



**Court of Magistrates (Malta)
As a Court of Criminal Judicature**

Magistrate Dr. Doreen Clarke LL.D.

Today, the 14th December 2020

**The Police
(Assistant Commissioner Dennis Theuma)**

VS

Paul Ugochukwu Offor

The Court,

Having seen the charges against Paul Ugochukwu Offor of 37 years, son of Mc Offor, and Pace Offor, born in Elemaga Ibere, Nigeria on the 26th of May, 1975 and residing in Spain at Calatora No 2, Eight Floor, Flat 2, Zaragoza, Spain and holder of Nigerian Passport A 1789762.

Charged with having on the 2nd of October, 2012 and during the preceding months in the Maltese Islands;

1. Conspired with another one or more persons on these Islands or outside Malta for the purpose of selling or dealing on these islands the dangerous drug (cocaine) in breach of the Dangerous Drugs Ordinance Chapter 101 of the Laws of Malta or promoted, constituted, organised or financed such conspiracy for the importation of the dangerous drug (cocaine) in breach of the Dangerous Drugs Ordinance Chapter 101 of the Laws of Malta.

2. Committed an act of money laundering by
 - a. Converting or transferring property knowing or suspecting that such property is derived directly or indirectly from, or the proceeds of criminal activity, or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;
 - b. Concealing or diguising the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
 - c. Acquiring, possessing or using property, knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;
 - d. Retaining without reasonable excuse of property, knowing or suspecting that the same was derived or originating directly, or indirectly, from criminal activity, or from an act or acts of participation in criminal activity;
 - e. Attempting any of the matters or activities defines in the above foregoing sub-paragraphs (i), (ii), (iii) and (iv) within the meaning of Article 41 of the Criminal Code;
 - f. Acting as an accomplice within the meaning of Article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii), (iv) and (v) within the meaning of Article 41 of the Criminal Code;

The Court, was requested to attach in the hands of third parties in general all moneys and other movable property due or pertaining or belonging to the defendant , and further to prohibit the defendant from transferring, pledging, hypothecating or othwise disposing of any movable or immovable property in terms of article 22A of the Dangerous Drugs Ordinance Chapter 101 of the Laws of Malta, of article 5(1)(a)(b) of the Prevention of Money Laundering Act Chapter 373 as well as to issue orders as provided for in articles 5(1) and 5(2) of the same act and of article 23A of the Criminal Code Chapter 9 of the Laws of Malta.

The Court was also requested to apply article 533(1) of Chapter 9 of the Laws of Malta, as regards to the expenses incurred by the Court appointed experts.

Having seen the Order of the Attorney General issued on the 4th October 2012 issued in terms of article 22(2) Chapter 101 of the Laws of Malta¹ and an other Order of the Attorney General also issued on the 4th October 2012 in terms of article 3(2A)(a) of Chapter 373 of the Laws of Malta² for this case to be tried before the Criminal Court.

Having seen the bill of indictment issued on the 22nd May 2015.

Having seen the Counter-order of the Attorney General issued in virtue of articles 22(2) and 31 of Chapter 101 of the Laws of Malta and in virtue of article 3(2A)(b)(c) of Chapter 373 of the Laws of Malta whereby it was ordered that the defendant be brought before the Court of Magistrates sitting as a Court of Criminal Judicature regarding the charges brought against him for the breach of the provisions of the aforementioned Acts

Having seen that the defendant had no objection to the case proceeding summarily before this Court sitting as a Court of Criminal Judicature³.

Having heard the evidence and the submissions of the parties.

Having seen the acts of the proceedings.

Having considered

The Evidence

The prosecuting officer **Assistant Commissioner Dennis Theuma** gave evidence to give an overview of this case and the investigation carried out⁴. The witness explained that it had become apparent to local authorities that it had become a trend for two persons to be sent with every overseas delivery: the courier himself and a second person who would be sent either as a decoy

¹ At folio 8.

² At folio 9.

³ Ref minutes of the sitting held on the 20th June 2019 at folio 541.

⁴ He first gave evidence on the 4th October 2012 (deposition at folio 12) when he gave a very brief overview of the case for purposes of the arraignment; he then gave evidence on the 16th October 2012 (deposition at folio 61) when he gave further details regarding this case.

or to oversee the delivery, make contact with the recipients in Malta and to transfer cash received through official channels. On the 2nd October 2012 Customs Enforcement officers stopped the defendant who had just arrived in Malta on a Ryan Air flight (FR7798) from Spain. His mobile phones were checked and on a Nokia he had just received a message instructing him to go to the Tropicana Hotel in Paceville. The defendant claimed that he had never been to Malta before, that he was here only for a few days; he had very little money. Accused was arrested and taken to hospital to ascertain whether there were any drugs in or on his body; no drugs were found. The defendant told the police that this was the first time he came to Malta but on verifications being made it transpired that he had also come to Malta in April of that year for a few days. On enquiries being made with the Tropicana Hotel it also transpired that that same day they had a *walk in client*, Jose Manuel Domingo Benito, who had come to Malta that same day on the same flight as the defendant. The police effected a search and Domingo was found to be in possession of about a kilogram of white powder suspected to be cocaine and a small amount of cannabis grass. The police then proceeded to conduct two controlled deliveries. In the course of the first delivery Kingsley Wilcox, the person who was to collect the drugs from Domingo was arrested; on his arrest he had €1,000 in his possession which were to be paid to Domingo. The witness exhibited in the acts of the proceedings the defendant residence permit⁵ a Ryan Air boarding pass issued in the name of the defendant for the flight of the 2nd October 2010 from Valencia to Malta⁶, and the statement released by the defendant⁷.

Under cross examination **Assistant Commissioner Theuma** said that whilst he was certain that there were the words "Tropicana Hotel" in the message sent to the defendant, he was not certain as to the full text of the message but no booking had been made by the defendant at the Tropicana Hotel. To his knowledge no message had been exchanged between Domingo and the defendant. He also stated that he was not aware that the defendant's documents had been stolen and a report had been lodged with the Spanish police.

In a subsequent testimony⁸, again under cross-examination, **Assistant Commissioner Theuma** said that the defendant did have money in his

⁵ Doc PO1 at folio 74.

⁶ Doc PO a folio 75.

⁷ Doc DT1 at folio 79.

⁸ At folio 582.

possession when arrested and taken to the Police General Headquarters, but he could not remember the amount; he also confirmed that from evidence produced before this Court it resulted that the defendant did have a return ticket for travel to Spain.

Inspector Herman Mula⁹ was the police officer who primarily handled this investigation. He explained that on being informed that the defendant had been stopped at the Malta International Airport by Customs he ordered that Offor be taken to the police headquarters; there Offor consented to being X-rayed in order for the police to ascertain whether he had any drugs in or on his body. His mobile phones were checked and a message with the words Tropicana Hotel was found. Regarding this message the defendant claimed that a friend of his had suggested that he (the defendant) should stay at that hotel although he had no booking. This raised suspicions so further investigations were carried out at the Tropicana Hotel where it transpired that there was an other *walk in client*, also from Spain: Jose Manuel Domingo Benito. A search was conducted in his room and in a concealed compartment in the bag which was on the bed the police found two big sachets containing white powder suspected to be cocaine and a small container in which there was a substance suspected to be cannabis grass. This person was also arrested and taken to the police headquarters; in the meantime he was receiving calls on his mobile phone. Domingo was allowed to answer the phone and the person who called him (from Spain) told him that there was an African man wearing a black cap in front of the Tropicana Hotel to whom he was to consign the package. The police went to the Tropicana Hotel again and they saw a person who fit the description given to Domingo, and he was arrested; this person was Kingsley Wilcox. When Wilcox was arrested he had the sums of €2,000 and €700 in two separate pockets. Wilcox told the police that he had been in contact with an other African man whose name was Innocent who sent the drugs from Spain; Wilcox was to receive a suitcase in front of the Tropicana Hotel, he then had to meet an other African man (who eventually was identified as Charles Christopher Majimor) who would take the drugs and hand them over to a Maltese person (Angelo) in Siggiewi. From the preliminary analysis of the mobile phones seized from the three persons arrested: Domingo, Wilcox and the defendant, it transpired that no calls were received by Domingo and the defendant from the same numbers, however both the a accused and Wilcox recieved calls from the man that was being identified as Innocent (through number 346 3239 9209).

⁹ Deposition at folio 83.

No calls were made between these three persons. The witness went on to explain that, following authorisation from a Magistrate the police proceeded with two controlled deliveries; the first on the 2nd October to Charles Christopher Majimor, and the following day to Angelo Bilocca and Priscilla Cassar.

Under cross-examination **Inspector Mula** clarified that the calls being made to the persons under arrest were not recorded, however they were being made on speaker phone so that the police could listen in on the conversation. According to what Domingo told the police the calls he received were made by the person who gave him the drugs to bring to Malta; he said his name was Michael. He clarified further that Domingo alleged that initially he had been approached by a female named Maria who introduced him to Michael who then instructed him to bring the suitcase to Malta. The witness also clarified that so far as he was aware Wilcox, who has been living in Malta for a number of years, did not know the defendant. The witness concluded by saying that from preliminary investigations it appeared that except for Innocent none of the other persons involved in this case communicated with, or knew the defendant.

Inspector Pierre Grech¹⁰ was present when the defendant and Wilcox released their statements. The witness also spoke with Kingsley Wilcox about his mobile phones and some data resulting therefrom. The witness explained that Wilcox had two mobile phones: a white 3G and a Sony Ericson. In the white 3G one of the contacts was a name "Oga" with the number 346 3239 9209; in the Sony Ericson one of the contacts was Ogainn with the number 346 3298 3271. Wilcox told the witness that Oga and Ogainn in reality were the same person, Innocent, and that Innocent was the person who sent the drugs to Malta. The witness also said that the accused received calls from one of these two numbers (346 3239 9209).

PS1174 Adrian Sciberras¹¹ was one of the police officers who went to the airport after the customs officials alerted the police. After being given details by the customs officers as to what made them suspicious PS1174 arrested the defendant informing him that he was being arrested on suspicion that he was carrying drugs. The defendant consented to going to Mater Dei hospital for x-rays to be taken. PS1147 scrolled through messages in the defendant

¹⁰ Deposition at folio 322.

¹¹ Deposition at folio 142.

mobiles and saw one message that read *Tropicana Hotel St Julians* and another that read *will let you know when he moves*. At this point the witness started suspecting that the defendant might be shadowing someone rather than carrying drugs himself, so, together with PC 10 and WPC 297, he went to the Tropicana Hotel where he was informed that there had just been a *walk in client* at the hotel: Jose Manuel Domingo Benito. The police officers went to this person's room, and on conducting a search found a packet containing white powder and a tin with grass. The witness emptied the contents of a black bag and on emptying the contents realised that there was a concealed base in the bag and there he found two packets. Domingo had two mobile phones in his possession and when they had gone to the police headquarters one of them started ringing. Domingo told PS1174 that the person who was calling was the person who had sent him to Malta with the drugs. Domingo was allowed to answer the phone and when he hung up he told PS1127 "*black man with black cap down at hotel*". The witness and other police officers went back to the Tropicana Hotel and on arriving, just in front of the main entrance, they saw a man fitting that description; they arrested this man who was Kingsley Wilcox. On an initial search carried out Wilcox was found to be in possession of three mobile phones and the sum of €2,700. In another search conducted in his residence various SIM cards, another mobile phone and some more money were found. When the witness was scrolling all mobile phones seized during that day he realised that the same foreign number had called both Wilcox and the defendant. Under cross-examination the witness said that the customs officers had taken the defendant to an ATM to withdraw some money since he only had twenty Euros and a credit card but he could only withdraw fifty Euros.

WPC 297 Rianne Spiteri¹² and **PC 10 Trevor Cassar Mallia**¹³ confirmed the version of events as given by PS 1127 in so far as the investigation carried out at the Tropicana Hotel and searches carried out are concerned. PC 10 also one of the police officers who went to Msida, next to the Macadeo Restaurant, during the controlled delivery to Charles Christopher Majimor.

The police officer stationed at the Immigration section at the airport, **PC1108 Sandro Grech**¹⁴, confirmed that he was carrying out random checks on passengers coming from Valencia to verify whether they had return tickets,

¹² Deposition at folio 161.

¹³ Deposition at folio 196.

¹⁴ Deposition at folio 240.

money and a hotel to stay. The witness stated that there was a passenger who had no money but just a credit card so he accompanied the passenger to an ATM in order for him to withdraw money; the card limit was fifty Euros. PC1108 referred the passenger to Customs since they were still carrying out investigations. Under cross-examination¹⁵ PS1108 confirmed that he was carrying out random checks at the arrivals; from what he recalls he first stopped the defendant not the customs official. In this regard he specified that he would be stationed immediately on arrival on the upper floor whilst customs officers are on a lower floor after baggage claim. He also confirmed that when he asked, the defendant said he didn't have money or a return ticket. On his insistence defendant produced a credit card so the witness took the defendant to an ATM on that same floor to withdraw some money; the limit on the card was fifty Euros.

Th Customs Officers who had some involvement in this case also gave evidence. **Anthony Zammit**¹⁶, **Hilary Fenech**¹⁷ and **David Scerri**¹⁸ confirmed that on the 2nd October 2012 random checks were being carried out on passengers who had just arrived from Valencia. The defendant was stopped and on being asked routine questions he become verbally aggressive. In particular he was asked if he had come to Malta before and he said that he hadn't and that he was staying in Malta for four days; asked how much money he had the defendant admitted having very little money but said he had a credit card. The defendant was accompanied by David Scerri and immigration police officers to the ATM and he was asked to withdraw €500 but he managed to withdraw only €50. In the meantime verifications were made and it was established that the defendant had in fact come to Malta before. At that stage the Police Drug Squad were informed and officers from that squad came to the airport to conduct their investigation. His luggage was checked and a search on his person conducted but nothing illegal was found. A report drawn up by the customs officers regarding the facts of this case was exhibited in Court¹⁹.

Also called to give evidence before this Court was **Joseph Bugeja**²⁰ in representation of the Ryan Air ground handlers at the Malta International Airport. The witness confirmed that the defendant had bookings with Ryan

¹⁵ Deposition at folio 570.

¹⁶ Deposition at folio 163 and folio 180.

¹⁷ Deposition at folio 172 and folio 185.

¹⁸ Deposition at folio 188.

¹⁹ Doc AZ at folio 184 and Doc AZ1 at folio 195.

²⁰ Deposition at folio 96.

Air for travel on the 24th April 2012 from Girona to Malta²¹ and on the 28th April 2012 from Malta to Madrid²²; and on the 2nd October 2012 from Valencia to Malta²³ and on the 4th October 2012 from Malta to Madrid²⁴. He travelled all of these flights except for the one of the 4th October 2012 from Malta to Madrid. Information was also given regarding travel by Jose Manuel Domingo Benito who had booked flights from Valencia to Malta and back to Valencia on the 24th January 2012²⁵ and 25th January 2012²⁶, and on the 2nd October 2012²⁷ and 4th October 2012²⁸. The defendant and Domingo travelled to Malta on the 2nd October on the same flight: Ryan Air 7798. The witness confirmed that the passenger lists he exhibited listed the passengers by name only; there is no ID Card number and that consequently he couldn't confirm whether the person travelling in April and October were in fact the same person i.e. the defendant. He also confirmed however that there were no other passengers with names similar or identical to those of the defendant and Domingo on those flights.

In a subsequent deposition²⁹ **Joseph Bugeja** presented two booking forms in the name of the defendant: one for the Ryan Air flight FR012 from Girona to Malta on the 24th April 2012³⁰, and the other for the Ryan Air flight FR7798 from Valencia to Malta on the 2nd October 2012³¹. Both these forms show the passenger to be Paul Ugochukwu Offor, born on the 26th May 1975 of Nigerian nationality, and having a travel document number x5638552x.

Under cross-examination³² the witness confirmed that the word "*travelled*" written in handwriting on the two booking forms relating to flights taken by the accused³³ were added by himself. He also said that the words "*no show*" written on the flight manifest referring to the passenger Jose Domingo³⁴ was not written by him. The witness, whilst confirming that when booking a Ryan Air flight the passenger is asked for details of an identification

²¹ Ref Flight Manifest, part of Doc JB, at folio 119.

²² Ref Flight Manifest, part of Doc JB, at folio 111.

²³ Ref Flight Manifest, part of Doc JB, at folio 100.

²⁴ Ref Flight Manifest, part of Doc JB, at folio 105.

²⁵ Ref Flight Manifest, part of Doc JB1, at folio 139.

²⁶ Ref Flight Manifest, part of Doc JB1, at folio 133.

²⁷ Ref Flight Manifest, part of Doc JB1, at folio 129.

²⁸ Ref Flight Manifest, part of Doc JB1, at folio 125.

²⁹ At folio 247.

³⁰ Ref Doc JB1 at folio 249.

³¹ Ref Doc JB2 at folio 250.

³² At folio 543.

³³ Doc JB1 and Doc JB 2 at folio 249 and 250 respectively.

³⁴ Doc JB at folio 126.

document, said that the flight manifest shows only the passengers' names. The witness also said that the documents he presented were taken from the Ryan Air computer data.

A Magisterial Inquiry was held in relation to this case in the course of which a number of experts were appointed³⁵:

PS122 Arthur Borg was appointed as a scene of crime officer to document the items seized from Domingo's hotel room. The relative report was exhibited in the acts of these proceedings³⁶.

PS 465 Daniel Abela³⁷ was appointed as scene of crime officer to photograph the items documented by PS122; the photos were taken in Inspector Herman Mula's office at the Police General Headquarters. The relative report including the photos taken was exhibited in the acts of these proceedings³⁸

Mario Mifsud was appointed in order to examine and analyze the substance seized from the Domingo's hotel room. From his deposition³⁹ and his report⁴⁰ the white powder in the two large bags and the small bag, having a total weight of 1085.2 grams was confirmed to contain the substance cocaine with a mean purity of 36.8%. The crushed leaves in a small bag, weighing 0.33 grams, were confirmed to be parts of the plant cannabis; the purity of the substance Delta THC was 10.2%. The total value of these drugs was €86,824.00

³⁵ A copy of the *proces verbal* is exhibited at folio 220. An expert (Dr Maria Cardona) was appointed to translate this *proces verbal* from the Maltese language to the English language; the translation is exhibited at folio 281. The *proces verbal* will show that PS171 Karl Glanville, PS826 Matthew Parnis, PC131 Darren Debattista, PC650 Justin Tabone, and PC1525 Patrick Farrugia had been appointed experts as scene of crime officers however they were not produced as witnesses in these proceedings.

³⁶ Doc AB at folio 267; deposition at folio 265. A translation of the report in the English language was exhibited by PS 122; ref Doc AB1 at folio 329.

³⁷ It should be pointed out that in the decree given by the Inquiring Magistrate this expert is indicated as PS 464 Daniel Attard rather than PS 465 (ref folio 224). In the report filed by the investigating officer the expert is indicated as PS465 Daniel Abela (ref folio 226). It was PS 465 Daniel Abela who presented a report. In these circumstances the Court has no doubt that the indication of the expert as PS464 in the decree was a typing error and that the expert actually appointed was PS 465.

³⁸ Doc DA at folio 237; deposition at folio 235.

³⁹ At folio 327.

⁴⁰ Doc MM1 at folio 340.

Dr Martin Bajada⁴¹ was appointed to analyze the various mobile phones seized by the police in this investigation; he filed two reports. One report⁴² contains the extraction of all the data from the mobile phones; the other⁴³ contains the PIN and PAK codes obtained for the sim cards utilised by Kingsley Wilcox. From his report and the data extracted various facts can be established:

- The defendant owned a Samsung; its SIM card was pin-locked and no data could be extracted.
- The defendant also owned a Nokia linked to to MISDN 346 3213 7150. In this mobile:
 - The number 6 3239 9209 was saved under three names in the phone book contacts: *Oga Ino Leyica*, *Oga Ino/M*, and *Oga Ino/M*.
 - The number 6 3298 3271 was saved under the name *Ogaino Leyica 2*.
- Between the 24th April 2012 and the 28th April 2012 Offor made 20 calls to 346 3239 9209; localisation data shows that all these calls were made when Offor's mobile phone was in Paceville Malta.
- In August 2012 Offor received at least 7 calls from number 346 3239 9209.
- Between the 29th September 2012 and the 2nd October 2012, 14 calls were exchanged between the numbers 63239 9209 and Offor. Following Offor's arrest Ino called an other four times; these calls were not answered. Earlier in September 2012 there were 5 other calls made by Offor to Ino.
- In September 2012 Offor exchanged a number of message with 346 3239 9209 (Ino) including a message in which Offor sent his address in Zaragoza; a message he received which read: *21004144412100170995 La Caixa*; a message which he received which read *47MIAP Iberia*; there were also a number of deleted messages. On the 1st October 2012 Offor received an other message from this number; the message read: *Tropicana Hotel St Julian. Malta*.
- Half an hour later Offor sent the exact same message to number 6 0217 7979. Offor then received a message from that same number; this message read: *Am ok n got your message too, till morning i will call u as he moves*. Offor answered saying *ok goodnight*.
- On that same day Offor made/recieved 8 calls to/from that same number (6 0217 7979) there were also 2 missed calls.

⁴¹ Deposition at folio 444.

⁴² Doc MBa.

⁴³ Doc MBb.

From Dr. Bajada's report it also results that the same two numbers 346 3239 9209 and 346 3298 3271 were also saved in two mobile phones owned by Kingsley Wilcox under the names Oga and OgaInn respectively.

The other persons involved in this case were called as witnesses⁴⁴.

Jose Manuel Domingo Benito chose not to give evidence before this Court⁴⁵, however he had released two statements to the police which were then sworn on oath before a Magistrate; a copy of the relative *proces verbal* are exhibited in these proceedings⁴⁶.

In the first statement Domingo confirmed that on the 2nd October 2012 at about 12:15hrs the police found him in Room 630 at the Tropicana Hotel in Paceville. There the police also found two large packages full of cocaine as well a smaller amount of cocaine and some cannabis. Domingo went on to explain that a few days before he had met a man called Michael who asked him to bring some "cutting agent" to Malta. In a following encounter Michael made a copy of Domingo's passport in order to buy his flight tickets and he gave him instructions as to what he should do whilst travelling to Malta. On the 2nd October 2012 he met Michael again in a public garden in Valencia and they proceeded to go to the airport in a taxi; not much was said during the ride to the airport however Michael did tell him that he should stay at the Tropicana Hotel. Michael also told him that someone would come for the luggage and give him (Domingo) five hundred Euros. Michael gave him fifty Euros to cover the cost of the hotel and taxi. When they arrived at the Valencia airport Michael gave him the luggage and told him that they would meet again in two days. He described Michael as a dark skinned man from Nigeria or Guinea, with very short hair and a goatee and about 1.76mts tall. Domingo also confirmed that he boarded the Ryan Air flight, and on arriving in Malta went to the Tropicana Hotel and paid for a room. On going to his room he opened the luggage to see what was in it; he tore open a packet and tasted and sniffed a very small amount of the contents. He could not say whether it was cocaine or not. He then went out of his room to buy superglue, he returned to the room, closed the luggage and was about to smoke a cigarette when the police arrived. Domingo stated that on his arrival

⁴⁴ Charles Christopher Majimor was not called as witness.

⁴⁵ Ref folio 321.

⁴⁶ Exhibited at folio 202; the actual declaration is at folio 214. A copy of the *proces verbal* is exhibited at folio 220. Dr Maria Cardona, appointed by the Court, also translated this *proces verbal* from the Maltese language to the English language; the translation is exhibited at folio 301.

in Malta Michael was called him to check that he had arrived in Malta, then again when he was in the hotel room. In this second phone call Michael told him to wait and not go out. After this phone call the police arrested him but phone calls kept coming. In a phone call received whilst under arrest Michael told him that the person who was to collect the drugs was waiting near the hotel and that he should go to give him the luggage. Michael described the man: a dark skinned man who was wearing a black cap. As far as Domingo was aware there wasn't anybody on the same flight who was checking on him but he did say that there was a dark skinned man on the flight whom he had never seen before; he was shown a photo of the defendant and Domingo recognised him as the man on the flight. Domingo also said that this was the second time he came to Malta; he had come in January 2012 looking for a job; he had come for two days and also stayed at the Tropicana Hotel. He claimed that he went to various places seeking employment but was not successful on account of the language barrier. He denied having come to Malta (in January) to bring drugs. Domingo claimed that he used cannabis, smoking up to 15 grams every day. Domingo concluded by saying that he did not know what was in the luggage.

In his second statement, given the following day, Domingo again claimed that he was under the impression that the luggage he was asked to deliver contained a cutting agent. On being asked why he decided to check it out, he claimed that he did not trust them. He also said that he couldn't check it out in Spain because he couldn't do so in Michael's presence and once he was at the Valencia airport he did not have time. Domingo again insisted that he did not know that the substance was cocaine and that he sniffed it because he did not trust Michael, also claiming that he would not have come to Malta had he known it was cocaine. Domingo insisted that the first time he came to Malta he was in search of employment and that didn't bring any drugs. He confirmed that he bought the cannabis found in his hotel room from Spain and brought it to Malta with him.

These statements were confirmed on oath before a magistrate. Before the Magistrate Domingo specified that he was given the substance to bring to Malta in exchange for five hundred Euros by two persons. He denied knowing the defendant Paul Offor and he claimed that he was not aware that by his actions he was risking life imprisonment.

Kingsley Wilcox also chose not to give evidence⁴⁷ however he too had released a statement to the police which was then sworn on oath before a Magistrate; the relative acts are exhibited in these proceedings⁴⁸. In this statement Wilcox stated that in the week preceding the 4th October 2012 a Nigerian man called Innocent, who lives in Spain, called him on his mobile number 7791 2222 and told him that a package was coming to Malta on the 3rd October; Innocent also told him that he was to go to the Tropicana Hotel and wait for his further instructions. Innocent told him to give the person at the hotel one thousand five hundred Euros and take the package and that he should then give the package to his friend John who would then give it to a Maltese person from Siggiewi called Angelo. Innocent called again to remind Wilcox what he had to do. On the 3rd October Wilcox did as instructed and went to the Tropicana Hotel in the afternoon; Innocent called him and told him that someone was going to meet him outside of the hotel but nobody came so he decided to go home but at that point he was arrested. Wilcox claimed that this was the first time that he did something like this. He explained that he got to know Angelo after John introduced him a month before; John had taken him to Angelo's house in Siggiewi. According to what John told him, John and Angelo had been doing business together for a long time. When Wilcox was introduced to Angelo, Angelo asked him whether he knew of anybody who would want to buy heroin or hashish blocks but Wilcox didn't know anybody. On that same day Angelo showed Wilcox "a bullet of heroin" and then they discussed how Wilcox was to pick up a package from him when it arrives. Following this occasion John and Wilcox went to Angelo's house on several occasions and on one occasion Angelo and John discussed robbing an Italian man the following Friday and wanted to involve Wilcox against payment but Wilcox refused. Wilcox said that on at least three other occasions he saw John giving Angelo packages containing white powder which according to John contained cocaine. On one of these occasions Wilcox saw Angelo checking this powder using a lighter, spoon and liquid. Regarding Innocent, Wilcox said that he lives in Spain and he had met him in a bar in Bugibba where he saw him on two occasions; they exchanged phone numbers. They spoke on the phone a number of times but never discussed anything before that phonecall regarding the package which he was to collect on the day he was arrested. Wilcox initially said that he thought that the package he was instructed to collect would contain pills but eventually he said that he suspected that the package may contain drugs

⁴⁷ Ref folio 238 and folio 532.

⁴⁸ Ref the relative *proces verbal* exhibited at folio 22; the actual declaration is at folio 30.

because he was being asked to deliver it to John who is in the cocaine business; he felt that something was not right. Wilcox continued to state that following his arrest and after having informed the police that he was supposed to collect a package and take it to John, he agreed to participate in a controlled delivery. In fact Wilcox was given his phone again and he was informed that the package was ready and that they were to meet in Msida. Wilcox went there to hand over the package to John and the police arrested John. Following this Wilcox and John proceeded to deliver the package to Angelo. They went inside, Angelo opened the packet and there was white powder inside. At that point Angelo's wife realised that there were the police outside so she grabbed the package and ran to an other room; at that point the police intervened and arrested everybody. Wilcox proceeded to identify Angelo and his wife, and John from photos shown to him. Asked about the defendant Wilcox said that he did know him and that he never heard of him.

Priscilla Cassar and Angelo Bilocca were also called as witnesses but they availed themselves of the right to silence⁴⁹.

John Seychell Navarro⁵⁰ was appointed by this Court to compile a compendium of assets and liabilities pertaining to the defendant. This compendium was exhibited⁵¹; it shows that Offor had no assets or liabilities.

Letters Rogatory were transmitted to the competent authorities in Spain to obtain information regarding bank accounts held by the defendant and information regarding the account mentioned in the SMS message sent to Offor by Ino⁵². These documents were translated by a Court appointed translator **Imelda Fede**⁵³.

From these documents the following facts can be confirmed:

- The account number 2100 41444 12 100170995 is a current account registered in the name of Innocent Akaegbodi.
- Paul Ugochukwu Offor, bearing identity document number x5638552x, has an account with the same bank: account number 2100 2371 64 0100413365.

⁴⁹ Ref folio 365 and folio 367 respectively.

⁵⁰ Deposition at folio 273.

⁵¹ Ref Doc PO.

⁵² The documents sent from the Spanish Authorities are exhibited at folio 487.

⁵³ Ref deposition at folio 507 and 521 and the translation Doc IF.

The statement for the account held in the Offor's name shows transactions from the 9th June 2008 up to the 16th June 2009 when it seems to have been closed. There were never any significant amounts in this account since the highest balance never exceeded €1,300. It also appears that deposits into this account were only made by "social security" or "payroll officers and employees" at the start of every month.

The statement for the account held in name of Innocent Akaegbodi shows transactions from the 9th June 2008 up to the 12th December 2012 when it appears to have been closed. Even in this account there never were any significant deposits since the highest balance never exceeded €4,100. Except for a few instances there is no indication who effects deposits or what they represent since there are only a few entries in which there is an indication as to who might be making the deposit. Some of these seem to indicate that deposits were effected by the defendant.

- On the 11th August 2012 three deposits of €50.00 each were made; on that same day a withdrawal of €144.01 was made apparently in favour of Ryan Air.
- On the 12th August 2012 four deposits for a total of €170.00 were made; on the same date a withdrawal of €164.01 was made apparently in favour of Ryan Air.
- On the 12th August 2012 four other deposits for a total of €170.00 were made; these were again followed by a withdrawal of €164.01 was made apparently in favour of Ryan Air⁵⁴.
- On the 17th September 2012 three deposits for a total of €500.00 were made.
- On the 17th September 2012 three deposits for a total of €500.00 were made⁵⁵.

The defendant released a statement on the 3rd October 2012⁵⁶. In this statement he claimed that this was the first time he came to Malta and that he came, on a direct flight from Valencia, to visit the islands; he did not know anyone in Malta. He stated that he had been living in Spain, where he had a wife and three year old son, for almost nine years. As to employment he said that up the week before his arrest he had a job in a factory but he lost that

⁵⁴ It is not clear from the statement whether these were duplicated entries or whether they were actual separate deposits.

⁵⁵ Even in this case it is not clear from the statement whether these were duplicated entries or whether they were actual separate deposits.

⁵⁶ Doc DT1 at folio 79.

job due to the recession; however he also worked in the fields picking fruit and he worked in a hair salon in the weekends. Further on in the statement he was again asked what his job his and this time he claimed that he makes arrangements for the delivery of cars, he basically drove sold cars from the the place of sale to the residence of the buyer. Regarding his financial status he claimed that he owns debit cards and that he brought two hundred and fifty Euro with him to Malta however he also stated that he usually brings three hundred Euro. He stated that he had an account with a Spanish Bank, Caja Madrid, but he does not have much money deposited there. Offor stated that in nine years since he had been living in Spain he travelled to Belgium and Holland to buy cars for friends of his who live in Nigeria; money for this transaction used to be sent to him via Western Union. He denied that money he received via Western Union was related to drug trafficking, and he also denied ever using drugs. He claimed that he decided to stay at the Tropicana Hotel after the address was given to him by a friend, called Ino, whose mobile telephone numner is 346 3239 9209. Offor stated that he does not receive many messages from Ino. On reference being made to two particular messages he recieved form Ino he stated that one, 47M1AP Iberia, was probably sent to him in error because he didn't know anything about it. With regards to the other, which was a bank account number (21004144412100170195 La Caxia⁵⁷) he stated that Ino sent it to him because he had to deposit some money in that account. Offor claimed that he did not know any of the persons who were on the same flight to Malta. On being confronted with the fact that call logs taken from his mobile phone and those of an other passenger show that they had both received of dialled the same number: 346 3292 2394, Offor said that he did not know to whom that number belonged however he had a missed call from that number whilst still in Spain so he called back to see who it was but no one answered him. On being confronted with the fact that the other passenger who recieved calls from that number had been caught with drugs and he too was staying at the Tropicana Hotel, Offor claimed that he had no knowledge of these facts. He denied having been sent to Malta to oversee a transfer of drugs in which that other passenger was involved; he also denied that the bank account number was to be used for proceeds from drug trafficking. He denied that he used to oversee drug trafficking operations from the Iberian Peninsula to other European countries.

⁵⁷ Although in the statement the last three digit of the account number is indicated as 195, this seems to be a typing error; in the message the last three digits are 995.

The defendant chose to give evidence before this Court⁵⁸. In his deposition Offor said that he came to Malta on the 2nd October 2012 to seek employment since in Spain there was a bit of a crisis. At that point he was out of a job however in the past he had worked on a farm, in the weekends he worked at a barber's salon and he had "*some kind of business*". He said that he came to Malta from Valencia and he had a return ticket; he hadn't booked a hotel but some one had suggested that he should stay at the Tropicana Hotel. The person who made this suggestion was a man called Ino whom he knew from the time when he was working at the hair salon in Zaragoza. Offor explained that he used to live in Zaragoza and Ino used to live in Madrid, however there was a time when Ino came to Zaragoza. Offor said that this was the first time he came to Malta and that when he booked his flight to Malta he used his passport as an identification document. Explaining what happened on his arrival in Malta, Offor said that he only had a hand luggage. As he was on his way out two men in plain clothes stopped him and asked for his passport; they asked him some questions then they proceeded to conduct a strip search in the course of which they touched his stomach. Offor got angry at this and they called in the police. Before the police came there was an other policeman who asked him how much money he had; Offor showed him how much money he had, about two hundred and fifty Euros, but the man sad that that was not enough so he was taken to an ATM and he withdrew the maximum amount allowed: fifty Euros. He was taken back near the Customs officers, then the police came and they took him to the police headquarters and he was asked a number of questions. With his consent they took him to hospital to check whether he had ingested drugs. Nothing was found and he was taken back to the police headquarters. Offor said that on his arrest on suspicion of being a drug courier he refused the right to consult with a lawyer, however after the hospital tests were carried out and, on being told that he was going to be kept under arrest on suspicion that he conspiring with drug traffickers, he asked to speak to a lawyer; he infact consulted with a lawyer over the phone. After this he was interrogated and a statement was made.

In the course of his testimony Offor also confirmed this statement⁵⁹. Regarding the mobile phone number indicated in the initial part of the statement Offor clarified that he had two phones: a Nokia which he had been using, and a Samsung which was new and he had not yet used. The number

⁵⁸ Deposition at folio 606.

⁵⁹ The statement was read out to him by his attorney; furthermore, questions were asked about each of the questions and replies in the statement.

indicated in the statement was that of the Nokia. Offor gave further details regarding his employment and how much he used to be paid for his work at the hair salon. He confirmed that when he travels he usually takes three hundred Euros with him and that when he was at the police headquarters he had about two hundred and fifty Euros with him, out of which he bought some snacks. When he was eventually taken to prison the money he had left was kept by the prison authorities. Regarding the car business he mentioned in his statement Offor clarified that in the year 2011 he started buying cars for friends of his in Gabon and Nigeria who used to transfer the money to his bank account via Western Union. He used to find cars for sale on the internet and on buying them he would drive them to Antwerp to ship them to Africa. Offor then claimed that he also used to do business with Ino who used to recommend him to third parties. These persons would pay Ino who would then transfer the money to Offor. Regarding Ino, Offor claimed that they are neither good friends nor bad friends; Ino is old enough to be his father so they cannot be friends. However, knowing that Ino had been to Malta, he discussed coming to Malta in search of employment with him but did not tell him the date when he was coming. With regards to the bank account number mentioned in an SMS exchange, Offor said that that Ino put money in his (Offor's) account for the car business; Ino would put money in the account, Offor would buy the car and the balance would be Offor's profit. Regarding his identification documents Offor stated that in 2009 or 2010 he had lost his identity card and never found it again; a new card was issued with the same number; Offor had reported the matter to the police in Spain⁶⁰. Regarding the messages found on his mobile referring to the Tropicana Hotel, one which he received from Ino and one which he sent to somebody else, Offor claims that he sent the message to a certain Aram Mumba, a taxi driver, who was to *"pick him in the airport"*. He went on to clarify that he did not know the taxi driver but he sent the message to the owner of the car as means of identification to come to pick him up from the hotel in Valencia to the airport. Regarding the message (sms) *"i will call as soon as he moves"* he said *"the message means till morning I send him the Tropicana Hotel that's my identification to the driver that he will come and I call you and say yes I received your message and got your message and when the driver moves I will tell you"*. Regarding many phone calls made to that same telephone number Offor said *"is to let him know that I am ready to travel"*. Offor claims that all the calls were made regarding his travel from the hotel in Valencia to the airport.

⁶⁰ Refer Doc PU01 at folio 664.

Under cross-examination Offor confirmed that he lived in Zaragoza before he came to Malta and that Ino lived in Madrid which is about three hours away from Zaragoza. He used to call Ino when he had something to question. Offor also confirmed that he used to travel out of Spain in connection with his car business, to deliver cars. He also confirmed that Ino used to refer clients however Ino never suggested where Offor should stay (in which hotel) when he was out of Spain, in those cases he would ask the owner of the car. The only time Ino suggested a hotel was when Offor came to Malta. He also insisted that he never came to Malta before the 2nd October 2012.

Imelda Fede was also appointed to translate the document exhibited by the defendant. From the translation⁶¹ it appears that the document is a police report filed on the 2nd May 2009 whereby the defendant reported the loss of his identity card, his driving license and other objects.

Lt Helenio Galea⁶² confirmed that when a person is first detained at the Corradino Correctional Facility any money which is in that person's possession is kept by the prison officials in an account for the benefit of that person. From the prison records it appears that when Offor was taken into custody he had one hundred and eighty nine Euros (€189) in a black wallet.

Having considered

From the summary of the evidence adduced it will be apparent that there are some inconsistencies and contradictions in the testimony of the Customs Officers and PC1108 Sandro Grech, and in the versions given by the defendant.

The versions given by the customs officers and PC1108 are conflicting in that there is disagreement as to who first stopped the defendant, who asked him what, how much money he had, who took him to the ATM, and how much money he withdrew. In reality these conflicting versions are incidental to the real facts in issue. Furthermore these conflicts have been resolved through other evidence. In fact it has been definitively established that defendant was stopped at some point following his disembarking and arrival in the airport terminal and before leaving the terminal passing through

⁶¹ Refer Doc IF 1 at folio 672.

⁶² Deposition at folio 673.

customs area. It has also been established that defendant was questioned by both PC 1108 and Customs Officers, that he had some money but was taken to an ATM to withdraw more money; that only fifty Euros were withdrawn as this was the card limit. Whatever the amount of money Offor had on arriving in Malta, it could not have been much since, after buying a few snacks whilst under arrest, and on being taken in custody in prison he only had €189.

Significantly relevant, on the other hand, are the inconsistencies and contradictions evident in the versions given by the defendant.

Offor claims that he never travelled to Malta before the 2nd October 2012; and he was very insistent on this point. Documents exhibited by Joseph Bugeja show that Offor had in fact travelled to Malta on at least one other occasion: between the 24th and the 28th April 2012. Defense counsel submits that these documents, the flight manifest, show only a name with no other details, be they parentage, date of birth or an identity document number, consequently the flight manifest cannot be taken as conclusive evidence that the person therein indicated as Paul Ugochukwu Offor is in fact the defendant. The flight manifest is not the only document exhibited by Bugeja; he also exhibited the flight booking forms for both April and the October the flights. These show the passenger for whom the flights were booked to be Paul Ugochukwu Offor, born on the 26th May 1975 of Nigerian nationality, and having a travel document number x5638552x. Identification documents belonging to the defendant: his passport and his Spanish Residence Permit both indicate him as having been born on the 26th May 1975. His residence permit bears the number x5638552x which is identical to the number indicated in the booking form. This should be clear evidence that the person who booked those flights and travelled to Malta in April was the same person who booked the flights and travelled to Malta in October. Defendant however submits that he had lost his documents in the year 2009 implying that anyone who came in possession of the lost documents could have used them and forged his identity in the booking form for travel in April. The Court will concede that is a possibility albeit extremely farfetched, however even this is disproved by other evidence produced. Localisation data obtained by Dr Martin Bajada unequivocally shows that the mobile phone (Nokia) habitually used by the defendant as per his admission, linked to MISDN 346 3213 7150 was utilised in Malta (mainly Paceville) between the 24th and 28th April 2012. The only

conclusion that can be drawn from these facts is that Offor was in fact in Malta in April 2012.

When asked about the message (SMS) he received from Ino, on the 2nd October 2012, with the words Tropicana Hotel St Julians and the message (with same exact words) he then sent to number (34)6 0217 7979 Offor initially said that Ino had suggested where he could stay when he came to Malta. Offor also said that he never told Ino when he was going to travel to Malta, yet surprisingly the message suggesting a hotel where he could stay was sent on the very same day Offor came to Malta.

When he made the statement Offor gave no information as to why he forwarded that message and why he continued to communicate with the person to whom he forwarded the message. In his testimony before this Court he first said that he forwarded the message to the taxi driver who had to take him from the hotel in Valencia to the airport; he also mentioned the name of the taxi driver. He then stated however that he didn't know the taxi driver and that the message was sent to the person who owns the taxi; he sent that message as means to identify himself with the driver. He went on to say that the message that followed: "*i will call as soon as he moves*" and the ensuing phone calls were all exchanged with the owner of the taxi. The Court considers it highly improbable that on booking a taxi two messages and eight calls had to be exchanged in order for Offor to reassure the owner of the taxi that he had in fact been picked up and that they were on their way to the airport. Furthermore if Offor wanted to use the name of a hotel as reference, it would have made more sense for him to use the name of the hotel where he was staying in Valencia rather than the name of a hotel in Malta, a name which would not have meant anything to a taxi driver in Valencia. Any doubt as to the improbability of the explanation given by Offor this will also be done away with through facts emerging from the data obtained from Offor's mobile phone. Localisation data and call logs show that all of these messages and phone calls were sent/made after Offor's arrival in Malta so they couldn't have had anything to do with his taxi ride to the Valencia airport.

In view of the foregoing the Court cannot rely on what the defendant states as his credibility has been clearly undermined.

The Charges

Having considered

Through these proceedings the defendant is being charged with having conspired with other persons to sell or deal in drugs in Malta, and with money laundering.

The First Charge

Having considered

In terms of article 22(1)(f) of Chapter 101 of the Laws of Malta any person *who with another one or more persons in Malta or outside Malta conspires for the purposes of selling or dealing in a drug in these Islands against the provisions of this Ordinance or who promotes, constitutes, organises or finances the conspiracy* shall be guilty of an offence.

It has long been established in our jurisprudence that for the crime of conspiracy to subsist it is essential for the prosecution to prove 1) an agreement between two or more persons; 2) the intention to deal in drugs; and 3) the agreed plan of action. Furthermore, it has also been established in our jurisprudence that it is not necessary for the prosecution to show that the agreement was actually put into practice. In fact, in terms of section 22(1A) of Chapter 101 conspiracy *shall subsist from the moment in which any mode of action whatsoever is planned or agreed upon between such persons*.

In the judgement given in the case *The Republic of Malta vs Steven John Caddick et*⁶³, after affirming that for the crime of conspiracy to subsist it is not necessary to show that the agreement was put into practice, the Court went on to state that:

Although it is true that for the crime of conspiracy to subsist it does not have to be proved that the agreement was put into practice, the converse is not true, that is that evidence of dealing does not necessarily point to a conspiracy.

Under our law the substantive crime of conspiracy to deal in a dangerous drug exists and is completed "from the moment in which

⁶³ Decided on the 6th March 2003 by the Court of Criminal Appeal

any mode of action whatsoever is planned or agreed upon between two or more persons” (section 22(1A) Chapter 101). Mere intention is not enough. It is necessary that the persons taking part in the conspiracy should have devised and agreed upon the means, whatever they are, for acting, and it is not required that they or any of them should have gone on to commit any further acts towards carrying out the common design. If instead of the mere agreement to deal and agreement as to the mode of action there is a commencement of the execution of the crime intended, or such crime has been accomplished, the person or persons concerned may be charged both with conspiracy and the attempted or consummated offence of dealing, with the conspirators becoming (for the purpose of the attempted or consummated offence) co-principals or accomplices. Even so, however, evidence of dealing is not necessarily going to show that there was (previously) a conspiracy, and this for a very simple reason, namely that two or more persons may contemporaneously decide to deal in drugs without there being between them any previous agreement.

In the judgement given in the case *The Republic of Malta vs Steven John Lewis Marsden*⁶⁴ reference was made to English doctrine and caselaw regarding the type of evidence which may prove the charge of conspiracy:

*..... as Timothy Jones and Michael Christie point out in the second edition of Criminal Law: “Proof of the agreement essential to a criminal conspiracy will generally be inferential. Sometimes overt acts will have been committed by some or all of the accused, but this will not always be the case. But even if there have been some such overt acts, the existence of mens rea, in the form of an agreement and commitment to the criminal purpose of the conspiracy, will have to be proved by inference. For example, if a group of men is apprehended wearing masks and carrying weapons while sitting in a car outside a bank, there is a clear inference to be drawn that there is an agreement to rob the bank. The group is unlikely to be there for any other purpose. Lord Justice-Clerk Grant pointed out to the jury in *H.M. Advocate v. Wilson, Latta and Rooney* (1968): “You won’t often get eye-witnesses of the agreement being made or eavesdroppers who actually hear it being*

⁶⁴ Decided on the 2nd November 2009 by the Court of Criminal Appeal.

made. Accordingly, in many cases it is a question of judging from the acts of the alleged conspirators whether in fact there was a conspiracy between them in pursuance of which they are acting.

The evidence derived from such decisional process will not always be as unambiguous as the example in the previous paragraph. An individual who may appear at an early stage of the 'conspiracy' to be involved might not be firmly committed. This problem is raised in a crucial form by the absence of any requirement of proximity such as is to be found in the law of attempt. The cynical view of proof in conspiracy cases would be that the apparent difficulty in proving the agreement is to the advantage of the prosecutor. There is the danger that in stressing to the jury that a conspiracy can be proved inferentially, the judge may neglect to emphasise the necessity of proof per se.

These same principles are expounded by Archbold⁶⁵:

The essence of conspiracy is the agreement. When two or more agree to carry their criminal scheme into effect, the very plot is the criminal act itself: Mulcahy v. R. (1868) L.R. 3 H.L. 306 at 317; R. v. Warburton (1870) L.R. 1 C.C.R. 274; R. v. Tibbits and Windust [1902] 1 K.B. 77 at 89; R. v. Meyrick and Ribuffi, 21 Cr.App.R. 94, CCA. Nothing need be done in pursuit of the agreement: O'Connell v. R. (1844) 5 St.Tr.(N.S.) 1.

The agreement may be proved in the usual way or by proving circumstances from which the jury may presume it: R. v. Parsons (1763) 1 W.Bl. 392; R. v. Murphy (1837) 8 C. & P. 297. Proof of the existence of a conspiracy is generally a 'matter of inference, deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them': R. v. Brisac (1803) 4 East 164 at 171, cited with approval in Mulcahy v. R. (1868) L.R. 3 H.L. 306 at 317.

Irrespective of whether the case rests on direct or circumstantial evidence it is essential that this evidence prove defendant's guilt beyond reasonable doubt. In this regard and with special reference to these cases where the

⁶⁵ Criminal Pleading, Evidence and Practice 2003 page 2690/ 2692.

prosecution's case rests on circumstantial evidence the Court of Criminal Appeal held that:

*It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other coexisting circumstances which would weaken or destroy the inference.*⁶⁶

It is also established that circumstantial evidence must be not be ambiguous and must unequivocally link the defendant and no one else with the offence⁶⁷.

Having considered

From the evidence adduced before the Court a number of facts have been ascertained:

- On the 2nd October 2012 Jose Manuel Domingo Benito travelled from Valencia to Malta on a Ryan Air flight carrying slightly more than one kilogram of cocaine and some cannabis grass. He did so on instructions given to him by a person he knew by the name Michael; Michael was a Nigerian man. On instructions given to him by this Michael, Domingo stayed at the Tropicana Hotel as a walk in customer; he was to consign the drugs as per instructions to be communicated. He had to return to Spain on the 4th October,
- The person who was to collect the drugs was Kingsley Wilcox who was acting as per instructions given to him by a Nigerian man living in Spain called Ino. The instructions given to him were to go to the Tropicana Hotel, collect the drugs which he was then to hand over to an other person whom he knew by the name of John; together they would then consign the drugs to two Maltese persons in Siggiewi: Angelo and his wife.
- The identity of the person who Wilcox referred to as John was verified on his arrest by the police; this was infact Charles Christopher Majimor.

These facts leave no doubt whatsoever that there was an agreement involving all these persons and a third party in Spain and that this agreement concerned the transport of two bags of cocaine from Spain to Malta where it

⁶⁶ Ref Il-Pulizija vs Dawood Sayed Dawood Abd el Kaader decided on the 9th June 1998 in which judgement reference was made to Lord Normand in 'Teper v The Queen' [1952]AC 480, 489.

⁶⁷ Ref Il-Pulizija vs Joseph Lee Borg decided by the Court of Criminal Appeal on the 15th June 1998.

was to be ultimately consigned to Angelo Bilocca and Priscilla Cassar. Neither can be any doubt as to the fact that a very clear elaborate plan of action as to the participation of each of these persons, acting on the very specific instructions given from time to time by that third party in Spain.

From the evidence adduced further facts can be ascertained;

- The person Wilcox referred to as Ino used two mobile phone numbers 346 3239 9209 and 346 3298 3271.
- The person who defendant referred to as Ino also used the two mobile phones numbers 346 3239 9209 and 346 3298 3271.
- Like Domingo, defendant came to Malta on the 2nd October and was scheduled to leave on the 4th.
- Like Domingo, defendant was going to stay at the Tropicana Hotel and Wilcox had to collect the druga from there.
- Fourteen calls were made between Ino and the defendant in the days immediately preceding his travel to Malta and on the day he was in Malta prior to his arrest; following Offor's arrest Ino tried to call him four times.
- Eight calls and some messages were also exchanged between Offor and the person having mobile phone number (34)6 0217 7979 immediately after Offor forwarded the message indicating the name of the Tropicana Hotel.
- When Offor was in Malta in April 2012, also for a few days, he and Ino called each other twenty times.

It has already been established that the defendant can be given little to no credibility given that he has lied on oath regarding events which have been sufficiently proven through other evidence⁶⁸: his having been in Malta in April 2012; the circumstances in which Ino sent him a message with the words "Tropicana Hotel St Julians"; and the circumstances in which he forwarded that message to a third party and the ensuing phone calls between him and this person. He also lied about the nature of his relationship with Ino. Offor claims that they are friends who do not communicate regularly unless Offor wants some advice or unless Ino is referring some "clients" who wish to buy a car. Yet whilst in Malta in April 2012 they called each other twenty times, and in the few days between the

⁶⁸ In this regard reference is being made to the fact that in his deposition defendant chose to confirm on oath all the replies he gave in the statement made to the police.

end of September and Offor's arrest on the 2nd October they called each other fourteen times.

In the absence of any plausible reason offered by the defendant in his testimony as to why he and Ino spoke so often immediately before and when in Malta in October 2012, in the absence of any plausible reason offered by the defendant in his testimony as to why he forwarded the message with the words Tropicana Hotel and the circumstances regarding the ensuing message and phone calls with a third party; taking into consideration that both Domingo and Offor were instructed to stay at the Tropicana Hotel, that both travelled to Malta on the same flight and were to leave on the same date; and taking into consideration that Wilcox, also acting on the instruction given by Ino, went to the Tropicana Hotel to take the drugs brought over by Domingo, the Court is satisfied that the evidence can only point to one conclusion i.e. that defendant was carrying out his part in a plan (to oversee the transport and consignment of the drugs) agreed to with Ino, which plan formed part of the agreement whereby the drugs had to be transported to and consigned in Malta.

In this regard and with reference to what the onus of proof beyond reasonable doubt entails reference should be made to what Lord Denning deems necessary for this onus to be considered discharged.

*Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence: 'of course it is possible but not in the least probable', the case is proved beyond reasonable doubt, but nothing short of that will suffice.*⁶⁹

In view of the foregoing the Court is satisfied that the first charge brought against defendant is sufficiently proven.

The Second Charge

⁶⁹ Lord Denning in *Miller vs Minister of Pension* - 1974 - 2 ALL ER 372 quoted by the Court of Criminal Appeal in *Il-Pulizija vs Peter Ebejer* decided on the 9th June 1997.

Having considered

By means of the second charge the defendant is being imputed with money laundering or complicity in money laundering. The prosecution is alleging that Offor has received money deriving from drug trafficking on behalf of Ino which he then transferred to Ino via Western Union.

Our Law does not set out a concise definition of money laundering however it lists various activities which would constitute the crime, its attempt or complicity therein. The Law Society Anti-money Laundering Practice Notes October 2013⁷⁰ defines money laundering as follows:

the process by which the proceeds of crime, and the true ownership of those proceeds, are changed so that the proceeds appear to come from a legitimate source.

There are three acknowledged phases to money laundering: placement, layering and integration with some legislation also including passive possession of criminal property as money laundering⁷¹. In the judgement given in the case *The Police vs Valdimir Omar Fernandez Delgado*⁷² the Court however stated that:

the three elements: placement, layering and integration, are not per se sine qua non elements necessary for the crime to exist, establishing that these stages were but a general description of the crime in question.....

The Court went on to refer to a judgement given in the case *Il-Pulizija vs Carlos Frias Mateo*⁷³ where it was said that:

.... dawn l-istadji⁷⁴ huma biss deskrizzjoni genrali tal-process tal-hasil tal-flus. Hija skola ta' taghlim li nholqot sabiex gurija tkun f'posizzjoni aktar felici sabiex tifhem l-intricci u l-kumplikazzjonijiet li jinvolvu dawn it-tip ta' reati. Ghalhekk il-qasma tal-process tal-hasil ta' flus f'dawn it-tlett stadji hija wahda

⁷⁰ Quoted by Archbold (Criminal Pleading, Evidence and Practice, 2012, page 2475).

⁷¹ Ref The Proceeds of Crime Act 2002 (UK)

⁷² Decided on the 29th April 2015 by the Court of Magistrates.

⁷³ Decided on the 19th January 2012 by the Court of Criminal Appeal.

⁷⁴ Referring to “placing layering and integration”

generali u bl-ebda mod dogmatika. Fil-fatt awturi ohrajn jikkritikaw din il-klassifikazzjoni minhabba li tissemplifika wisq is-sitwazzjoni u f'hafna kazijiet ma hiex riflessjoni veritjiera ta' dak li realment ikun qed jigri. Ghalhekk dawn l-istadji ghandhom jittiehdu biss bhala punto di partenza u bhala deskrizzjoni generali tal-process tal-“money laundering” b'mod flessibbli tant li ma hux rikjest li l-prosekuzzjoni trid tipprova l-intenzjoni f'kull wiehed u wahda minn dawn l-istadji. Dan qieghed jinghad fid-dawl ta'd-definizzjoni ta' “money laundering” li nsibu fit-tieni artikolu tal-Kap. 373 kif ukoll irreati kkontemplati fl-artikolu 327, 328 u 329 tal-Att tal-Parlament Ingliz “Proceeds of Crime Act 2002” fejn analizi taghhom ma tirrikjedjex li l-prosekuzzjoni tipprova li l-imputat kellu l-intenzjoni li jikkommetti “placement”, “layering” u “intergration” bil-propjeta`.

The process which money laundering refers to must involve proceeds of crime. A link must therefore be shown to exist between some criminal activity and the assets in question. This has been affirmed by the Court of Criminal Appeal in the case Republic of Malta vs John Vella⁷⁵ when it said:

....l-Avukat Generali jista' akkuza persuna bir-reat ta' money laundering minghjar ma jkollu sentenza ta' kundanna ta' dak li jkun qed jigi allegat li huwa l-attivita kriminali sottostanti.... Certament pero ikun x'jkun il-kaz, jekk l-Avukat Generali jiddeciedi li jakkuza lil xi hadd b'money laundering ... irid jindika n-ness bejn l-attivita kriminali sottostanti partikolari li jkun qed jallega.

Consequently, for a charge of money laundering to be successful proof must be brought of some criminal activity which resulted in illicit proceeds, which proceeds were then “processed” in order for their illicit origin to be hidden.

The charge of money laundering brought against defendant is based on Chapter 373 of the laws of Malta and not Chapter 101. In the latter case the prosecution must necessarily show a link between the assets being laundered and some criminal activity prohibited under Chapter 101. In the former case (i.e. an offence under Chapter 373) what the prosecution must show is a link between the laundered assets and an offence listed in either the first or

⁷⁵ Decided on the 29th November 2011 and quoted in Police vs Paul Borg decided by the Court of Criminal Appeal on the 6th October 2003.

second schedule of the said Chapter 373 which however also include traffic in narcotic drugs and psychotropic substances.

Generally the difficulty in money laundering prosecutions does not refer to showing suspicious transactions (whether through layering, placing and integrating, or passive holding, or otherwise) but that the assets being so processed have been illicitly acquired, and that the person processing those assets knew or at least suspected that those assets were illicitly acquired.

In these present proceedings there can be no doubt that the prosecution has brought sufficient evidence showing criminal activity through the trafficking of a controlled substance: cocaine. What it had to also prove for this second charge to be successful is that this criminal activity led to some gain, obviously illicit, which was then processed by the defendant Paul Offor. Not only must this be shown but, in terms of the writ of summons, it must also be shown that the acts whereby this illicit gain was “processed” took place in Malta in October 2012 or in the preceding months.

Evidence adduced shows that Offor came to Malta in April 2012 and October 2012. In April 2012 Offor was in Malta for a few days and while here he was in very regular contact with Ino in Spain over the phone. No other evidence was brought with respect to this visit to Malta, in particular no evidence was brought as what Offor might have done whilst here and whether he handled any monies. In October 2012 Offor returned to Malta. The Court is satisfied that the prosecution showed beyond reasonable doubt that this time Offor came to Malta having conspired with other persons in a drug trafficking operation.

Whilst clear unequivocal evidence shows who the persons involved in this operation were and their modus operandi, there is no evidence which suggests that any money or any other property exchanged hands. In reality no money could have exchanged hands here in Malta because the police intercepted the drugs very soon after being brought into Malta and before being consigned; all consignments were then effected under the control of the police and any money that was going to be paid was seized by the police before it was paid or transferred.

The evidence does show that Offor transferred some money to Ino however these transfers were effected in August 2012 and September 2012. In the first instance €320 or €490 were transferred, in the second instance €500 or

€1000. There is no evidence which shows that these transfers were effected via Western Union, neither is there any evidence which shows that any part of the acquisition and/or processing of those funds took place in Malta.

In these circumstances it cannot be said that this second charge has been proved.

Having considered

With regards the penalty to be meted out the Court took into consideration on the one hand the gravity of the offence of which the defendant is being found guilty, and the amount, nature, purity and value of the drugs involved. On the other hand the Court also took into consideration defendant's clean conviction sheet.

With regards to the prosecution's request for the Court to order the defendant to pay expenses incurred in the appointment of experts, the Court took into consideration the fact that whilst some experts were nominated in the course of these proceedings and their findings have no bearing on proceedings that may have been taken against other persons involved in this case⁷⁶, other experts were nominated in the course of the magisterial inquiry and their report could be relevant in at least four other proceedings. Expenses in the former case are to be borne solely by the defendant whilst expense in the latter case are to be apportioned.

Wherefore the Court, whilst finding the defendant not guilty of the second charge brought against him and acquitting him therefrom, after having seen Parts 4 and 6, articles 22(1)(a)(f) and 22(2)(b)(i) of Chapter 101 of the Laws of Malta and Regulation 9 of Legal Notice 292 of the year 1939, finds the defendant guilty of the first charge brought against him and condemns him to **eight years imprisonment and a fine of eight thousand Euros (€8,000)**.

Furthermore and by application of section 533 of Chapter 9 of the Laws of Malta the Court is ordering that the defendant **pay the Registrar of this Court the sum of one thousand two hundred and fifty one Euro and nine cents (€1251.09)** representing expenses incurred in the appointment of experts⁷⁷.

⁷⁶ The Court is here referring to John Seychell Navarro.

⁷⁷ This amount represents the entire fees paid to John Seychell Navarro and one/fifth of the fees paid to Dr Martin Bajada, PS122 Arthur Borg and PS465 Daniel Abela.

DR. DOREEN CLARKE
MAGISTRAT