



MALTA

**COURT OF MAGISTRATES (MALTA)  
AS A COURT OF CRIMINAL JUDICATURE**

**MAGISTRATE DR.  
MIRIAM HAYMAN**

Sitting of the 29<sup>th</sup> April, 2015

Number. 457/2013

**The Police  
Inspector Raymond Aquilina;  
Inspector Herman Mula;  
Inspector Pierre Grech**

**VS  
OMISSIS;  
Vladimir Omar Fernandez Delgado detentur tal-passaport  
tal-Panama numru 1866486;**

**The Court;**

Having seen charges proffered against the above-mentioned **Vladimir Omar Fernandez Delgado** who was charged of having:

On the 9<sup>th</sup> May, 2013 and during the preceding 3 years from this date, on these Islands, with several acts committed, even if at different times and which constitute violation of the same provisions of the Law, and are committed in pursuance of the same design:

- a. Carried out acts of Money Laundering by:
  - i. 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;
  - ii. Concealing or disguising 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;
  - iii. Acquiring 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;

- iv. Retaining without reasonable excuse of 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;
- v. Attempting any of the matters or activities defined in the above foregoing sub-paragraph (i, ii, iii, and iv) within the meaning of Article 41 of the Criminal Code;
- vi. Acting as 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, & v).

Seen in this regard the Order issued by the Attorney General to proceed under Section 2A of Article 3 of Chapter 373 of the Laws of Malta, and the subsequent Counter Order issued in terms of the same Chapter in virtue of sub article 3(2A)(b)(c). The order or counter order as it is known was issued only with regards to VLADIMIR OMAR FERNANDEZ DELGADO. It is thus to be noted that this judgement relates only to this accused.

Seen that in the examination the accused answered he was not guilty to the charges presented against him.

Heard all the evidence produced, seen all the records of the case.

Considers that one of the Prosecuting Officers, **Inspector Herman Mula**, testified about a certain John Joseph Evans who was being monitored because of effected suspicious transfers through Western Union. This same Evans had

arrived in Malta from Madrid accompanied by a certain Vladimir Omar Delgado. He said that both gentlemen were stopped on their arrival at the Luqa Airport. He added also that Inspector Raymond Aquilina was also involved in this investigation due to the suspicion of money laundering whilst Inspector Pierre Grech was involved since the underlying crime was allegedly drug related. He testified about further police investigations conducted by other police officers as shall later result. He added that he spoke to one of the persons stopped – Mr Evans, who according to the Inspector informed him that the set of keys found on his person related to a residence in Miami. It was according to this witness, the accused Delgado who actually informed Inspector Pierre Grech on being spoken to by him, that the identical key now found in his possession related to a residence in St Julian's.

He further testified about an x-ray conducted on Delgado for which he was not present but which gave negative results with regards to possible drug substance in his body cavities.

He added that Mr Evans released a statement which was in fact interrupted so that a search was effected in his residence 'The Olives', Flat 7, Forest Street, St Julian's. Eventually however, the key found opened the residence found at 'The Hollies', Mensija Street, St Julian's, Flat number 7. Mr Mula further testified that at this stage Mr Evans informed him personally that this apartment was in fact rented by a Panamanian organisation that imported drugs into Malta. He handed him over half a kilo of cocaine which Evans brought from behind the bed in the main bedroom, out of a Play Station 3 console box. Further searches resulted in the finding of suspected cannabis grass, always in the same residence,

intended - according to Evans, for personal use. Western Union receipts were also retrieved from his residence.

Under cross-examination, he did reaffirm that Evans had informed him that Vladimir Fernandez Delgado, the accused in this case, had no idea of the contents of the searched apartment. He further informed the Inspector that Mr Delgado had affected money transfers only as a favour to and for him; insisting that Mr Delgado had no idea that the monies involved were in fact drug proceeds. He insisted that Delgado simply just effected the money transfers without ever inquiring the source thereof.

A Proces Verbal was in fact drawn up and later on exhibited in the records of the case as confirmed by this testifying Inspector (folio 48).

On his part, **Inspector Pierre Grech** testified that in Delgado's possession the police officers found a Western Union document relating to a money transfer. He actually affected searches on the person of the accused. Having questioned Delgado about a key found in his possession, Inspector Grech testified that initially Delgado gave him the wrong information in this regard, stating it apartianed to Evans' apartment in the States, but later corrected his version informing the Inspector that the said key was handed to him by Evans and related to his flat in St Julian's. It was in fact Mr Delgado who indicated to the police the block of flats in which Evans resided.

Inspector Pierre Grech further testified that he was also involved in the both statements released by Delgado. He confirmed that Delgado in the second statement had a change

of mind and this time opted to consult a lawyer – a right he waived in the first instance.

He presented both statements as Dok PG1 and Dok PG2, at folio 64 and 67; and Dok PG17 (folio 74) drawn up by himself listing all his exhibits. Dok PG9 therein mentioned is the Western Union transfer document found in Mr Delgado's possession.

**Ronald Cilia** himself, as a representative of Western Union, exhibited various money transfer documents effected by John Joseph Evans as Dok RC1, Dok RC2, Dok RC3, Dok RC6, Dok RC13, Dok RC14. Documents RC5 and RC6 show money transfers affected by Vladimir Delgado.

**Inspector Raymond Aquilina** tendered evidence about an alleged drug trafficking and money laundering investigation culminating in an arraignment in the Dutch Courts resulting in the Maltese police investigating a certain John Joseph Evans and other persons of Maltese nationality. He added that this Evans was travelling from Spain to Malta accompanied by a certain Vladimir Omar Fernandez Delgado. Both were stopped at the Malta International Airport and Delgado was found to be in possession of two (2) Western Union Money Transfers transactions receipts. He further confirmed that keys were found in the possession of Delgado and that whilst Mr Evans informed the police that these opened his apartment in the USA, from his part Delgado told the police that the keys related to a flat in St Julian's. In fact it was Delgado who took the police to the relative flat. Though no key matched the relative apartment, later as they entered another connected block, the key opened the flat number 7, The Hollies, Mensija Road, St Julian's.

Here later on in the investigation John Joseph Evans pointed out to the police the illicit substance he was allegedly keeping therein.

He further testified that Delgado was initially questioned by Inspector Pierre Grech and later also by the witness. Witness confirmed that Delgado admitted sending money to third parties to him unknown on Evans' request. Delgado denied knowledge of Evans' drug operations and dealings.

Inspector Raymond Aquilina confirmed that he also interviewed Evans who confessed that monies he transferred through Western Union all originated from trafficking of illicit substances in Malta. He showed them documents of such transactions dating 1<sup>st</sup> January, 2004 till the 19<sup>th</sup> May, 2013, amounting to one hundred and fifty six (156) transactions, having a global amount of one hundred and eighty seven thousand one hundred and forty-one Euros and seventy-four cents (€187,141.74).

Mr Evans in the interview continued to explain the ongoing drug operations in Malta, the monies received and the involvement of various Maltese nationals in this organisation.

He also testified about monies that were sent by Mr Evans to the amount of fifty-two thousand eight hundred and seventy Euros and sixty-three cents (€52,870.63), explaining that from July to September 2009, he sent ten (10) transactions which amounted to nine thousand three hundred and ninety Euros (€9,390); in two thousand and ten (2010) from June to September he sent fifteen (15) transactions amounting to seven thousand two hundred and thirty-three Euros and thirty

cents (€7,233.30). In 2011 from June to September, he sent thirty-one (31) transactions amounting to fifty two thousand eight hundred and seventy Euros and sixty-three cents (€52,870.63); and in 2012 from June to September he sent ten (10) transactions amounting to thirteen thousand three hundred and forty-seven Euros and seventy-nine cents (€13,347.79).

He further testified about monies that Evans himself received in Malta. He exhibited thus a set of documents illustrating all Evans's financial transactions, as provided by Fex Serv Limited (Dok RA, folio 383).

Inspector Raymond Aquilina further testified that John Joseph Evans also confirmed under oath the statements he had released to the Investigating Officers, exhibited these in the records of this case.

Police Officers involved in these searches testified in these proceedings.

**WPC 44 Graziella Sciberras** gave evidence about her involvement at John Joseph Evans' residence in St Julian's, where a bag containing a substance suspected to be cocaine was retrieved, including green substances suspected to be cannabis grass, and Western Union papers.

**PC 1348 Joseph Campbell and PS 1086 Johann Micallef** testified about the observation conducted on Evans and Delgado at the Airport.

PS 1086 saliently deposed that he retrieved from the accused a Western Union receipt.



**David Scerri**, a Customs Officer, together with the above-mentioned police officers testified about having stopped Mr Evans at the Malta International Airport and effecting a search on him. He confirmed Sergeant Micallef effected a strip search on Evans that gave a negative result.

As premised, a Magisterial Inquiry was in fact conducted and exhibited in the records of this case. Experts therein nominated exhibited their relative reports.

Saliently **Godwin Sammut**, drug analyst, concluded that:

“

- a. **Cocaine** was found in the extracts taken from the white powder which are in the exhibits labelled as 154\_13\_01 and 154\_13\_03. The total weight of the white powder is **640.36 grams**, while the approximate purity is **60%**. Cocaine is controlled by Chapter 101 of the Laws of Malta under Part A of the First Schedule;
- b. The mean price of Cocaine per gram as stated in the Malta National Report 2011 is €63.78, therefore the total value is €40,842.16;
- c. Tetrahydrocannabinol was found in the extracts taken from the green grass which is in the exhibit labelled as 154\_13\_02. The total weight of the green grass is **12.10g**, while the approximate purity is **10%**. Cannabis grass is controlled by Chapter 101 of the Laws of Malta under Part III, Section 8;
- d. The mean price of Cannabis herb per gram as stated in the Malta National Report 2011 is €23.32 therefore the total value is €282.17;

- e. **Cocaine** was found on a swab taken from the weighing balance which is in the exhibit labelled as 154\_13\_04. Cocaine is controlled by Chapter 101 of the Laws of Malta under Part A of the First Schedule.”

This substance obviously relates to the drugs found in Evans’ residence.

Seen also the report submitted by **Dr Martin Bajada**, relating to the examination of the mobile phones seized, Dok MB.

Seen also the report submitted by **Dr John Seychell Navarro**, Dok VDFG (folio 310), wherein he concluded that Vladimir Omar Fernandez Delgado received four hundred Euros (€400), whereas he effected twenty (20) transactions, sending a total of fifty-two thousand two hundred and sixty-four Euros and fifty-four cents (€52,264.54).

These documents were in part confirmed by **Ronald Cilia** in the name of Fex Serv Financial Services (as represented by Western Union Money Transfers). He testified that Vladimir Omar Fernandez Delgado from the sixth (6<sup>th</sup>) of May, two thousand and thirteen (2013), up to the sixth (6<sup>th</sup>) November, two thousand and fourteen (2014), effected two (2) transactions to Columbia to the total sum of three hundred and seventy-four Euros (€374), and received from Panama and Dominican Republic fifteen (15) transactions for the total sum of five thousand nine hundred and sixty-four Euros (€5,964). He exhibited these documents as Dok RC.

From the Compodium of Assets exhibited however, it transpired as premised that Delgado transferred to Panama a

lot more monies, totalling to fifty-two thousand two hundred and sixty-four Euros and fifty-four cents (€52,264.54), mostly in the year 2013, in a period of nearly two months, from 1<sup>st</sup> March 2013 to the 29<sup>th</sup> April, 2013, having also effected two (2) transfers in October, 2012, at times to be noted transferring quite a considerable amount of thousands of Euros, even in more than one transaction daily (folio 200 – 204, Dok VDFG).

A certain **Twanny Bugeja** testified that he had granted on lease to John Joseph Evans first a property at Flat 7, The Olives, Forest Street, St Julian's and later a top floor property, a penthouse at No7, The Hollies, St.Julians therefore contemporaneously renting two different apartments to the same person. He added that Evans had rented yet another flat, presumably for his sister, this time Flat 4. Bugeja testified Evans paid the rent due on these apartments, the first rental contract dating to July, 2012 (folio 307, Dok TB).

On her part, **Anna Farrugia** gave evidence that she had leased a property at 114, Cedar Wood, Triq is-Swieqi, Swieqi, in the year 2010, to a gentleman whom she assimilated to John Joseph Evans.

This was in fact confirmed by her husband **Silvio Farrugia** who however insisted, since the dates of the lease were uncertain by both witnesses, that Evans resided therein prior to August, 2010.

A certain **Anton Busuttil Dougall** gave evidence that Evans slept at the Giorgianis Hotel in three different dates in 2010, between April and May (vide Dok AB, folio 439).

On his part a **Donald Bonnici** also testified that accused had in the period from 30th June 2010 and four months thereafter been renting an apartment at Anna Capri Flats, Apt no.6, Spinola Road, St. Julians. (Dok DB a folio 448)

A **Raymond Fonk** representative of PSG Limited testified that a certain Evans had also resided at the Metropole Hotel from the 4th of July to the 31st thereof of 2009.

On his part, a **Joseph Bugeja** representing Globe Ground Handling at the Malta International Airport, a company representing Ryanair, testified regarding the arrival of John Joseph Evans and Vladimir Omar Fernandez Delgado, who travelled from Madrid to Malta on the 9<sup>th</sup> May, 2013 (vide Dok JB, foliko9 314).

This summarises the evidence brought forward by the Prosecution to sustain its charges of money laundering adduced against **VLADIMIR OMAR FERNANDEZ DELGADO**.

**Accused** also chose voluntarily to take the stand and give evidence under oath.

Be it premised and emphasised again that this case started with two co-accused. Later on in the proceedings, once the Prosecution's evidence was well matured, a separation of the acts and judgments were ordered, **therefore this judgement is being pronounced solely against Vladimir Delgado**.

In this regard note must be made of Mr Evans' sworn statement entered in the records of the case and the question of its admissibility as evidence for and against the accused.

Mr Evans was brought to testify a couple of times by the Prosecuting Officer, in both times cautioned that he had a pending related criminal case. He asked to be allowed to consult his lawyer - a request that this Court obviously consented to due to his right against self incrimination. By way of comment, the Court premises that in fact, Mr Evans excluded Delgado's knowledge in the proceeds of the monies that were being transferred; he went as far as also excluding Delgado's involvement in any of the drug crimes proffered against him. Delgado in fact is only answering to money laundering charges under Chapter 373 of the Laws of Malta.

The Court is thus faced with a situation where a favourable evidence if believed (this contrary to the usual information emanating from a sworn statement under Section 30A of Chapter 101 of the Laws of Malta), is to be excluded because Mr Evans did not give evidence viva voce under oath in front of this Court, thus exposing himself to examination by both parties, most especially Defence. Court is here making reference to the principle established in such judgments as in the case here reproduced. The Court, in the case "***Ir-Repubblika ta' Malta vs Matthew John Migneco***" decided on the 8th April, 2010, so pronounced itself on this point:

*"S'intendi, dana l-Artikolu 30A tal-Kap. 101 irid dejjem jinqara fid-dawl tad-disposizzjonijiet generali tal-Kodici Kriminali (eccetwat l-Artikolu 661 tal-istess Kodici, li ghalih l-Artikolu 30A jaghmel deroga espressa). Issa, l-Artikoli 549(4) (u ma jistax ikun hemm dubju li l-intervent ta' Magistrat taht is-subartikoli (12) u (13) tal-Art. 24A tal-Kap. 101 hija forma ta' inkjesta dwar l-in genere b'modalitajiet kemm xejn differenti mehtiega ghall-finijiet tal-istess Kap.*

*101) u 646(2) tal-Kap. 9 huma cari fil-portata taghhom: id-deposizzjoni regolarment moghtija fl-inkjesta dwar l-in genere (bhalma hi dik a fol. 137 sa 144) tista' tingieb bhala prova, u mhux semplicement ghall-finijiet ta' kontroll, basta, pero`, li x-xhud jingieb ukoll fil-qorti biex jigi ezaminat viva voce...hlief jekk ix-xhud ikun mejjet, ikun barra minn Malta jew ma jkunx jista' jinsab... (ara l-proviso tas-subartikolu (2) tal-imsemmi Artikolu 646). Mill-attijiet ta' l-istrutturja (fil-konfront ta' l-akkuzat Migneco) ma jirrizultax li dana Rizzo hu inammissibbli ghal xi raguni kontemplata fil-ligi, anqas li hu "ko-akkuzat" fis-sens kif il-gurisprudenza interpretat a contrario sensu l-Artikolu 636(b) tal-imsemmi Kap. 9. F'kaz li, fil-kors tal-guri kontra l-akkuzat Migneco, dana Rizzo jkun ghadu hekk "ko-akkuzat", allura huwa ma jkunx ammissibbli bhala xhud u anqas id-deposizzjoni tieghu hawn aktar 'l fuq imsemmija ma tkun hekk ammissibbli."*

Therefore *a priori* the Court is pronouncing Evans' sworn statements as inadmissible evidence for and against the accused.

**Accused Vladimir Omar Fernandez Delgado** testified and confirmed that he was arrested at the Malta International Airport in 2013, confirming also he had come to Malta before the day of his arrest in October, 2012. He came to Malta on both occasions as a guest of John Joseph Evans. He explained he knew Mr Evans from his childhood explaining they were good friends and insisting as knowing Evans to be a good person. He knew him since he was five (5) years of age, at the time they were both living in Panama. He explained that as a teenager Evans immigrated to the USA. They were roughly, according to the accused, of the same age.

He further added that he lost contact with Evans when he moved to another location in Panama, the situation being further aggravated by the fact that then he proceeded to live in the USA. He added that they reconnected in the year 2004 – 2005 via the net.

He explained that though he himself a university graduate, he encountered difficulties of employment in Panama, till he found work in the free zone in Latin America. He explained that they received containers with goods from China, shipping to different countries all over Latin America.

In 2010 he became a sales executive with the company Magic Time, a company also operating within the free zone. Due to wages concerns, he left the said Magic Time company and joined successfully a betting company, and then TEIK International, owned by a good friend of his, a friend encountered through the betting business.

He explained that he was appointed the director of his department. His mode of operation was such that the owner used to give him two thousand (2,000) in advance to cover his expenses, these being deducted from any commissions he would later receive after an effective sale. He further explained his commission with the company TEIC was between ten and fifteen per cent, getting paid the highest commission if he sold the proposed goods at the highest price.

He testified further that in 2013 he was concentrating his sales in Europe, ensuring that he might be able to close eight to ten sales every trip. His sales in Europe were till the date of his arrest concentrated in Spain and Germany. He explained the modes of payment, fifty per cent upfront and the rest would be

paid on credit in a stipulated time. Therefore, his trips were at times intended for sales, others to collect a payment.

He admitted to visiting Malta after having been in Spain for business, always as Evans' guest.

He testified that to his knowledge Evans was an international DJ, a wealthy person and doing fine. He insisted he had no idea of Evans' involvement, since he never saw him in any bad company or gave him reason to believe otherwise. Regarding his second visit to Malta he testified to residing at one of Evans' flats, The Olives, flat number 4. Evans himself according to the accused was however living in The Hollies block, in the penthouse thereof. He also explained that the two blocks – The Hollies and The Olives, though two separate buildings were interconnected (at the garage level). He stayed there as Evans' guest. He admitted to visiting Evans' place of abode but having slept there only on one occasion when together they left Malta to Egypt.

He said that whilst in Malta, he met Evans' friends whom he described as good people.

He admitted to sending money abroad as a favour for Evans. He added that the first time this occurred he was in Malta in October, 2012. He explained that once Evans knew that it was normal for him to send money abroad, because it was the nature of his work, he asked him for such a favour. He insisted that in October he effected two such money transfers – one in the name of Evans and one for himself. He explained that though Evans did not threaten him, he did push him by invoking his help. He confirmed he had sent a transfer to his girlfriend on his behalf, she being the person he trusted most of all.



He explained that the money he sent to her resulted from his activity – all legal, admitting he sent circa two thousand five hundred Euros (€2,500) to his girlfriend and about one thousand nine hundred Euros (€1,900) as a favour for Evans, which monies he transferred to Panama.

He further stated that this second visit to Malta was in April, 2013, intending in this travel to collect monies from his clients in Europe. Though he had no intention of coming to Malta this second time, he was contacted by Evans who invited him over. He further explained that due to the fact that at that time Evans' VISA was about to exceed its three (3) months validity, together they visited Egypt at Evans' expense. He was arrested on his re-entry in Malta.

He further added that initially the police search was concentrated solely on Evans and he was involved only when he himself made it known to the police officials that he was accompanying Evans.

He explained that at this stage they started searching, even through the souvenirs he brought with him from Egypt, checking any sand therein contained. He was himself searched and eventually informed of his arrest to which he said he questioned “*Why?*”, only to be informed he would understand at a later time. He added that at this point he was totally lost (folio 557).

He added that from the airport in the afternoon, he was later at night taken to hospital, and an x-ray was performed. At the police station, as he called it, he confirmed that he released a declaration (statement).

He also confirmed he stayed in Malta for about a week before he departed for Egypt.

As he had previously explained in his statement, he reiterated that the last time he visited Europe he himself had transferred the sum of thirty three thousand Euros (€33,000). Testifying about the occurrence of April, 2013, he admitted to effecting several transactions and that the mentioned monies were the result of sales effected. He explained he sent these monies to different persons because his clients had different options of payments, using credit cards, bank transfers, or actual cash. He spoke about payments to the tune of one thousand Euros (€1,000) to five thousand Euros (€5,000), which were usually payments effected by his clients through credit cards. He added that when the credit involved higher amounts, then the mode of payment preferred by his clients was cash. Thus in such cases his boss in Panama would direct him to collect the monies and transfer it to an indicated person. In other instances, since the money allowance is en thousand US Dollars (\$10,000) and ten thousand Euros (€10,000) respectively, when he would have collected more than these amounts, he would transfer monies to trusted friends in Panama, also thus avoiding having to travel with so much cash on his person. He explained that he thus avoided the danger and risk of losing these monies since he would be travelling to various countries on one determined trip.

He confirmed that when he came to Malta he had in total, inclusive of his own monies, the sum of circa thirty three to thirty five thousand Euros (€33,000 - €35,000). Due to the fact that they (Evans and himself) were leaving for Egypt, he thus decided to transfer these monies.

Asked why he decided to send these monies to different persons, he answered:

*“I am aware that if you send large sums of money to one specific person is going to bring an alert by and then they will investigate them for something – not even necessary or need because there is no illegal activity happening. In my case I have people I trust, like people I have worked with together before that are very close that I imagine they are responsible people. Mostly, the majority of my transactions, I send it to one person which is Lianne Chong, which is my girlfriend, the person I trust the most and you can see that in my papers.”*  
(folio 591)

He admitted sending the amounts of three thousand Euros (€3,000) to his girlfriend, to his brother, his friend Jorge Romero, people he trusted so as to distribute thus the earnings from his sales.

He admitted affecting five (5) transactions in the name of Evans, on his behalf.

Asked by Defence Counsel if he suspected where the monies, those transferred for Evans, were coming from, he answered:

*“Again as I already mentioned, if John Evans was doing something, he was keeping it from me because in the first place I was not staying in the same building as him all day long. And again, the building was connected by a parking lot below the building so if on top of that the people I know from him are in my consideration good people, people not involved in drugs or anything like that. Maybe fans of him that dated him and ....her friend like me or stuff like that. But it was not something that I can tell like I see fancy cars or strange*

*people or movement of something shady going on. I never saw.”* (folio 594).

Asked about monies he received in Madrid from a local female, Maltese, he explained he then did not know the sender, that he had asked Evans to lend him some money.

He then proceeded to present a set of documents A – J, which purported to attest to his good character, one coming from his brother, one of the same nature sent by his girlfriend, other declarations related to his employment, and even the modus of payments received, explaining also his commissions.

He insisted on exhibiting these **photocopies**, insisting he wanted to proof his work and how he operated.

He confirmed both statements released in which basically he had declared the same evidenced by him viva voce. Therein he added that he had shown Inspector Aquilina the TEIC website on the computer at the Inspector’s office.

He better explained in his first statement the nature of his work, saying that his work was to provide his clients with goods, paper, shoes, clothes, costume jewellery, by buying himself directly from the factories and offering to supply.

He insisted in the statement not to mention any names of his clients on the premise that he did not want to lose his business or involve them in any problems.

Asked how he forwarded the monies collected to his boss, he answered that though it was a risky job, he got paid quite well. His boss directed him to get the money, uncaring of the

method used. He added that sometimes he risked carrying the cash with him, but when the amount was substantive, then not wanting to risk carrying all that money, he would send it to three of five people he trusted. He told the Inspector in his statement, which he was confirming under oath, that in sending these monies he used the services of Money Gram or Western Union, unless the client transferred the credit directly to his boss. He added that he never sent more than three thousand (3,000) to one person in Panama, then when in his home county he would proceed to collect the money.

In his second statement, he confirmed that he earned monthly circa three thousand US Dollars (\$3,000) from his work, reiterating he did not work on a fixed commission basis.

He also explained that part of his work entailed travelling with samples to a foreign country to show his wares so to speak. He explained that the last time he come to Malta travelling from Europe, he had not been carrying such sample luggage because his aim to travel was the collection of monies due, not to sell or show the product. He also explained that he issued receipts for payments received, keeping a copy thereof in Panama. He testified to an example of a sale affected in Spain to the amount of sixteen thousand Euros (€16,000), in the sale of paper products.

Asked if he was scared to mention names he answered that the only thing that scared him was the loss of business. He insisted he was innocent of all allegations charged against him.

Asked about the people he transferred money to on Evans' request, he replied that he had no knowledge of these people,

but that Evans had assured him that nothing was amiss with this.

Asked why he chose to transfer monies to different people, he answered he would not opt to put all his eggs in one basket, and thus avoided the risk of a bigger loss of money.

He explained that he trusted Evans and therefore accepted to transfer the monies, insisting that they were childhood friends. He explained that his impression of Evans was that he was wealthy, seeing also that not only did he have a penthouse, but yet another apartment. He explained that during these money transfers, Evans was either with him in the agency or waiting for him in the car.

Explaining why the address 'The Hollies' resulted from the questioned transfers, since he insisted he was always residing at 'The Olives' and not with the accused, he said simply that he must have just given the agency that address on the first transfer being affected. He insisted that at a point he did not know the difference between 'The Hollies' and 'The Olives' since he considered them to be the same building, these being interconnected in the middle.

He explained that whilst he had pointed to the police that he resided in 'The Olives Apartments', the drugs in actual fact were found in 'The Hollies'.

He also explained that Evans never threatened him to send the money, he insisted with him.

He also told the Court that the balance in his account back in Panama amounted only to one hundred US Dollars (\$100).

Questioned about the monies seized from his person by the police, the one thousand eight hundred Euros (€1,800), he answered that one thousand of those belonged to Evans, saying only the remaining eight hundred and five Euros (€805) belonged to him.

With regards to the key found, he explained that it was the key that Evans had given to him in Egypt since he had told him that it would be better if he arrived in Malta first. He admitted that they key would open Evans' flat. He confirmed that he led the police to the residences mentioned.

Under cross examination, he confirmed that he always thought the money he was transferring on behalf of Evans was legal, emanating from his savings. He confirmed that the two occasions he came to Malta he came as Evans' guest and never paid any monies for accommodation. He confirmed that in total in Malta he brought with him circa thirty-five thousand Euros (€35,000), proceeds from payments, admitting however he never declared such monies. He insisted that he had only slept once in Evans' apartment, having however been there many times before. He agreed he had never seen Evans in his job as a DJ, performing as such.

He agreed that though having travelled to Malta he had no clients here, only potential.

### **Considers:**

It has amply resulted from evidence adduced that Delgado and Evans travelled on the same flight returning from Spain after a holiday in Egypt at Evans' expense. The police, having

been tipped about possible drug presence, having information of this involvement with regards to Evans, stopped him and affected a search on his belongings and on his person. This gave a negative outcome. It appears that once it was established that accused Delgado was in fact accompanying Evans, apparently this being indicated by the latter, he was also searched. The only object of import at this stage found was a Western Union receipt of a money transfer Delgado had affected whilst in Spain. No drugs were found at this stage.

Both Evans and Delgado were taken to the Police Head Quarters for further investigations. Both were questioned after being duly cautioned and granted at Law the right to consult a lawyer. Both issued a statement explaining their involvement, Evans going so far as even choosing to confirm his statement under oath. As already premised however, Evans never chose to give evidence viva voce in front of this Court, rendering thus his sworn statement ineffective at Law as already discussed and elaborated in the Migneco case above cited.

It also resulted that Evans had been in Malta for several times before for considerable times, having here resided in a couple of hotels and rented more than one apartment, even two contemporaneously, namely The Hollies and The Olives, the former being the site where the drugs were found.

It also resulted that identical keys were found on the persons of both Evans and the accused. Initially both refused to give the police the correct indication where these keys opened. Evans and Delgado, **seemingly following suit**, insisted that the said keys referred to Evans' apartment in the States. Later however the accused himself indicated to the police Evans'



place of residence where eventually the mentioned drugs were discovered.

As said, Delgado admitted to coming to Malta twice, the second time however leaving for Egypt with Evans and re-entering in our Islands on the day of his arrest. He admitted that on both occasions he accepted Evans' request to transfer monies for him, mainly to Panama, admitting that though he was never threatened by Evans to do this, he did suffer pressure at his hands due to his persistence in such a favour. He also testified that on every transfer, he was either accompanied by Evans, or that Evans waited for him in the car. It has amply resulted from Dr John Seychell Navarro's compodium of assets, that in fact accused had in all transferred abroad the global sum of over fifty thousand Euros.

As said searches were conducted in both apartments, one of which was allegedly Evans' residence, and in which the drug substance was found. Therefrom a number of Fexserv money transfers were seized, therefore resulting to be in the possession of John Joseph Evans, these were exhibited as part of Doc HM8 folio 43. Curiously enough, as attested by the police officers, these or rather three of them, though seized from Evans' place of residence, related to transfers effected by the accused; one sent to his girlfriend a certain Lian Chong as he himself informed the Court, this on the 29<sup>th</sup> April, 2013, to the amount of three thousand three hundred and eighty-two Euros (€3,382); another to a certain Ricardo sent on the 25<sup>th</sup> March to the ammount of three thousand two hundred and eighty-eight Euros and nine cents (€3,288.09); and yet another to Jonathan Fernandez Delgado sent on the 29<sup>th</sup> April, 2013, (resulting from the very evidence of the accused to be his

actual brother) to the amount of three thousand three hundred and seventy-five Euros (€3,375). Interestingly every transfer incurred a hefty fee of one hundred and eighteen Euros (€118).

The accused was also found in possession of a key that ex admissis he said pertained to Evans' actual residential apartment, that is the actual location where the drugs were found, the penthouse. He explained this fact, insisting always that as Evans' guest he was housed in a different apartment; that once in Egypt Evans had actually given him this very key as the plan then was that Delgado would arrive back in Malta before. Ultimately however, they travelled back together, yet Delgado kept possession of the key of a flat he was so adamant about having slept in only once occasion prior to the Egypt travel.

Accused on his part insisted copiously that he had known Evans to be a successful person, wealthy, an international DJ, and was so flourishing that he even owned two apartments, one of them a penthouse. He insisted he had no reason to believe otherwise, and that Evans was always surrounded or in the company of what he called good people.

He thus explained that he had no reason to know or suspect of Evans' drug operations.

### **Considers:**

It is in the light of the salient facts elucidated that the charges proffered under the Money Laundering Act must be examined.

As justly pointed out by Defence in its note of submissions, this Legislation has undergone numerous amendments. Saliently it establishes different levels of proof necessary on the part of the Prosecution and accused, in establishing the nexus between the underlying offence and the proceeds, the knowledge of such, the proof of the actual underlying offence on one part and the rebuttal on the other.

Our Money Laundering Act, though a copious piece of legislation, does not give us a concise definition of the crime under issue. It does pronounce a number of instances which would constitute this crime, its attempt or complicity.

Reference is made to Archbold 2012 where one finds that this offence is described and defined as:

*“The explanatory notes to the PCA (Proceeds of Crime Act 2002) define money laundering as “the process by which the proceeds of crime are converted into assets which appear to have legitimate origins, so that they can be retained permanently or recycled into further criminal enterprises.”* (Archbold : Criminal Pleading, Evidence and Practice, 2012, page 2475).

The Law Society Anti-money Laundering Practice Notes October 2013 (Supporting Solicitors) defines this crime as follows:

*“Money laundering is generally defined as 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. Under POCA the definition is broader and more subtle. Money laundering can arise from small profits and savings from relatively minor crimes, such as regulatory breaches, minor tax evasions or benefit fraud. A*

*deliberate attempt to obscure the ownership of illegitimate funds is not necessary.”*

Adds:

*“There are three acknowledged phases to money laundering placement, layering and integration. However, the broader definition of money laundering offences in POCA includes even passive possession of criminal property as money laundering.”* (page 9)

In examining this offence, our Courts have also established 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, for better understanding of the lay person sitting in a Trial by Jury. The Criminal Court reiterated further that thus the Prosecution need not, according to Law, prove the intention in each and one of these stages.

This short summary reflects the main points raised by the Court of Appeal in the judgment *“Police (Insp Angelo Gafa’) vs Carlos Frias Mateo”*, dated 19<sup>th</sup> January, 2012, wherein the Court is here cited to have said this:

*“Kif ben qalet tajjeb l-Ewwel Qorti diversi awturi jaqsmu l-process tal-hasil ta’ flus fit-tlett stadji imsejha “placement”, “layering” u “integration”. Dawn l-istadji gew imfissra b’mod konciz mill-Qorti tal-Magistrati. Pero` mill-bidunett ta’ min jipprecisa, li dawn l-istadji 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 jinvolve dawn it-tip*

*ta' reati. Ghalhekk il-qasma tal-process tal-hasil ta' flus f'dawn it-tlett stadji hija wahda 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 qiegħed jingħad fid-dawl ta'd-definizzjoni ta' "money laundering" li nsibu fit-tieni artikolu tal-Kap. 373 kif ukoll ir-reati kkontemplati fl-artikolu 327, 328 u 329 tal-Att tal-Parlament Ingliz "Proceeds of Crime Act 2002" fejn analizi tagħhom ma tirrikjediex li l-prosekuzzjoni tipprova li l-imputat kellu l-intenzjoni li jikkommetti "placement", "layering" u "intergration" bil-propjeta`."*

Furthermore, as justly pointed out by Defence Counsel in the note of submissions, our Courts have advised caution in dealing and assessing this case, as well explained in another judgment handed down by the Criminal Court in the case "*Republic of Malta vs John Vella*" decided on the 9<sup>th</sup> November, 2007:

*"L-Avukat Generali jista' jakkuzza persuna bir-reat ta' money laundering mingħajr ma jkollu sentenza ta' kundanna ta' dak li jkun qed jigi allegat li huwa l-attivita' kriminali sottostanti. Certament pero, ikun x'ikun il-kaz, jekk l-Avukat Generali jiddeciedi li jakkuzza lil xi hadd b'money laundering irid jindikana n-ness bejn l-attivita' kriminali sottostanti partikolari li jkun qed jallega. Mhux kull akkwist, mhux kull konverzjoni ta' trasferiment ta' proprjeta', mhux kull habi jew wiri ta'*

*proprijeta' necessarjament jammonta ghal money laundering. Din hi Ligi straordinarja li tintroduci kuncett radikali fis-sistema nostrana u li tirrikjedi applikazzjoni bl-akbar skuplu u attenzjoni biex ma tigix reza fi strument ta' ingustizzja, iktar reminixxenti taz-zminijiet tal-inkluzjoni minn dawg tal-era moderna tad-drittijiet tal-bniedem."*

Further considers, that as said our Law does not give a comprehensive definition of this crime, opting instead to delineate various instances which would constitute the crime of Money Laundering or its attempt or complicity. Section 2(1)(i) of the said Chapter defines the crime of money laundering as being constituted in any one or more of the instances as reflected in the charge sheet.

Whilst the *actus reus* of this crime should present no problems to comprehend, it is immediately obvious that the mental formal elements involved range from the actual knowledge that the proceeds laundered had a criminal provenance, to even the suspicion thereof. The Law as amended uses the words "*knowing*" or "*suspecting*". [(Section 2(1)(i)]

The element of knowledge should present no difficulties to proof in a Court of Law, knowledge is what it is. It clearly means that one has a good understanding, knowhow, command, and comprehension of a situation. The term suspicion on the other hand can present and lend itself to a myriad of difficulties and is deserving of more exploration.

Guidance is here sought by reference to Money Laundering Offences: The Law Society, Chapter 5, 2013, October Practice Notes. This extract refers to the P.O.C.A. It can help us understand the mental elements necessary under our

Legislation. To keep in mind is that our Chapter 373 speaks only of knowledge and suspicion, whereas the POCA speaks of three elements including that of “*reasonable grounds for suspicion*”, this within the limitations hereunder outlined:

*“5.3 Mental elements*

*The mental elements which are relevant to offences under [Part 7 of POCA](#) are:*

- *knowledge*
- *suspicion*
- *reasonable grounds for suspicion*

*These are the three mental elements in the actual offences, although the third one only applies to offences relating to the regulated sector. There is also the element of belief on reasonable grounds in the foreign conduct defence to the money laundering offences. A person will have a defence to a principal offence if they know or believe on reasonable grounds that the criminal conduct involved was [exempt overseas criminal conduct](#).*

*For the principal offences of money laundering the prosecution must prove that the property involved is [criminal property](#). This means that the prosecution must prove that the property was obtained through criminal conduct and that, at the time of the alleged offence, you knew or suspected that it was.*

*For the failure to disclose offences, where you are acting in the regulated sector, you must disclose if you have knowledge, suspicion or reasonable grounds for suspicion; while if you are not in the regulated sector you will only need to consider*

*making a disclosure if you have actual, subjective knowledge or suspicion.*

*These terms for the mental elements in the offences are not terms of art; they are not defined within P.O.C.A and should be given their everyday meaning. However, case law has provided some guidance on how they should be interpreted.*

### **5.3.1 Knowledge**

*Knowledge means actual knowledge. There is some suggestion that wilfully shutting one's eyes to the truth may amount to knowledge. However, the current general approach from the criminal courts is that nothing less than actual knowledge will suffice.*

### **5.3.2 Suspicion**

*The term 'suspects' is one which the court has historically avoided defining; however because of its importance in English criminal law, some general guidance has been given. In the case of Da Silva [1996] EWCA Crim 1654, which was prosecuted under the previous money laundering legislation, Longmore LJ stated:*

*'It seems to us that the essential element in the word 'suspect' and its affiliates, in this context, is that the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice.'*

*There is no requirement for the suspicion to be clear or firmly grounded on specific facts, but there must be a degree of*



*satisfaction, not necessarily amounting to belief, but at least extending beyond speculation.*

*The test for whether you hold a suspicion is a subjective one.*

*If you think a transaction is suspicious, you are not expected to know the exact nature of the criminal offence or that particular funds were definitely those arising from the crime. You may have noticed something unusual or unexpected and after making enquiries, the facts do not seem normal or make commercial sense. You do not have to have evidence that money laundering is taking place to have suspicion."*

***(P.O.C.A Proceeds of Crime Act 2002 (U.K).***

This therefore is the level that the Prosecution must reach to prove the mental element of this crime, knowledge or suspicion as here explained, beyond reasonable doubt, on the part of the offender of the illegal provenance of the proceeds.

It is obviously only after an acute examination of all the facts of the case presented to the Court, that one of these elements can be proved. Obviously knowledge transcends any suspicion.

The proof of the underlying offence is regulated by Article 2(2)(a) of Chapter 373 that reads:

*“A person may be convicted of a money laundering offence under this Act even in the absence of a judicial finding of guilt in respect of the underlying criminal activity, the existence of which may be established on the basis of circumstantial or other evidence without it being incumbent on the prosecution to prove a conviction in respect of the underlying criminal*

*activity and without it being necessary to establish precisely which underlying activity.”*

Therefore, the Prosecution are aided, to a degree, in proving the necessary crime originator of the questioned laundered proceeds by direct evidence where available, or by circumstantial evidence or any other evidence, and need not necessarily produce an actual conviction that establishes the underlying offence. Neither does the Law require them to proof with precision the nature of the crime involved. Therefore the launderer need not be knowledgeable of the precise nature of the crime whose proceeds he is helping to convert into unsuspecting clean property. Suffice that he has knowledge or a suspicion that these proceeds might have a dubious origin.

Applied to the case in question this therefore means that the Prosecution need not proof John Joseph Evans' guilt but the nature of his operations, in his instance drug trafficking or that something appeared amiss at a stage in time to the accused.

Yet another exception arises in this Chapter concerning the level of proof and or the burden thereof. This emanates from Section 3(3) of Chapter 373 which refers directly to a shift in the burden of proof found entrenched in Chapter 101 of the Laws of Malta. Thus Section 3(3) of Chapter 373 reads:

*“In proceedings for an offence of money laundering under this Act the provisions of article 22(1C)(b) of the Dangerous Drugs Ordinance shall mutatis mutandis apply.”*

Whereas Article 22(1C)(b) of Chapter 101 of the Laws of Malta reads:

*“In proceedings for an offence under paragraph (a), where the prosecution produces evidence that no reasonable explanation was given by the person charged or accused showing that such money, property or proceeds was not money, property or proceeds described in the said paragraph, the burden of showing the lawful origin of such money, property or proceeds shall lie with the person charged or accused.”*

Obviously this last quoted Section deals with proceeds of crimes dealt with under Chapter 101. This presumption is however applicable to all predicate offences and their proceeds as regulated by Chapter 373.

It therefore transpires that for a charge of money laundering to be proven successfully, the Prosecution must prove the nexus between the criminal activity and the questioned dubious proceeds, but it lies with the charged or accused, failing a reasonable explanation thereof to prove, now to a level of probability, the lawful origin of the monies in question.

In this regard, for a better understanding of the level of proof the Prosecution has to reach to establish the underlying offence and that necessitated by the accused as rebuttal of the illegal knowledge of the proceeds, the Court is once again referring to the Carlos Frias Mateo decision above cited, dated 19<sup>th</sup> January, 2012, wherein the Court said:

*“F’din il-kawza, l-appellat qed jigi akkuzat bil-ksur ta’ provvedimenti tal-Kap 373 tal-Ligijiet ta’ Malta izda dan il-Kap jagħmel referenza wkoll għall-Artiklu 21(1c)(b) tal-Kap*

*101 tal-Ligijiet ta' Malta li wkoll jitfa' l-piz li juri l-origini lecita tal-flus, propjeta jew rikavat fuq il-persuna akkuzata. Ghalhekk, dan il-livell ta' prova "prima facie" japplika kemm ghall-persuna li tkun akkuzata b'money laundering taht il-Kap 101 kif ukoll taht il-Kap 373. Issa, peress illi l-Artiklu 2(2)(a) ta' l-istess Att jezimi mir-responsabilta' l-prosekuzzjoni illi tipprova xi htija precedenti in konnessjoni ma xi attivita` kriminali, kull ma ghandha tipprova l-prosekuzzjoni huwa illi l-flus illi nstabu fil-pussess tal-persuna li kienux konformi ma l-istil ta' hajja tal-persuna, liema prova tkun tista' tigi stabbilita anke minn provi indizzjarji. Dana jfisser illi l-prosekuzzjoni m'ghandix tipprova lill-Qorti l-origini tal-flus, lanqas jekk il-flus kienu llegali. Kull ma trid tipprova huwa fuq grad ta' "prima facie" illi ma hemm l-ebda spjegazzjoni logika u plawsibbli dwar l-origini ta' dawk il-flus. Darba ssir din il-prova fil-grad imsemmi, jkun imiss lill-akkuzat sabiex juri illi l-origini tal-flus ma kienx illegali.*

*Forsi f'dan l-istadju ikun opportun illi jigi kwalifikat il-prova "prima facie" u fiex din tikkonsisti.*

*Ikkunsidrat :*

*Hu ben saput illi l-Qrati generalment jirrikonoxxu erba' tipi ta' prova, dak li huwa possibli, l-probabbli, minghar dubju dettat mir-raguni u c-certezza. Izda l-prova "prima facie" hija wzata mill-Magistrat Inkwirenti meta jirredici l-Process Verbal u l-Magistrat Istruttur fl-gheluq tal-Kumpilazzjoni. Fl-opinjoni tal-Qorti din hija livell ta' prova illi tidhol bejn il-possibli u l-probabbli.*

*L-awtur Blackstone (At D 6.21) jghid fost affarijiet ohra, "Thus, the standard of proof the prosecution are now*

*required to satisfy at committal proceedings is very low, lower than that resting on a plaintiff in civil proceedings. It is commonly expressed as establishing a prima facie case or a case to answer.” Il-probabbli huwa l-livell uzat f’proceduri civili. Ghalhekk skond dan l-awtur “prima facie” huwa anqas minn hekk u jista’ jigi definit bhala “a case to answer”, haga li ghandha tigi nvestigata aktar fil-fond.*

*Fil-kuntest tal-provi illi l-proskuzzjoni gabet f’dan il-kaz, intlahaq dan il-livell ta’ “prima facie”? Kien hemm “a case to answer”?”*

Further considers:

First and foremost the Court is of the opinion that the first issue to be tackled is one raised by the Defence in its note of submissions regarding the charges proffered claiming uncertainty on the part of the Prosecution, having directed at the accused all the content of Section 2(2) of the Money Laundering Act. True enough, Prosecution chose to debit the accused with the burden of all the criminal instances found in the said Section. Obviously he cannot be guilty of all, but one does not necessarily exclude the other. Obviously these are alternate charges, this being more evident and obvious in as far as the alleged complicity or attempted charges are proffered. One must also remember that at a later stage in the proceedings, Attorney General, exercising his discretion under Chapter 373, sent this case for a summary judgement, therefore inviting this Court to examine the facts against the requisites of Section 2(2) of the said Chapter.

Yet another issue considered by Defence in its submissions is the inadmissibility of John Joseph Evans' statement. It is

argued that the lack of this evidence in the records of the case, weakened considerably the argument and strength of evidence rendered by the Prosecution to sustain the charges. Defence submitted that no evidence in the absence of the sworn statement of Evans was presented by the Prosecution to prove beyond reasonable doubt Evans' illegal operations. Therefore, no evidence of any underlying offence results according to the Defence. Note however must be made of the following points as elucidated: that Prosecution established to the degree required at Law that Evans had lived in Malta for a considerable period of time in different locations, hotels and rentals, and was at the moment of his arrest renting two apartments in St Julian's, one of which a penthouse to the tune of over two thousand Euros (€1,000) monthly; that he had throughout his stay in our Islands transferred a considerable amount of money, frequently to Latin America in particular; that drugs, a considerable amount thereof, were found in his apartment - this as so strongly stressed and emphasised by the same accused and Defence; that according to what resulted regarding his places of abode and that attested by the accused, he had a wealthy standard of living; that Evans had, according to the accused, asked him to transfer monies abroad to persons indicated by him, an exercise he could have simply done himself; that accused did in fact on such request and direction transfer monies as so directed; that accused also evidenced that during the transfers he effected in Evans' name, he was always accompanied inside the agency by the same Evans or that Evans opted to wait outside for him in the car. All these factors taken into consideration with the presence of a substantial amount of drugs rebut completely Defence's argument.

It is the firm opinion of this Court, examining the above established facts, that these all point out clearly and flagrantly to shady operations and wrongdoings on the part of Evans, persuading the Court that the underlying offence was indeed drug related on Evans' part. It thus remains now incumbent on the accused to prove the lawful origins of the suspected proceeds, always to a level of probability. The Law here requires that he provides a reasonable explanation in rebuttal.

Accused brought forward his defence by giving evidence viva voce and exhibiting a set of documents purporting to illustrate the nature of his work and referencing to his good character. Initially the documents presented were photocopies drawn up in the Spanish language, later most originals were exhibited, and translated purportedly by a competent authority. They were as it appears from the same documents, notarised and show the seal of the Republic of Panama as represented by the Ministry of Interior and Justice. Prosecution justly in its note pointed out, as also the Court during the actual evidence of the accused, that documents so exhibited either by the accused himself or by a note entered in the records of the case, were inadmissible due to the lack of procedure followed in their obtainment. Accused however insisted that their presentation in the records of the case gave him a degree of comfort.

The Prosecution was indeed very correct when in its note it emphasised Articles 627, 628, 629 and 630 of The Code of Organisation and Civil Procedure, sections of the Law that clearly and imperatively indicate and establish the rules how documents or any acts of any foreign Government are to be presented in a Court of Law, so as to be considered as admissible evidence. The authentication by a Diplomatic or

Consular representative of the Government of Malta in the country from which the documents emanate, is entrusted *ex lege* with this task and determines their validity. This applies also to all notarial acts and registers. This procedure is certainly not unknown to much learned Defence Counsel. The above-cited Sections of Chapter 12 are rendered applicable to the Courts of Criminal Justice Code by virtue of Section 520 (1) of the Criminal Code.

Another available option to the accused, and one frequently referred to, is gathering of evidence by the procedure of Letters Rogatory contemplated under Article 399 of the Criminal Code, actually a commonly used procedure in the cases pending in front of this Court as presently presided, due to many foreign nationals being there accused, thus frequently resulting in evidence found in foreign countries, the crimes of drug trafficking and money laundering being what they are of cross border/cross country in nature.

The accused, might it be pointed out, had ample time to require and adopt any one of these suggested procedures or both, if it comes to it. Nothing precluded him to so proceed. Accused knew as from day one the evidence that had been accrued by the police even in regards to Mr Evans, a co-accused for a considerable length of time of the proceedings, because the case was in fact proceeding against both simultaneously, before the actual late separation of judgement.

Accused did offer an explanation as to why he transferred so much monies abroad frequently. He in fact testified that he effected sales of goods abroad, mainly in Latin America, the Caribbean and of recent accessing the European market



through Spain and Germany, and since some of his clients preferred cash payments, he would, in order to avoid customs intervention and related problems or even actual loss of the said monies gathered as payment, effect its transfer to third parties amongst whom he mentioned his girlfriend, a certain Lian Chong, his brother and a couple of other so-called trusted friends.

It was according to the accused this mode of operation regarding his work known therefore to his friend Evans, that induced the latter to insist that he favours him by affecting the questioned money transfers. Accused admitted to not being threatened by Evans but pressured through his insistence. He believed Evans to be rich, wealthy, to be a successful DJ. Yet, as well pointed out by the Prosecution, he did feel that as he had already sent a lot of money abroad on behalf of Evans, he might get himself into trouble. He did in a short span of a little over a month transfer a considerable amount on behalf of Evans, as already pointed out when examining the Fexserv and Western Union transactions exhibited (Dok RA compiled by Inspector Aqulina and the compodium of assets attest to this).

The Court, in assessing this evidence here and at this stage, questions, why did accused himself not question such transfers? Nothing impeded Evans from affecting the transfers himself as he had affected many frequently, previously. Another perplexity arising from the evidence adduced is to the tune that if accused was still transferring monies legally obtained through his work to his girlfriend Lian Chong and his brother, why were receipts of such transfers as already pointed out found also in Evans' possession, or why did Evans himself seemingly transfer funds to a Delgado purportedly

accused's brother? Wasn't Evans then extraneous to such transfers? Why would Evans keep in his possession and apartment transfers affected by Delgado to his much trusted girlfriend?

Accused also explained that this last trip over to Europe was intended only to gather the balance of payments due from his clients of sales previously affected. He evidenced that receipts were in fact issued on such payments. The Court here asks, where are these receipts, considering he testified that he had entered Malta with over thirty thousand Euros (€30,000) received in payments? Why not produce them in evidence to clearly show the actual nature of his work considering he testified that he was quite successful in his business and earned good monies from the commissions arising from his sales? These sales were, one can reasonably conclude, frequent in nature, ergo the vouched success professed by accused. He in fact explained the absence of his sample luggage with which he travelled when trying to capture and entice clients, arguing he had no need for such burden as the purpose of his last trip was to collect monies. The absence of the receipt book finds however no reasonable explanation. Another perplexity arising from what the accused testified is that though purporting to be successful in his work and earning good monies there from, considering his commissions, he felt the need to borrow money from Evans once in Spain. Money that once again he received via yet another money transfer, this time from a local Maltese girl whom he describes now as Evans' friend, explaining that this girl had in fact sent money to Evans that was then lent to him. Strange that such a wealthy person as he thought Evans to be, had to recourse to borrowing money to help a friend!

Another issue that does not add up when considering the reasons forwarded by the accused is the issue of the key. Mr Delgado explained in his evidence that he was in possession of the key identical to the one held by Evans because Evans himself gave it to him, this in Egypt, planning then to return in two different dates. This explanation really finds no viability with the Court, if it is to believe the version of the accused that he was extraneous to Evans' apartment. So why, would one logically ask, did he need or was he given its key when he always insisted with the Court he resided elsewhere? One has to remember that this very same key in contention is the one that actually opened the Hollies block, this housing the penthouse where the drugs were found. Why also, seemingly in unison, when questioned separately, did both accused and Evans provide the same lie that the key in question related to Evans' apartment in the States? Why indeed!

Another perplexity that irked the Court arising from Delgado's testimony, is who bore the fees of all these multitude of transfers, a hefty one hundred and eighteen Euros (€118) every time? His boss? The client? Himself? Surely not a very intelligent *modus operandi* if it purports to be above board!.

In conclusion, the Court here has to consider, premised the above deliberations, that at Law therefore, the Prosecution had to proof that no reasonable explanation was presented by the accused regarding the nature of the monies. It follows that in his defence accused can provide a reasonable explanation showing to the level of probability, his lack of knowledge or suspicion with regards to the nature of the proceeds.

Accused, as delineated above, did give an explanation as to his habitual transfers of monies. He testified to this *viva voce*, then only presented the Court with documents that are for reasons premised inadmissible. According to this Court however, the explanation given lacked the credibility of lack of knowledge and more still of suspicion. The accused, as any other reasonable man, moreover one by his own admission successful in the world of trade and commerce, must have asked all the questions raised by this Court, he himself admitted to wanting to stop the transfers for fear of, to quote him "...*getting into trouble.*" (folio 583). He testified in this context that though he was not threatened by Evans, he was pushing him to help him. It is humanely impossible to believe that a university graduate involved regularly in international money transfers, was devoid of any knowledge or a suspicion that something was strongly amiss in Evans' request.

Premised all the above, the Court does consider accused guilty as charged after having seen Articles 22(1C)(b) of Chapter 101; Articles 2(1) (b), 2(1), 2(a), 2(c), 2(A)(a)(ii), 3(3) of Chapter 373 of the Laws of Malta; and the Second Schedule thereof.

Considers, with regards to the correct penalty to be proffered, that it seems, as Defence Counsel has repeatedly stated in his note of submissions, mirrored this by the note entered by the Commissioner of Police, that the sum here in contention is that of circa eighteen thousand Euros (€18,000), this obviously being the monies transferred on Evans' behalf. In its final submissions Defence Counsel stressed that this amount, should the Court find guilt, be taken into consideration when the penalty is inflicted.

Further considers that in actual fact this Court has no other involvement of the accused proven but that limited to the transfers mentioned; his conviction sheet is also pristine.

Therefore condemns him to the term of effective imprisonment for a period of three (3) years and for the fine of twenty-thousand Euros (€20,000).

Seen Article 533 Chapter 9, and condemns him to the payment of the sum of one thousand nine hundred and ninety-two Euros and eighty-nine cents (€1,992.89) incurred as legal expenses.

Orders also the forfeiture of all monies found on the person of the accused.

**< Final Judgement >**

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