, no doubt he was adverting to the findings he had made earlier, for example:

* the significant deposits and withdrawals of cash, in the context of his findings that neither the applicant nor his father was involved in any “cash generating business” [[94]](#footnote-94), that the applicant was lying when he said that the only reason that he used cash to deal with security companies was to settle margin calls urgently and that one of the reasons that the applicant had chosen to deal with matters in that way was that he knew that cash transactions were more difficult to trace;[[95]](#footnote-95)
* the $62.45 million deposited by the 10 SJM cash cheques, which were not the gambling winnings of the applicant;[[96]](#footnote-96)
* the unexplained deposit of cheques drawn on the accounts of third parties; for example, in the context of his rejection of the applicant’s testimony that multiple payments made by third parties were repayments of investments in Neptune Club and Massive Resources;[[97]](#footnote-97) also, the deposit of $37,529,524 and $10,459,048 from Hooray Securities into Account   A and Account   E in the context of his determination that the applicant was lying about the true nature of his dealings with Ms Yu and the circumstances surrounding the sale of the Gold Wo shares.[[98]](#footnote-98)

In determining his verdict in respect of Charge 1, the judge adverted to the fact of his earlier findings and, drawing those findings together, said:[[99]](#footnote-99)

“ I find that the defendant was aware of all the transactions in relation to account A. I find that the defendant himself knew that dealings in cash transactions would be more difficult to trace than those by way of checks. I find that there were no cash generating business that would generate the kind of cash that was deposited into account A. I find that the overall almost identical amount of deposits and withdrawals in the account shows that the account had been used as a repository of funds. I find that for the reasons already given above, the deposits from SJM were not the defendant’s gambling winnings. I find that the dealings in the Gold Wo shares, for reasons given above was arranged so as to conceal the involvement of Ms. Yu Xiao Mei. These are all facts known to the defendant at the material times.”

The judge’s finding that Account A had been used as a repository of funds stands apart from his other findings. In making the former finding the judge had regard to the position “overall”, whereas in the other determinations clearly he had regard to the transactions in the timeframe in which they had occurred. As noted earlier, he said so specifically, “the material time to consider was when the money was being deposited into the defendant’s bank account.” [[100]](#footnote-100)

Having enumerated his findings of fact relevant to his verdict in respect of Charge 1, the judge went on to consider whether or not the applicant had reasonable grounds to believe that the monies were the proceeds of an indictable offence:[[101]](#footnote-101)

“ I find that a right thinking member of the community when looking at the movement of funds in account A and *all the surrounding circumstances mentioned above* would have reasonable grounds to believe that the money being dealt with through the account represented wholly or in part, directly or indirectly proceeds of an indictable offence. I therefore find that the defendant had reasonable grounds also to so believe and I convict him of charge 1 accordingly.” [Italics added.]

Consideration of the element of *mens rea* required that it be done in the timeframe of the transaction(s), not retrospectively and compendiously. It follows that in making that determination the judge ought not to have had regard to his finding that the account was used as a repository for funds, given that finding was based on a retrospective “overall” view of the opening and closing balances in each of the accounts.

As noted earlier, the judge made the same finding in respect of each of the other four charges, namely that a consideration of the overall deposits and withdrawals in the respective accounts led to his determination that they had each been used as a repository for funds in respect of each of the other four charges. Those findings, being made retrospectively and compendiously, not in the timeframe of the particular act of dealing arising from the identified deposits, were not relevant to a consideration of the applicant’s *mens rea* at the time of his dealing with particular monies. So, the judge’s reliance on his finding, based on the fact of similar opening and closing balances, that each of the accounts was used as a repository of funds in his consideration of *mens rea* was an error.

Whilst the judge was in error in doing so, we are satisfied that in the context of his overall findings, in which he considered the issue of *mens rea* in the timeframe of the actual dealing in the monies, the error was not material.

*The reasonable grounds to believe test*

Of the two-stage test approach to the phrase “having reasonable grounds to believe” articulated in the judgments of the Court of Final Appeal in *Pang Hung Fai* *v* *HKSAR,* Spigelman NPJ said:[[102]](#footnote-102)

“ There are four aspects of the approach derived from *Shing Siu Ming* which distract the decision maker -- whether a judge or jury -- from the terminology of the offence.

First, the test replaces the statutory word “grounds” with the word “facts”. The latter term is narrower. While all “facts” may be “grounds”, not all “grounds” are “facts”. Accordingly, the range of relevant circumstances is restricted.

Secondly, the introduction of a distinction between “objective” and “subjective” elements diverts attention away from the purpose of the statutory words to create the mental element of a criminal offence, as an alternative to a state of “knowledge”.

Thirdly, the personification of the “objective” element, in terms of a “reasonable person” or “right-thinking member of the community”, is a distinction that diverts attention away from the fact that it is the accused, rather than an abstract legal concept of a person, who must ‘have’ reasonable grounds for the requisite ‘belief’.

Fourthly, the language of “first step” and “second step”, in whatever order, directs the decision maker – whether judge or jury – as to how s/he or they must think. This is something which an appellate court should rarely do, if at all. Furthermore, these “steps” combine the two distractions referred to in the second and third points.”

Of the proper construction of the phrase “having reasonable grounds to believe”, Spigelman NPJ observed, “This is not a complicated formulation. The words are readily understandable.” [[103]](#footnote-103) Of the phrase “reasonable grounds” he said that it was, “perfectly understandable”.[[104]](#footnote-104) Of the appropriate direction to be given to a jury, he said: [[105]](#footnote-105)

“ Although it is usually undesirable to substitute the words of a statute with an equivalent formulation, it is sometimes appropriate to do so, for purposes of clarification. For example, when an alternative formulation may assist a jury in its deliberations. On most such occasions, the *Seng Yuet Fong* formulation will be all that is required.

That, was a reference to the judgment of the Appeal Committee of the Court of Final Appeal in *Seng Yuet Fong v HKSAR*, delivered by Litton PJ, as he was then: [[106]](#footnote-106)

“ To convict, the jury had to find that the accused had grounds for believing; and there was the additional requirement that the grounds must be reasonable: That is, that anyone looking at those grounds objectively would so believe.”

Nevertheless, Spigelman NPJ went on to add: [[107]](#footnote-107)

“ However, another formulation may sometimes assist. In s 25(1), the word “believe” is used in the sense of “know”. The two mental elements in the subsection should be understood as if they read: “knew or ought to have known”.”

In the result, Spigelman NPJ determined that this Court had erred in concluding that “a test of “could believe” was applicable to section 25(1), rather than a test of “would believe”.” [[108]](#footnote-108) He said that, “Only a test which states that those “grounds” *would* lead to the ‘belief’ does so.” [[109]](#footnote-109)

Whilst there is no issue that the judge applied a ‘would’ test, rather than a ‘could’ test, issue is taken on the basis that the judge had regard to ‘facts’, rather than ‘grounds’, and did so in respect of a “right-thinking member of the community”, rather than the applicant.

Spigelman NPJ rejected the determination of this Court [[110]](#footnote-110), that in the consideration of whether or not the applicant dealt with the property having reasonable grounds to believe that it was the proceeds of an indictable offence, “personal beliefs, perceptions or prejudices of the applicant are removed from the assessment process.” Of that error, he said: [[111]](#footnote-111)

“ The error, I believe, is in the reasoning process by which the statutory word “grounds” has been replaced by the word “facts”. As I have said above, “facts” is a narrower concept than “grounds”. It may be that a “belief, perception or prejudice” is not a “fact”. However, such matters fit quite readily within the concept of a “ground”, which a particular person can be said to have ‘had’.”

Earlier, Spigelman NPJ said: [[112]](#footnote-112)

“ That does not mean that any such “perception or evaluation”, to use the words of the ground of appeal, is entitled to weight, let alone determinative weight.”

He went on to add: [[113]](#footnote-113)

“ When assessing the whole of the evidence, the judge or jury can give such weight to an accused’s belief, perception or prejudice as s/he believes is warranted. No doubt, in many cases, that decision maker will entirely discount such evidence of the accused. Nevertheless, they are “grounds” which stand or fall by the test of reasonableness.”

*The judge’s analysis*

As Mr Caplan submitted in his written submissions, it is clear from the judge’s analysis and, in particular, his findings in respect of each of the five charges that he followed the same structure, namely:

1. what was known to the applicant;
2. whether, in all the circumstances, a right-thinking member of the community would consider there were reasonable grounds to believe that the monies were the proceeds of an indictable offence; and
3. whether the applicant had such reasonable grounds to believe.

For example, in respect of Charge 1 the judge determined:[[114]](#footnote-114)

“ I find that the defendant was aware of all the transactions in relation to account A. I find that the defendant himself knew that dealings in cash transactions would be more difficult to trace than those by way of checks. I find that there were no cash generating business that would generate the kind of cash that was deposited into account A. I find that the overall almost identical amount of deposits and withdrawals in the account shows that the account had been used as a repository of funds. I find that for the reasons already given above, the deposits from SJM were not the defendant’s gambling winnings. I find that the dealings in the Gold Wo shares, for reasons given above was arranged so as to conceal the involvement of Ms. Yu Xiao Mei. *These are all facts known to the defendant at the material times.*

*I find that* *a right thinking member of the community* when looking at the movement of funds in account A and all the surrounding circumstances mentioned above *would have reasonable grounds to believe* that the money being dealt with through the account represented wholly or in part, directly or indirectly proceeds of an indictable offence. *I therefore find that the* *defendant had reasonable grounds also to so believe* and I convict him of charge 1 accordingly.” [Italics added.]

*Charges 2-5*

Having found the applicant knew of the transactions in the three bank accounts in his own name (Charges 1-3) and that he dealt with the money in his father’s bank accounts, the judge determined, in respect of the impugned deposits which he stipulated, that a right-thinking member of the community would have reasonable grounds to believe that those monies were the proceeds of an indictable offence. Then, he found that the applicant had such reasonable grounds to so believe.[[115]](#footnote-115)

*The applicant’s testimony: the judge’s analysis and findings*

What the judge described as being ‘The defendant’s case and summaries of evidence’ encompassed paragraphs 71 to 546 of the 669 paragraphs of the Reasons for Verdict. Paragraphs 211 to 546 addressed the testimony of the applicant. Whilst the judge accepted some of the applicant’s testimony, nevertheless he made multiple findings that the applicant was lying or not telling the truth. Further, he considered the applicant’s asserted beliefs and, in particular, the reasonableness of such beliefs.

At an early stage of his ‘Findings’ the judge said:[[116]](#footnote-116)

“ I find the defendant not a witness of truth. I find that he is someone who is prepared to, and did try to, lie whenever he saw the need to do so.”

Of the applicant’s testimony in respect of profits that he said were made in his hairdressing business, the judge said that he found, “the defendant to be lying about the profits he was making from his salon businesses. He was just making it up as he went along.” [[117]](#footnote-117) The judge determined that the applicant was “lying when he said that the only reason he used cash to deal with the securities companies was to urgently settle the margin calls”. Rather, he found that one of the reasons he did so was because “he knew the cash transactions were more difficult to trace”. [[118]](#footnote-118) Of the deposit of 10 SJM cheques, to a total value of $62.5 million, into the applicant’s bank accounts the judge found that, “the defendant was lying when he said they were all monies from his gambling winnings.” [[119]](#footnote-119) Further, he found that, “the defendant is not telling the truth about the circumstances surrounding the cash cheques from SJM.” [[120]](#footnote-120)

Of his dealings with Ms Yu in the sale of Gold Wo shares, the judge said “… the defendant was lying about the true nature of his dealings with Ms Yu and the circumstances surrounding the sale of Gold Wo shares through her.” [[121]](#footnote-121) Of the defendant’s evidence that deposits of money in his bank accounts by various individuals and entities were the return of his investments in Neptune Club or the sale of his shares in Massive Resources, the judge said “I find that the defendant is not telling the truth about those investments and I reject his evidence.” [[122]](#footnote-122)

*The applicant’s asserted beliefs*

Clearly, in those instances the judge had unambiguously rejected the applicant’s testimony advanced to explain or provide reasons for particular deposits into the bank accounts. Notwithstanding those findings, nevertheless the judge went on to consider the applicant’s evidence of his beliefs or understanding in respect of the propriety of the deposits.

Of the applicant’s testimony that he had asked Lin Cheuk Fung why a number of people were sending him cheques drawn on their personal accounts and had been told it was “for him to give me or transfer me the money”,[[123]](#footnote-123) and that “he felt reassured and never doubted the propriety of the money so received” [[124]](#footnote-124), the judge found:[[125]](#footnote-125)

“ the defendant is not telling the truth about whether he did ask Lin or those who made the deposits about why they were making the deposits.”

Subsequently, the judge found:[[126]](#footnote-126)

“ …he did not care where the money came from and did not bother to ask why the money was coming from those people.”

Notwithstanding his rejection of the applicant’s account of his dealings with Lin and Cheung and his testimony of making enquiries of Lin and being reassured as to the propriety of receiving those payments, nevertheless the judge went on to consider the issue of the applicant’s asserted beliefs or understanding on the entirely hypothetical basis that the applicant had been telling the truth:[[127]](#footnote-127)

“ I also find that, *even if* the defendant did ask and was told that the money was clean and it was fine for the defendant to accept, a right thinking member of the community would immediately question the truth of the explanations, because if the investment was with Lin in Neptune Club, the boss of the VIP room, why would the money be coming back from all those individuals and entities who are connected to Lin. Given the circumstances of the so-called $20  million investment in Neptune Club, a right thinking person would have reasonable grounds to believe that the money so paid represented wholly or in part, directly or indirectly proceeds from an indictable offence.” [Italics added.]

Similarly, notwithstanding his rejection of the applicant’s testimony in respect of payments to his accounts by Lin and those acting on his behalf, the judge went on to consider the matter on the hypothetical basis that the applicant had been telling the truth:[[128]](#footnote-128)

“ I find further that, *even if* it is accepted that the defendant was telling the truth about how the payments were return for his investment in Neptune Club or in Stock Code 070, and *even if* he was telling the truth about how he himself did not consider there was any problem with the payments being made by the staff members or companies connected to Lin Cheuk Fung instead of by Lin’s company or Lin himself, given that the defendant was dealing with a boss of a casino in Macau, any right thinking member of the community would consider such method of payment to be reasonable ground to believe that those money represented proceeds of an indictable offence.

I further find that *even if* the individuals were depositing money for Lin, in the case of the supposed investment in Stock Code 070, any right thinking person would pause and wonder why that was the case. The deposits were not small amounts and why would the majority shareholder of a listed company be repaying investment returns in the listed company by way of personal checks drawn on his staff member’s personal account? Or on a company with the staff member as directors or shareholders? I find that the same right thinking person would immediately have decided that there were reasonable grounds to believe that the money so deposited into the defendant’s and his father’s bank account represented wholly or in part, directly or indirectly proceeds of an indictable offence.” [Italics added.]

*Conclusion*

We are satisfied that in addressing the issue of whether or not the applicant had reasonable grounds to believe that the monies with which he dealt in each of the accounts were the proceeds of an indictable offence, and in making affirmative findings, the judge considered all of the relevant evidence and did so in the appropriate way. In particular, he had regard not only to the applicant’s evidence of his explanations and reasons for the various deposits but also to his evidence as to what he was told and what he believed or understood in respect of those deposits. As noted earlier, of those circumstances Spigelman NPJ said:[[129]](#footnote-129)

“ When assessing the whole of the evidence, the judge or jury can give such weight to an accused’s belief, perception or prejudice as s/he believes is warranted. No doubt, in many cases the decision maker will entirely discount such evidence of the accused.”

The judge rejected the applicant’s testimony. He was entitled to do so.

*Other Grounds of Appeal*

*Neptune Club and Massive Resources*

In the course of his evidence-in-chief, in addressing the provenance of deposits into the five bank accounts, the applicant explained that various deposits made by stipulated depositors into some of those accounts were made by way of repayment of two investments that he and his father had made in early 2005.[[130]](#footnote-130) First, of $20 million in the Neptune Club, which operated VIP gaming tables in several rooms at the old Lisboa Casino. In that investment he and his father did not become shareholders, rather they deposited money for payment of interest.[[131]](#footnote-131) Secondly, of $26.4 million paid to Lin Cheuk Fung for 20% of the shares of Massive Resources.[[132]](#footnote-132) However, no shares were transferred or registered in his name, rather Lin Cheuk Fung held them as trustee.[[133]](#footnote-133) The applicant said that he was Lin’s “shareholder behind the scene”.[[134]](#footnote-134) Of the latter investment, the judge noted that the applicant testified that there were documents evidencing the acquisition of that tranche of shares, although none had survived.[[135]](#footnote-135)

Of the alleged payments of interest and return of capital arising from the $20 million investment which, on the applicant’s testimony, began as early as April 2005 the judge noted that :[[136]](#footnote-136)

“ The check payments were from staff members or directors of Neptune Group and companies associated with Neptune Group, as well as direct payments by Cheung Chi Tai. They included individuals Tang Wai Yee, Yu Sin Tung, Chan Chun Shing, Wong Kin Kwok, Lo Kwan and Amy Leung Yim Fun and companies LuckyTex, Asia Time, Up Sky, WinCon and Artune Group.”

Similarly, the judge noted that it was the applicant’s testimony that the payments allegedly made to the applicant and his father in respect of the sale of their interest in their tranche of shares in Massive Resources was made by “staff members of Neptune”.[[137]](#footnote-137) Amongst the drawers of such cheque payments in September 2007 were Cheung Chi Tai ($18 million), Artune ($10 million) and Au Yeung Kai Chor ($3.3 million).[[138]](#footnote-138) Notwithstanding the fact that the applicant testified that he and his father had made a profit of more than $56 million on the sale of their tranche of shares in Massive Resources,[[139]](#footnote-139) the judge went on to note that the applicant testified that he was unable to locate any documents to evidence the transaction.[[140]](#footnote-140)

Of the $18 million payment by Cheung Chi Tai, the judge noted that the applicant testified that Mr Robinson had “misunderstood” the position when he described it in his report as being part of a loan of $20 million made to the applicant to buy property in the United Kingdom.[[141]](#footnote-141) Later, the judge determined the applicant to have lied about the circumstances in which Mr  Robinson had received his instructions, finding of the applicant that he was, “trying to wriggle his way out of a situation where he had told his solicitors and his expert something different to what he now wanted to say in the witness box.”[[142]](#footnote-142)

Clearly, the applicant’s testimony that the various deposits of money were explained as repayments of the two investments addressed the specific stipulation of those persons as the drawers of cheques deposited into the five bank accounts identified in Sgt Kwan’s schedules adduced into evidence in the prosecution case.

Having reviewed the applicant’s evidence at length in respect of the alleged investments in Neptune Club and Massive Resources and the resulting deposits into the five bank accounts, the judge found the applicant’s explanation for payments of over $5 million in April and May 2005 as being repayment of capital and interest in relation to the $20 million investment to be bordering on the “nonsensical” and the applicant to have lied in his evidence of having added to his investment by depositing gambling winnings.[[143]](#footnote-143) Earlier, the judge found the applicant’s account of the rate of interest attached to the shareholding in shares of Massive Resources as “ludicrous”.[[144]](#footnote-144) Also, he found the applicant not to have told the truth in his evidence of having asked Lin Cheuk Fung and the others who had made deposits to the bank accounts, why they made those deposits.[[145]](#footnote-145) As noted earlier, having made those trenchant criticisms, the judge went on to reject his evidence:[[146]](#footnote-146)

“ It is the defendant’s evidence that the deposits by various individuals and entities were either return of capital and interest for his and his father’s $20 million investment in Neptune Club or return of capital and interest for his and his father’s $26.4 million purchase of 20% of Lin Cheuk Fung’s 070 shares. For reasons given above *I find that the defendant is not telling the truth about those investments and I reject his evidence.*  [Italics added.]

Clearly, in making that unambiguous determination the judge was rejecting the applicant’s account not only of his ‘so-called’ [[147]](#footnote-147) investments but also the reason those deposits were made into the five bank accounts. 　In those circumstances, the remaining issue was, having regard to all the other evidence, whether or not the applicant had reasonable grounds to believe that the deposits were the proceeds of an indictable offence.[[148]](#footnote-148)

The judge’s finding, in the context of the alleged investments in the shares of Massive Resources, that the applicant “must have known that such behind-the-scenes transactions without disclosure about his interest was inappropriate at least and illegal at worst”,[[149]](#footnote-149) addressed specifically the applicant’s evidence that there was nothing wrong with that arrangement.[[150]](#footnote-150) However, as noted above, subsequently the judge rejected comprehensively the applicant’s evidence of having made an investment in Massive Resources shares. So, that finding, and the related determination that in those circumstances there were reasonable grounds to believe that the related deposits of monies into the five bank accounts of the proceeds of an indictable offence, were rendered otiose and nugatory.

Having rejected the applicant’s account for the reason those deposits were made, the judge said, “I do not know the real reason and it is not for the court to speculate.” [[151]](#footnote-151) The criticism made of the judge that the finding was an insufficient basis upon which to proceed to convict the applicant is, with respect, misplaced. The deposits were unexplained. As noted earlier, the single remaining issue was, having regard to the evidence accepted by the judge, whether or not the applicant had reasonable grounds to believe that the monies were the proceeds of an indictable offence. As the judge noted, in rejecting the applicant’s evidence as an attempt to come up with a legitimate explanation of the deposits, the relevant context was the absence of any evidence:[[152]](#footnote-152)

“ …to explain all the funds that was moving into the accounts from all those individuals who did not have any apparent business connection to the defendant or his father.”

In determining his verdicts the judge adverted to and adopted his findings in respect of deposits into the bank accounts which the applicant had attributed to being repayments in respect of the alleged investments in Neptune City and the shares of Massive Resources.[[153]](#footnote-153) In respect of Charge 2, the judge determined that the applicant was “not telling the truth”. First, in respect of “the real nature” of the deposit of $18 million by Cheung Chi Tai [[154]](#footnote-154) and, secondly in respect of the alleged investment in Massive Resources shares, as to “the nature of the various transactions of money between himself, his father and the entities who were paying him and his father money, including Artune.” [[155]](#footnote-155) He went on to conclude:[[156]](#footnote-156)

“ I find that any right thinking member of the community, knowing the connection between Cheung Chi Tai and Artune and Lin Cheuk Fung and the casino in Macau would have reasonable grounds to believe that the money deposited and dealt with in the account represented wholly or in part, directly or indirectly proceeds of an indictable offence. I find therefore the defendant had such reasonable grounds to so believe…”

The context in which the judge made that finding was the determination he had made immediately before, namely that the deposits of a total of $28  million into that account by cheques drawn on the accounts of Cheung Chi Tai and Artune were “unexplained deposits” and constituted 82.9% of the deposits by cheque into that account. The connection to the casino to which the judge referred was that Cheung Chi Tai and Lin Cheuk Fung were both shareholders of Massive Resources, which operated the casino, and Artune was a company owned by Lin Cheuk Fung.[[157]](#footnote-157)

*Conclusion*

We are satisfied that the judge was entitled to reject the applicant’s evidence both as to his investments in Neptune Club and shares of Massive Resources and that stipulated deposits in the bank accounts were repayments of those investments. Further, he was entitled to determine, having regard to all the evidence, that the applicant had reasonable grounds to believe that those monies were the proceeds of an indictable offence.

*Cash deposits*

As the judge noted, the prosecution pointed to the fact that the total of “$95 million odd” was deposited in cash into the five bank accounts as giving rise to reasonable grounds to believe that the monies were the proceeds of an indictable offence.[[158]](#footnote-158) The judge noted that the applicant explained withdrawals of cash from his bank accounts as being the quickest way to settle a margin call in his securities accounts, namely “to deposit cash directly into the brokerage firms’ bank accounts.” [[159]](#footnote-159) However, the judge went on to observe:[[160]](#footnote-160)

“ It does not however explain why third parties would make cash deposits into his own bank account.”

In that context, it is to be noted that it was the evidence of Mr Sutton that a total of $40,100,000 was deposited in cash into Accounts A-C and Account E in 21 transactions of $1,000,000 or more, of which 19 deposits, to a total of $37,600,000, were deposits by unknown persons.[[161]](#footnote-161)

Furthermore, the judge said:[[162]](#footnote-162)

“ According to the evidence of the various securities firm employees, a deposit in cash would at most be just half a day or a day faster than a bank transfer. If the defendant was in such good standing, and if he is telling the truth that the securities firms would grant him leeway, there was no good reason for him to use cash to settle the margins.”

In the result, the judge found:[[163]](#footnote-163)

“ ….the defendant is lying when he said that the only reason he used cash to deal with the securities companies was to urgently settle the margin calls. The defendant knew cash transactions are more difficult to be traced and I find that it must be one of the reasons that he had chosen to deal with the securities companies on the occasions that he did.”

In his verdicts in respect of each of the five charges, the judge stipulated the total amount of cash deposits and withdrawals from each of the five bank accounts, namely:

Charge 1 – $27,903,851 deposits and $55,696,871 withdrawals;

Charge 2 – $4,724,016 deposits and $2,276,600 withdrawals;

Charge 3 – $13,305,000 deposits and $25,949,162 withdrawals;

Charge 4 – $4,251,000 deposits and $2,408,000 withdrawals; and

Charge 5 – $7,334,500 deposits and $16,830,500 withdrawals.

Of the issue taken by the applicant in his evidence in respect of transactions described as “cash deposits”, but which involved amounts of money that condescended to cents the judge noted earlier the evidence of a bank officer of Wing Lung Bank to the effect that:[[164]](#footnote-164)

“ The customer may honour a cash/uncrossed check over the counter at the same bank as the check issuing bank and request the teller to cash the check and instantly deposit the cash into the designated bank account. Because the check is honoured as cash, the deposit was made by cash. The bank would record the deposit transactions as DP CASH/DPCS on the bank statement.”

The judge found that the applicant knew that dealings in cash were more difficult to trace and that the defendant was not involved in any “cash generating business”. In respect of Charge 1, the judge said:[[165]](#footnote-165)

“ I find that the defendant himself knew that dealings in cash transactions would be more difficult to trace than those by way of checks. I find that there were no cash generating business that would generate the kind of cash that was deposited into account A.”

In respect of Charge 3, the judge said:[[166]](#footnote-166)

“ I find that the transactions in relation to account C were all known to the defendant. I find that there were no reasons why there should be so many cash transactions in relation to account C given there being no corresponding cash generating business that the defendant was engaged in.”

Finally, in addressing Charge 5, the judge said that he agreed with Mr Sutton that “cash transactions of large amount of money are suspicious on their own” and observed that it was obvious that “cash deposits and withdrawals are harder to trace than check deposits and withdrawals.” [[167]](#footnote-167)

Although the charges brought against the applicant concerned his dealings in the monies in the various bank accounts by way of deposit only, the judge was entitled to approach the resolution of that issue by having regard to the dealings generally within the account and in the context of the evidence in respect of the various businesses of the applicant and his father. More particularly, he was entitled to determine that they were not involved in cash generating businesses. That finding was highly relevant to the issue of the unexplained provenance and nature of the cash deposits in the bank accounts. As the judge noted, the need to deposit large sums of money in cash into the bank accounts was unexplained. The judge was entitled to find, as he did, that in all the circumstances the applicant had reasonable grounds to believe that the monies were the proceeds of an indictable offence.

*Gold Wo*

The sale on 6 September 2001 of 30.5 million and 8.5 million Gold Wo shares in the accounts of the applicant and his father respectively with Hooray Securities resulted in payments on 10 September 2001 to their respective bank accounts with Wing Lung Bank of $37,529,523 (Charge 1) and $10,459,048 (Charge 5). 　There was no dispute that the respective accounts with Hooray Securities had been opened for the specific transaction, namely to receive those shares from their respective accounts with Lippo Securities and sell the shares. 　On 6 September 2001 $50,325,000 and $14,000,025 was transferred from the respective accounts of the applicant and his father with Hooray Securities to an account with that firm in the name of Ms Yu Xiao Mei.[[168]](#footnote-168)

It was the applicant’s testimony that in May 2001, by arrangement with Mr   Ben Cheung, he had bought ‘off market’ 27.9 million of the Gold Wo shares at around $0.42/$0.43, which shares he sold in September 2001.[[169]](#footnote-169) The judge noted that, although the applicant testified that he had made payment directly with the seller(s), he could not remember how payment was made.[[170]](#footnote-170) However, the Bought/Sold notes on which *ad valorem* stamp duty was levied was dated 22 August 2001 and stipulated a price of $2.80 per share,[[171]](#footnote-171) on which date the shares were received into the applicant’s account with Lippo Securities.

As the judge noted, it was the applicant’s testimony that four or five months after he had acquired that tranche of Gold Wo shares he had been approached by Ms  Yu Xiao Mei who wished to acquire Gold Wo shares.[[172]](#footnote-172) Although the market price was $2.80 or $2.90 per share, the applicant said that he reached an agreement to sell her about 30 million shares at a price of $1.20 per share.　　Notwithstanding that agreement, the judge noted of the circumstances of the sale of the Gold Wo shares in September 2001:[[173]](#footnote-173)

“ The buy and sell orders were not put on the market through the automated CCASS matching system. Instead, both parties negotiated a price in private and then “*it went on the Teletext terminal*”. The 30.5 million shares the defendant said were sold to Ms. Yu in-chief was therefore actually duly sold on the market through on-market transactions, and the funds from the sales credited to the defendant’s Hooray trading account.”

The judge went on to note the effect of the applicant’s testimony in respect of the buying price of the shares, namely that it was “the market price that the shares were bought at which was $2.90 less the $1.20 per share that was promised to the defendant and his father, which was $1.70.” [[174]](#footnote-174) It was the effect of the applicant’s evidence that to give effect to the arrangement, given that the payment of the full market price for the shares had been received into their Hooray Securities accounts, the applicant and his father had arranged for payment to be made from those accounts to the Hooray Securities account of Ms Yu Xiao Mei.

The judge found that the applicant “did not tell the whole truth” about either his arrangement with Mr Ben Cheung for the purchase of 27.9 million Gold Wo shares “at a big discount off the market price” or his arrangement with Ms Yu Xiao Mei for the sale of those and other Gold Wo shares “at $1.2 per share, which was lower than the then market price of $2.8 or $2.9, but almost three times the price he bought the shares for.”[[175]](#footnote-175) Subsequently, the judge said that he found that the applicant:[[176]](#footnote-176)

“ was lying about the true nature of his dealings with Ms Yu and the circumstances surrounding the sale of Gold Wo shares through her.”

Of the latter arrangement, he said:[[177]](#footnote-177)

“ Ms Yu did nothing except to connect the defendant with the purchasers of the shares. It was a huge sum of money to pay someone for doing so little.”

Of the documentation evidencing the arrangement between the parties for the sale of the shares, the judge said:[[178]](#footnote-178)

“ …the defendant’s evidence is that the arrangement was evidenced in the transfer authorization given to Hooray and nowhere else. *The documents however do not even hint at the existence of such an arrangement.* There was also no mention of the purpose of the payment authorization of the $64 million odd from the defendant and his father’s Hooray account to Ms. Yu’s Hooray account. I find this extremely strange. The sum of money involved was huge by any account. Yet the defendant and his father chose not to have a written agreement recording their arrangement. Even if Ms. Yu was acting as a confirmor as the defendant said he suspected, there would have been no harm to have something written down to protect their interest.” [Italics added.]

The judge was entitled to find that the authorisations that the applicant and his father each gave to an officer of Hooray Securities to transfer $50,325,000 and $14,025,000 from their accounts to the stipulated account in the name of Ms  Yu Xiao Mei with Hooray Securities did not “even hint at the existence of such an arrangement”, namely an agreement to buy 30.5 million and 8.5 million Gold Wo shares at $1.20 per share. There was no mention whatsoever of any such agreement in respect of the sale of the shares, let alone of the alleged role of Ms Yu Xiao Mei. The authorisations merely stipulated payments of sums of money to her account without condescending to any explanation whatsoever as to the reasons for such payments.

In the result, the judge said:[[179]](#footnote-179)

“ I find that the irresistible inference from the parties’ choice to not have any written agreement is that they did not want Ms. Yu’s involvement to be known. I do not know why the concealment was necessary and cannot speculate, but I do find that any right thinking member of the community looking at this dealing between the defendant, his father and Ms. Yu would have reasonable grounds to believe that the money involved in the transactions represented wholly or in part directly or indirectly proceeds of an indictable offence.”

In his consideration of the verdicts in respect of Charge 1 and Charge 5, the judge referred specifically to the two sums of money deposited into the respective bank accounts of the applicant and his father, namely $37,529,524 and $10,459,048, from Hooray Securities.[[180]](#footnote-180) Clearly, in his consideration of the applicant’s impugned dealings with monies in the five bank accounts the judge was focusing his attention properly on the deposits made into those accounts. There is no merit whatsoever in the suggestion that the judge found that the monies paid to Ms Yu Xiao Mei were intended for future criminal activity or conduct.

In the context of his consideration of Charge 1, the judge reiterated his finding that the identity of Ms Yu Xiao Mei had been concealed in the dealings with her in Gold Wo shares.[[181]](#footnote-181) In determining that the applicant had reasonable grounds to believe that monies deposited into Account A were the proceeds of an indictable offence, the judge said that in making the determination regard was to be had to “the movement of funds in Account A and all the surrounding circumstances mentioned above”.[[182]](#footnote-182) Obviously, that included a consideration of the evidence of the sale of the Gold Wo shares at a huge discount to market price, in the context of an absence of any documentation detailing the alleged agreement between the parties.

We are satisfied that there was cogent evidence on which the judge was entitled to make those findings.

*The SJM cash cheques*

As the judge noted, the prosecution pointed to 10 cash cheques drawn on the bank account of SJM which were deposited into Account A (Charge 1) in support of its case.[[183]](#footnote-183) The applicant testified that the cheques were his winnings from gambling.[[184]](#footnote-184) The cheques, to a total value of the $62,450,000, were dated on various dates in the period on and between 22 December 2004 and 14 January 2005 and were deposited into that account on and between 28 December 2004 and 14 January 2005.

The mere fact that the judge had found that the applicant, “…was an avid gambler of Baccarat in the Macau casinos” [[185]](#footnote-185) did not preclude the judge from rejecting the applicant’s evidence that the 10 SJM cash cheques were his winnings from gambling. In making the finding that the applicant was an avid gambler, the judge had gone on to determine that there was no admissible evidence in the defence case as to “whether he was always winning or as to how much his winnings amounted to”.

In determining that the applicant was lying in his testimony that the cheques “were all monies from his gambling winnings” [[186]](#footnote-186) and having noted that these were the only cash cheques drawn on SJM deposited into his bank accounts, in the context that the applicant testified that he gambled frequently in the period 2004 to 2008, the judge said:[[187]](#footnote-187)

“ Why then would there be only 10 cash checks and within such a narrow period of time? If they were really winnings, and since they were the only cash checks issued by SJM, it must have been a memorable win for the defendant. Yet he claimed he was not able to remember any details of how he requested the money or the circumstances that he had won so much money.

I find that the only reason why those were the only checks from SJM despite the defendant’s alleged frequent gambling and winning and why the defendant was not able to remember any details from the win is because the defendant is not telling the truth about the circumstances surrounding the cash checks from SJM.”

Of the applicant’s inability to remember the details of the circumstances in which he had sought the issue of four SJM cash cheques dated 22 December 2004, the judge noted earlier:[[188]](#footnote-188)

“ The defendant explained it was possibly because at the time of gambling he had been served by different junkets and so he might have asked for cash checks from different chip rollers.

Mr. Reading referred to the defendant’s movement records and suggested to the defendant that he was not present when the requests for the 4 cash checks were made. The defendant said there was no need for him to be present in Macau for requests to be made. The defendant then said that he made phone calls to 4 different junkets and made request for the checks. As it was so long ago, the defendant said he was not able to remember the details, but he thought that the gambling might have taken place earlier and he asked for the checks when he was in Hong Kong. If he was in Macau, he would have collected the checks in person.”

Furthermore, in the context of the absence of the deposit of other SJM cash cheques paid into the bank accounts of the applicant, other than in the few weeks at the end of December 2004 and early January 2005, notwithstanding his evidence of having gambled in Macau in the period 2004 to 2008, the judge noted:[[189]](#footnote-189)

“ I find the defendant’s answers in relation to why there were no other casino cash check deposits other than the 10 from SJM evasive. During cross-examination on this topic, the defendant for the first time explained that some of the deposits received from individuals who were repaying his Neptune Club or Stock Code 070 returns also included his gambling winnings and so the 10 cash checks were not the only payments of his winnings.”

In the result, the judge concluded:[[190]](#footnote-190)

“ I find the defendant not telling the truth about how the deposits from individuals included gambling winnings.

…………..

Based on my observations above and the fact that the defendant had never mentioned in his examination-in-chief that the payments by the individuals on behalf of Neptune or Stock Code 070 company or Lin Cheuk Fung or Cheung Chi Tai included his gambling winnings, I find that the only irresistible inference is that the defendant is lying about the SJM deposits being his gambling winnings. I do not know what the real reason for those deposits are for and cannot speculate.”

We are satisfied that the evidence upon which the judge determined that the money represented by the 10 SJM cash cheques deposited into the applicant’s bank account was not the applicant’s gambling winnings was compelling and the judge was entitled to make that determination.

The criticism made of the judge that the finding that he did not know the real reason for the deposits of the SJM cheques was an insufficient basis upon which to proceed to convict the applicant is, with respect, misplaced. Having rejected the applicant’s testimony that the $62.45 million deposited into his bank account in a period of several weeks by way of SJM cash cheques represented his gambling winnings, there was no explanation at all for the huge deposit of monies. The single remaining issue was, having regard to all the circumstances, whether or not the applicant had reasonable grounds to believe that the monies were the proceeds of an indictable offence.

In his verdict in respect of Charge 1 the judge reiterated his finding that “the deposits from SJM were not the defendant’s gambling winnings”.[[191]](#footnote-191) Then, in the context of the unexplained deposit into one of the applicant’s bank accounts of a huge sum of money over a short period of time, the judge determined that the applicant had reasonable grounds to believe that the monies were the proceeds of an indictable offence.[[192]](#footnote-192) We are satisfied that, on the evidence that he accepted, the judge was entitled to make that finding.

*The applicant’s father’s bank accounts*

It was an admitted fact that the applicant, together with his father, were the only signatories of the two bank accounts in the name of his father, namely Account D and Account E.[[193]](#footnote-193) In addressing the issue of whether or not the applicant dealt with money in his father’s bank accounts, the judge noted that there was no evidence that the applicant’s father had the “same abilities and prowess as the defendant does in share dealings”.[[194]](#footnote-194) He rejected the applicant’s evidence as “not being the truth” that he had made investments together with his father. Rather, the judge found:[[195]](#footnote-195)

“ The truth is the defendant was just using his father’s name to open the accounts and then to use the accounts as if they were his own. I find that the reason he chose to do so must be for concealment of the source of the funds or his involvement in the dealing of the funds.”

Earlier, the judge had noted that five witness statements of Sergeant Kwan together with his oral testimony had been received in evidence.[[196]](#footnote-196) Subsequently, the judge found “the breakdown and analysis of the raw data performed by Sergeant Johnny Kwan correct and accurate.”[[197]](#footnote-197) As was pointed out in the respondent’s written submissions, that evidence was relevant to the issue of the role played by the applicant in transactions in Accounts D and E. Annex 6 of the statement dated 16 August 2012 described the role of the applicant as providing the authorised signature for many of the withdrawals from those two bank accounts in the material period. The applicant authorised nine of the 34 withdrawals from Account D to a value of $4,744,530 from total withdrawals of $6,521,969. Further, the applicant authorised 101 of 134 withdrawals from Account  E, to a value of $65,483,943 from total withdrawals of $81,735,709.30.[[198]](#footnote-198)

In determining that the applicant “did also deal with money in his father’s bank accounts” [[199]](#footnote-199) the judge cited examples of that conduct. First, the deposit of a cheque drawn on the account of Cheung Chi Tai for $1 million which had been deposited into Account E on 6 January 2006, but which “was later transferred into the defendant’s account by three instalments”.[[200]](#footnote-200) Secondly, a cheque dated 22 August 2007 for $3,910,000, in which the applicant’s father was the payee, drawn on the account of Golden Mount Ltd, a company controlled by Mr Chim Pui Chung, and which was deposited into Account E.[[201]](#footnote-201)

Earlier, the judge had noted of Mr Chim’s evidence that “the check was given by him to the defendant”, with whom he had done business at the time. The judge noted that there was no evidence that Mr  Chim had any dealings with the applicant’s father [[202]](#footnote-202) and that in respect of the cheque, Mr Chim’s evidence was:[[203]](#footnote-203)

“ There are 2 ways of issuing a check in Hong Kong. First, is writing down the payee’s name straight away. Secondly, the payees’ name is left blank for the relevant personnel to fill in himself. From what I recall, this issue was certainly given to the defendant, and he adopted the second way, i.e., he filled in the payee’s name himself. I can only confirm that this check was given by me to the defendant.”

In considering his verdict in respect of Charge 5, the judge described that evidence as “cogent evidence to show that the defendant had dealt with money in Account E.” [[204]](#footnote-204)

Of the transfer of money from Account E to accounts in the name of the applicant, the judge noted:[[205]](#footnote-205)

“ According to Mr. Sutton, there were 9 bank transfers totaling $7,450,000 from account E to account A; and 49 transfers totalling $30,320,000 to account B, which represented 37.1% of the value of total withdrawals. This is a very high percentage and there are no apparent reason why those money were being transferred into the defendant’s accounts.”

Noting that there were deposits of $6,659,000 into Account D and $81,826,428.36 into Account E in the material period, and having adverted to the background of the applicant’s father, the judge found that there was “no apparent reason for the deposits”.[[206]](#footnote-206) Obviously, the latter determination was made having regard to the judge’s rejection of the applicant’s evidence as to the reason for various deposits, for example the deposit of $10,459,048 from the applicant’s father’s account with Hooray Securities to Account E.

Of the background of the applicant’s father, in the context of deposits into Account D, the judge said:[[207]](#footnote-207)

“ Yeung Chung’s income and profits derived from his sole proprietorship business “Yeung Kee Vegetable Stall” for the years of assessment from 2004 to 2007 showed profits of $4,060, $1,600 and $1,220 for the 3 year period. Yet in that 3 year tax assessment period, there were 5 deposits totalling $840,000 from third parties with no apparent explanation. They are not securities companies and so should not be related to his purported share dealings. It is not known why those deposits were made into account D.”

Similarly, in respect of the deposits into Account E, the judge said:[[208]](#footnote-208)

“ Bearing in mind the tax records of Yeung Chung in the period that are available and the fact that he used to run a vegetable stall as his business with only a small taxable income, the amounts of money going through this account are staggering. On average, $1 million was being deposited each month into account E either by way of cash, check deposits, or transfers. At the same time, an average of $1 million was also withdrawn each month.”

Of the relationship between the tax records of the applicant’s father and the deposits made into Account E in the same time period the judge said:[[209]](#footnote-209)

“ According to tax records, for the tax period from 2004 to 2007, Yeung Chung made just a few thousand dollars’ profits from his vegetable stall. Yet from 1st April 2004 to 31 March 2007, a total of $43,726,674 had been deposited into account E by third parties alone.”

Clearly, the judge was entitled to have regard to the declared income of the applicant’s father in considering the provenance and reasons for the deposits into those accounts.

There is no force in the complaint made on behalf of the applicant that the judge had erred in not having regard to the evidence that the applicant and his father had been involved in a successful hotel project in the Mainland in 1991-4. The judge noted that it was the evidence of Mr Yang Wu Chun that its operations produced “an overall profit of RMB  2 to 3 million.” [[210]](#footnote-210) Similarly, the judge noted that the applicant testified that he and his father shared a profit of about RMB 3 million on the sale of the hotel, with the latter taking a 60% share. Further that the applicant’s 40% share of the profits of running the hotel amounted to HK$1 million.[[211]](#footnote-211) It was not suggested and there was no evidence that whatever money the applicant’s father might have gained in that project a decade earlier was in anyway related to deposits into the two accounts.

We are satisfied that there was cogent evidence that the applicant dealt with deposits of money in the two accounts and that the judge was entitled to find that in doing so he had reasonable grounds to believe that they were the proceeds of an indictable offence.

*Conclusion*

We grant the applicant leave to appeal against conviction on ground 1A (duplicity), ground 1 (reasonable grounds to believe) and grounds 2 and 3 (the repository point), but not on the other grounds of appeal. However, for the reasons set out above we dismiss the appeal.

We will now hear the parties on the application for leave to appeal against sentence.

|  |  |  |
| --- | --- | --- |
| (Michael Lunn)  Vice-President | (Andrew Macrae)  Justice of Appeal | (Ian McWalters)  Justice of Appeal |

Mr Jonathan Caplan QC and Anthony Chau, SPP, of the Department of Justice, for the respondent

Ms Clare Montgomery QC, Mr Gary Plowman SC and Mr Derek Chan, instructed by Bough & Co., for the applicant

1. Appeal Bundle, page 8. [↑](#footnote-ref-1)
2. Appeal Bundle, pages 16 and 17; Admitted Facts, paragraphs 11 and 12. [↑](#footnote-ref-2)
3. Reasons for Verdict, paragraph 5. [↑](#footnote-ref-3)
4. Appeal Bundle: Prosecution opening; page 13, paragraph 26. [↑](#footnote-ref-4)
5. Reasons for Verdict, paragraph 14. [↑](#footnote-ref-5)
6. Reasons for Verdict, paragraph 388; Appeal Bundle–Transcript, page 3061. [↑](#footnote-ref-6)
7. Reasons for Verdict, paragraph 387; Appeal Bundle–Transcript, pages 3060-1. [↑](#footnote-ref-7)
8. Reasons for Verdict, paragraph 274; Appeal Bundle–Transcript, page 2882. [↑](#footnote-ref-8)
9. *HKSAR v Salim* [2014] 6 HKC 678. [↑](#footnote-ref-9)
10. Reasons for Verdict, paragraph 553: “The applicable test is the two stage test of making a finding on what facts were known to the defendant and then making a finding on whether knowing those facts, a reasonable right-thinking member of the community would consider that there were reasonable grounds to believe that the money represented, wholly or in part, directly or indirectly, proceeds of an indictable offence.” [↑](#footnote-ref-10)
11. *Pang Hung Fai v HKSAR* [2014] 6 HKC 487. [↑](#footnote-ref-11)
12. Reasons for Verdict, paragraph 586: in the context that the applicant asserted that, whilst he was the beneficial owner, he was not the registered shareholder of 20% of the shares of Massive Resources the applicant, “…must have known that such behind the scene transactions without disclosure about his interest was inappropriate at least and illegal at worst”. [↑](#footnote-ref-12)
13. Reasons for Verdict, paragraph 597. [↑](#footnote-ref-13)
14. Reasons for Verdict, paragraph 635 [“in account A”] . [↑](#footnote-ref-14)
15. Reasons for Verdict, paragraph 635–Charge 1; paragraph 638–Charge 2; paragraphs 638 and 647–Charge 3; paragraphs 653 and 657–Charge 4; and paragraphs 658 and 666–Charge 5. [↑](#footnote-ref-15)
16. Appeal Bundle, page 686–Sgt. Kwan, Annex 7. [↑](#footnote-ref-16)
17. Reasons for Verdict, paragraph 575. [↑](#footnote-ref-17)
18. *HKSAR v Li Kwok Cheung & Ors* (2014) 17 HKCFAR 319. [↑](#footnote-ref-18)
19. Reasons for Verdict, paragraph 635. [↑](#footnote-ref-19)
20. Reasons for Verdict, paragraph 551. [↑](#footnote-ref-20)
21. Reasons for Verdict, paragraph 582. [↑](#footnote-ref-21)
22. Reasons for Verdict, paragraphs 129-130. [↑](#footnote-ref-22)
23. *Oei Hengy Wiryo v HKSAR* (2007) 10 HKCFAR 98. [↑](#footnote-ref-23)
24. *Li Kwok Cheung, George v HKSAR* (2014) 17 HKCFAR 319. [↑](#footnote-ref-24)
25. *Pang Hung Fai v HKSAR* (2014) 17 HKCFAR 778. [↑](#footnote-ref-25)
26. *DPP v Merriman* [1973] AC 584 per Lord Morris at page 593 and Lord Diplock at page 607 C-D. [↑](#footnote-ref-26)
27. *Practice Direction (Criminal Proceedings: Further Directions)* [ 2007] 1 WLR 1790. [↑](#footnote-ref-27)
28. *R v Middleton* [2008] EWCA Crim 233; 31 January 2008. [↑](#footnote-ref-28)
29. Transcript Bundle, pages 1003-1031, 29 May 2013. [↑](#footnote-ref-29)
30. Transcript Bundle, page 1004. [↑](#footnote-ref-30)
31. Transcript Bundle, page 948. Of the fact that the Hooray Securities account in the name of the applicant’s father and the bank account in the latter’s name, the subject of charge 5, had been opened on 4(3) and 7 September 2001 respectively, Mr Sutton said: “It’s unusual and that would require a level of investigation.” Given that the securities account was used for a month only he agreed that it was used for a “special purpose” – page 975. [↑](#footnote-ref-31)
32. Transcript Bundle; pages 1003-4. [↑](#footnote-ref-32)
33. Transcript Bundle; page 1031, lines 5-14. [↑](#footnote-ref-33)
34. Transcript Bundle; page 1031, lines 16-21. [↑](#footnote-ref-34)
35. Transcript Bundle, pages 1009-1010. [↑](#footnote-ref-35)
36. Appeal Bundle, pages 4135-9 (3 May 2013); page 4159 (12 November 2013). [↑](#footnote-ref-36)
37. Appeal Bundle, page 4139 (7 May 2013). [↑](#footnote-ref-37)
38. *HKSAR v Salim* [2014] 6 HKC 678. [↑](#footnote-ref-38)
39. Appeal Bundle, pages 770-1. [↑](#footnote-ref-39)
40. *DPP v Merriman* [1973] AC 584. [↑](#footnote-ref-40)
41. *DPP v Merriman* at 593 B-D. [↑](#footnote-ref-41)
42. *DPP v Merriman*, page 607 C-D. [↑](#footnote-ref-42)
43. *HKSAR v Salim* [2014] 6 HKC 678. [↑](#footnote-ref-43)
44. “In the context of the offence of money laundering under section 25 of the *Organized and Serious Crimes Ordinance*, Cap. 455 (‘the Ordinance’), how does the rule against duplicity operate? In particular, whether the offence of money laundering, capable of being committed in any of the modes of ‘dealing’ as included in its definition under section 2 of the Ordinance, is or could be a continuing offence [so] that the rule against duplicity does not apply; and how do the exceptions to the rule against duplicity (namely ‘one transaction’ as in *DPP v Merriman* [1973] AC 584, ‘general deficiency’ as in *R v Tomlin* [1954] 2 QB 274 and the ‘continuous course of conduct’ as in *Barton v DPP* [2001] 165 JP 779) appl[y] to a charge of money-laundering which alleges multiple dealings some of which [involve] money from known and different sources.” [↑](#footnote-ref-44)
45. *HKSAR v Salim*, paragraphs 144-145. [↑](#footnote-ref-45)
46. *HKSAR v Salim*, paragraphs 110-113. [↑](#footnote-ref-46)
47. *Archbold Hong Kong* 2014, Chapter 1-123-138. [↑](#footnote-ref-47)
48. *HKSAR v Salim*, paragraph 127. [↑](#footnote-ref-48)
49. *HKSAR v Salim,* paragraph 133. [↑](#footnote-ref-49)
50. *HKSAR v Salim,* paragraph 135. [↑](#footnote-ref-50)
51. *HKSAR v Salim,* paragraph 137. [↑](#footnote-ref-51)
52. *Barton v Director of Public Prosecutions* (2001) 165 JP 775 at 781, paragraph 6. [↑](#footnote-ref-52)
53. *HKSAR v Salim*, paragraphs 147-148. [↑](#footnote-ref-53)
54. *Barton v Director of Public Prosecutions*; page 785, paragraph 23. [↑](#footnote-ref-54)
55. *R v Ali* [2006] QB 322 at 357 G-H, paragraph 150. [↑](#footnote-ref-55)
56. *R v Ali*, page 358 A-B, paragraph 151. [↑](#footnote-ref-56)
57. Practice Direction (Criminal Proceedings: Consolidation) as amended by Practice Direction (Criminal Proceedings: Further Directions) [2007] 1 WLR 1790. [↑](#footnote-ref-57)
58. *R v Middleton*, paragraph 40. [↑](#footnote-ref-58)
59. *R v Middleton*, paragraph 53. [↑](#footnote-ref-59)
60. *R v Middleton,* paragraph 52. [↑](#footnote-ref-60)
61. *R v Middleton*, paragraph 43. [↑](#footnote-ref-61)
62. *R v R* [2007] 1 Cr. App. R. 10, 21 July 2006. [↑](#footnote-ref-62)
63. “ (2) A person is guilty of an offence if, and knowing or having reasonable grounds to suspect that the property is, in whole or in part directly or indirectly, represents another person’s proceeds of drug trafficking he-

    conceals or disguises that property, or

    converts or transfers that property or removes it from the jurisdiction,

    for the purpose of assisting any person to avoid prosecution for a drug trafficking offence or the making or enforcement of a confiscation order.” [↑](#footnote-ref-63)
64. *R v R*, paragraph 60. [↑](#footnote-ref-64)
65. *Barton v Director of Public Prosecutions*, paragraph 23. [↑](#footnote-ref-65)
66. Appeal Bundle, pages 375-9. [↑](#footnote-ref-66)
67. Reasons for Verdict, paragraphs 308-320; 389-396. [↑](#footnote-ref-67)
68. Reasons for Verdict, paragraphs 344-346; 412-418. [↑](#footnote-ref-68)
69. Reasons for Verdict, paragraphs 631, 67; 643; 652; and 658. [↑](#footnote-ref-69)
70. Reasons for Verdict, paragraphs 547-628: “Findings”. [↑](#footnote-ref-70)
71. Reasons for Verdict, paragraphs 503-5. [↑](#footnote-ref-71)
72. Reasons for Verdict, paragraph 612. [↑](#footnote-ref-72)
73. Reasons for Verdict, paragraph 629. [↑](#footnote-ref-73)
74. Reasons for Verdict, paragraphs 571-5. [↑](#footnote-ref-74)
75. Reasons for Verdict, paragraphs 583-600. [↑](#footnote-ref-75)
76. Reasons for Verdict, paragraph 599. [↑](#footnote-ref-76)
77. Reasons for Verdict, paragraph 620. [↑](#footnote-ref-77)
78. Reasons for Verdict, paragraphs 631 and 635. [↑](#footnote-ref-78)
79. Reasons for Verdict, paragraphs 632 and 635. [↑](#footnote-ref-79)
80. Reasons for Verdict, paragraph 634. Note, the judge’s identification of Au Yeung Kai Chor as one of those persons does not accord with the applicant’s own testimony: Appeal Bundle, Transcript, page 3053. [↑](#footnote-ref-80)
81. Reasons for Verdict, paragraph 635. [↑](#footnote-ref-81)
82. Reasons for Verdict, paragraph 629. [↑](#footnote-ref-82)
83. Reasons for Verdict, paragraph 630. [↑](#footnote-ref-83)
84. Appeal Bundle, pages 186-7, paragraphs 5.3.2-5.3.4 in which he described the movement of monies in 24 deposits matched by 24 withdrawals into and from accounts A-C; paragraph 6.2(iii); page 398, paragraph 4.2.33-34, in which he described the pattern of the deposits and withdrawals from account C as suggesting that it was a repository of funds. [↑](#footnote-ref-84)
85. Reasons for Verdict, paragraph 18. [↑](#footnote-ref-85)
86. The prosecution written closing speech; paragraphs 36, 67, 221 and 229(vi). Paragraph 36: “The equally and relatively low opening balance and ending balance of each of the five subject bank accounts strongly suggests that each account was used as a repository for funds during the relevant period”. The period to which reference was made was various dates in 2001 and various dates in 2007. Paragraph 67: reference was made specifically to Sgt Kwan’s schedule (Appeal Bundle, page 686). [↑](#footnote-ref-86)
87. Reasons for Verdict, paragraph 630. [↑](#footnote-ref-87)
88. Appeal Bundle, pages 163-173, Mr Sutton’s first report, paragraph 3.2.6-about $43 million was deposited into account A from the applicant’s other bank accounts in 43 transactions and, (paragraph 3.2.8-43), about $47.9 million was remitted to other bank accounts of the applicant by 48 transactions. [↑](#footnote-ref-88)
89. Appeal Bundle, pages 366-393, Mr Sutton’s second report. [↑](#footnote-ref-89)
90. Reasons for Verdict, paragraph 11. [↑](#footnote-ref-90)
91. Appeal Bundle, pages 558 and 562. [↑](#footnote-ref-91)
92. Reasons for Verdict: Charge 1 a difference of $97,000 on aggregate deposits and withdrawals of about $347 million (paragraphs 631); Charge 2 a difference of $67,000 on aggregate deposits and withdrawals of about $254 million (paragraph 637); Charge 3 a difference of $2,926 on aggregate deposits and withdrawals of about $31 million (paragraph 643); Charge 4 a difference of $136,720 on aggregate deposits and withdrawals of about $6.5 million (paragraph 652); and Charge 5 a difference of $90,599 on aggregate deposits and withdrawals of about $81 million (paragraphs 658 and 659). [↑](#footnote-ref-92)
93. Reasons for Verdict, paragraphs 635, 642, 647, 657 and 669. [↑](#footnote-ref-93)
94. Reasons for Verdict, paragraph 620. [↑](#footnote-ref-94)
95. Reasons for Verdict, paragraph 607. [↑](#footnote-ref-95)
96. Reasons for Verdict, paragraph 576. [↑](#footnote-ref-96)
97. Reasons for Verdict, paragraph 600. [↑](#footnote-ref-97)
98. Reasons for Verdict, paragraph 662. [↑](#footnote-ref-98)
99. Reasons for Verdict, paragraph 635. [↑](#footnote-ref-99)
100. Reasons for Verdict, paragraph 599. [↑](#footnote-ref-100)
101. Reasons for Verdict, paragraph 636. [↑](#footnote-ref-101)
102. *Pang Hung Fai v HKSAR,* paragraphs 44-48. [↑](#footnote-ref-102)
103. *Pang Hung Fai v HKSAR*,paragraph 30. [↑](#footnote-ref-103)
104. *Pang Hung Fai v HKSAR*,paragraph 49. [↑](#footnote-ref-104)
105. *Pang Hung Fai v HKSAR*,paragraph 55. [↑](#footnote-ref-105)
106. *Seng Yuet Fong v HKSAR* [1999] 2 HKC 833 at 836 E-F. [↑](#footnote-ref-106)
107. *Pang Hung Fai v HKSAR*,paragraph 56. [↑](#footnote-ref-107)
108. *Pang Hung Fai v HKSAR*,paragraph 69. [↑](#footnote-ref-108)
109. *Pang Hung Fai v HKSAR*,paragraph 77. [↑](#footnote-ref-109)
110. *Pang Hung Fai v HKSAR*,paragraph 83. [↑](#footnote-ref-110)
111. *Pang Hung Fai v HKSAR*, paragraph 84. [↑](#footnote-ref-111)
112. *Pang Hung Fai v HKSAR*,paragraph 83. [↑](#footnote-ref-112)
113. *Pang Hung Fai v HKSAR*, paragraph 85. [↑](#footnote-ref-113)
114. Reasons for Verdict, paragraphs 635-6. [↑](#footnote-ref-114)
115. Reasons for Verdict, paragraphs 642; 647; 657 and 669. [↑](#footnote-ref-115)
116. Reasons for Verdict, paragraph 565. [↑](#footnote-ref-116)
117. Reasons for Verdict, paragraph 567. [↑](#footnote-ref-117)
118. Reasons for Verdict, paragraph 607. [↑](#footnote-ref-118)
119. Reasons for Verdict, paragraphs 576 and 582. [↑](#footnote-ref-119)
120. Reasons for Verdict, paragraph 578. [↑](#footnote-ref-120)
121. Reasons for Verdict, paragraph 662. [↑](#footnote-ref-121)
122. Reasons for Verdict, paragraph 600. [↑](#footnote-ref-122)
123. Reasons for Verdict, paragraph 456. [↑](#footnote-ref-123)
124. Reasons for Verdict, paragraph 592. [↑](#footnote-ref-124)
125. Reasons for Verdict, paragraph 593. [↑](#footnote-ref-125)
126. Reasons for Verdict, paragraph 598. [↑](#footnote-ref-126)
127. Reasons for Verdict, paragraph 593. [↑](#footnote-ref-127)
128. Reasons for Verdict, paragraphs 590-1. [↑](#footnote-ref-128)
129. *Pang Hung Fai v HKSAR*, paragraph 85. [↑](#footnote-ref-129)
130. Reasons for Verdict, paragraphs 364 and 379. [↑](#footnote-ref-130)
131. Reasons for Verdict, paragraph 442. [↑](#footnote-ref-131)
132. Reasons for Verdict, paragraph 449. [↑](#footnote-ref-132)
133. Reasons for Verdict, paragraph 444. [↑](#footnote-ref-133)
134. Reasons for Verdict, paragraph 451. [↑](#footnote-ref-134)
135. Reasons for Verdict, paragraph 446. [↑](#footnote-ref-135)
136. Reasons for Verdict, paragraph 380. [↑](#footnote-ref-136)
137. Reasons for Verdict, paragraph 373. [↑](#footnote-ref-137)
138. Reasons for Verdict, paragraph 457. [↑](#footnote-ref-138)
139. Reasons for Verdict, paragraph 452. [↑](#footnote-ref-139)
140. Reasons for Verdict, paragraph 470. [↑](#footnote-ref-140)
141. Reasons for Verdict, paragraph 461. [↑](#footnote-ref-141)
142. Reasons for Verdict, paragraphs 623-4. [↑](#footnote-ref-142)
143. Reasons for Verdict, paragraph 588. [↑](#footnote-ref-143)
144. Reasons for Verdict, paragraph 587. [↑](#footnote-ref-144)
145. Reasons for Verdict, paragraph 593. [↑](#footnote-ref-145)
146. Reasons for Verdict, paragraph 600. [↑](#footnote-ref-146)
147. Reasons for Verdict, paragraph 609. [↑](#footnote-ref-147)
148. Reasons for Verdict, paragraph 601. [↑](#footnote-ref-148)
149. Reasons for Verdict, paragraph 585. [↑](#footnote-ref-149)
150. Reasons for Verdict, paragraph 474. [↑](#footnote-ref-150)
151. Reasons for Verdict, paragraph 589. [↑](#footnote-ref-151)
152. Reasons for Verdict, paragraph 610. [↑](#footnote-ref-152)
153. Reasons for Verdict: Charge 1- paragraph 634; Charge 2- paragraphs 640-642; Charge 3 - paragraphs 663 and 668. [↑](#footnote-ref-153)
154. Reasons for Verdict, paragraph 640. [↑](#footnote-ref-154)
155. Reasons for Verdict, paragraph 641. [↑](#footnote-ref-155)
156. Reasons for Verdict, paragraph 642. [↑](#footnote-ref-156)
157. Reasons for Verdict, paragraph 457. [↑](#footnote-ref-157)
158. Reasons for Verdict, paragraph 10. [↑](#footnote-ref-158)
159. Reasons for Verdict, paragraph 602. [↑](#footnote-ref-159)
160. Reasons for Verdict, paragraph 602. [↑](#footnote-ref-160)
161. Appeal Bundle, page 184. [↑](#footnote-ref-161)
162. Reasons for Verdict, paragraph 606. [↑](#footnote-ref-162)
163. Reasons for Verdict, paragraph 607. [↑](#footnote-ref-163)
164. Reasons for Verdict, paragraph 529. [↑](#footnote-ref-164)
165. Reasons for Verdict, paragraph 635. [↑](#footnote-ref-165)
166. Reasons for Verdict, paragraph 647. [↑](#footnote-ref-166)
167. Reasons for Verdict, paragraph 666. [↑](#footnote-ref-167)
168. Appeal Bundle, pages 375 and 377. [↑](#footnote-ref-168)
169. Reasons for Verdict, paragraph 313. [↑](#footnote-ref-169)
170. Reasons for Verdict, paragraph 317. [↑](#footnote-ref-170)
171. Reasons for Verdict, paragraph 315. [↑](#footnote-ref-171)
172. Reasons for Verdict, paragraph 318. [↑](#footnote-ref-172)
173. Reasons for Verdict, paragraph 394. [↑](#footnote-ref-173)
174. Reasons for Verdict, paragraph 396. [↑](#footnote-ref-174)
175. Reasons for Verdict, paragraphs 571-2. [↑](#footnote-ref-175)
176. Reasons for Verdict, paragraph 662. [↑](#footnote-ref-176)
177. Reasons for Verdict, paragraph 573. [↑](#footnote-ref-177)
178. Reasons for Verdict, paragraph 574. [↑](#footnote-ref-178)
179. Reasons for Verdict, paragraph 575. [↑](#footnote-ref-179)
180. Reasons for Verdict, paragraphs 632 and 661. [↑](#footnote-ref-180)
181. Reasons for Verdict, paragraph 635. [↑](#footnote-ref-181)
182. Reasons for Verdict, paragraph 636. [↑](#footnote-ref-182)
183. Reasons for Verdict, paragraph 12. [↑](#footnote-ref-183)
184. Reasons for Verdict, paragraphs 345 and 418. [↑](#footnote-ref-184)
185. Reasons for Verdict, paragraph 551. [↑](#footnote-ref-185)
186. Reasons for Verdict, paragraph 576. [↑](#footnote-ref-186)
187. Reasons for Verdict, paragraphs 577-8. [↑](#footnote-ref-187)
188. Reasons for Verdict, paragraph 414. [↑](#footnote-ref-188)
189. Reasons for Verdict, paragraph 579. [↑](#footnote-ref-189)
190. Reasons for Verdict, paragraphs 581-2. [↑](#footnote-ref-190)
191. Reasons for Verdict, paragraph 635. [↑](#footnote-ref-191)
192. Reasons for Verdict, paragraph 636. [↑](#footnote-ref-192)
193. Appeal Bundle, page 17, paragraph 12. [↑](#footnote-ref-193)
194. Reasons for Verdict, paragraph 649. [↑](#footnote-ref-194)
195. Reasons for Verdict, paragraph 649. [↑](#footnote-ref-195)
196. Reasons for Verdict, paragraph 22. [↑](#footnote-ref-196)
197. Reasons for Verdict, paragraph 549. [↑](#footnote-ref-197)
198. Appeal Bundle (Mr Sutton and Sgt Kwan), page 683. [↑](#footnote-ref-198)
199. Reasons for Verdict, paragraph 651. [↑](#footnote-ref-199)
200. Reasons for Verdict, paragraphs 649 and 465-6. [↑](#footnote-ref-200)
201. Reasons for Verdict, paragraph 650. [↑](#footnote-ref-201)
202. Reasons for Verdict, paragraph 650. [↑](#footnote-ref-202)
203. Reasons for Verdict, paragraph 121. [↑](#footnote-ref-203)
204. Reasons for Verdict, paragraph 664. [↑](#footnote-ref-204)
205. Reasons for Verdict, paragraph 665. [↑](#footnote-ref-205)
206. Reasons for Verdict, paragraphs 657 and 669. [↑](#footnote-ref-206)
207. Reasons for Verdict, paragraph 656. [↑](#footnote-ref-207)
208. Reasons for Verdict, paragraph 660. [↑](#footnote-ref-208)
209. Reasons for Verdict, paragraph 677. [↑](#footnote-ref-209)
210. Reasons for Verdict, paragraph 129. [↑](#footnote-ref-210)
211. Reasons for Verdict, paragraphs 242-245. [↑](#footnote-ref-211)