

INDICTMENT

The quarterly
Newsletter for
Investigators and
Prosecutors Serious
about Crime

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The United States Department of State released their 2014 International Control Strategy Report with the significant news that drug convictions in the Eastern Caribbean in 2013 were up by 21% from 2012 see: <http://www.state.gov/j/inl/rls/nrcrpt/2014/vol1/222883.htm>

This increase is due to the dedication of the Coast Guard, Customs and the Police who have interdicted more cocaine and cannabis in 2013 (cocaine seizures increased more than 400% from 2012). Another factor is improving case preparation, through better co-ordination, between investigators and prosecutors. Importantly new legislation, notably cash seizure provisions and the use of video recording of interviews, are being applied. All of

this contributes to the resulting increase in convictions.

This first quarter of 2014 has seen new legislative amendments, launch of a Prison Video Link, new publications to assist the fight against organised crime, issuance of Practice Directions and an important Judgment from the Privy Council on the role of the DPP. It is hoped these will lead to even more successful judicial outcomes and we report on these developments to assist with that aim!

We also include our regular features: *Stop the Press* and *Legal News from the Region*.

Also, as we approach the World Cup in Brazil, Mr Belmarsh recounts a football coverup that led to the fall from grace of a contender!

As always please follow for regular regional updates at: <https://twitter.com/IndictmentEC>



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Sejilla Mc Dowall

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THE POWER TO REQUEST

The Privy Council delivered its Judgment in the Commissioner of Police and another v Steadroy C.O. Benjamin [2014] UKPC 8 on 16th April 2014. In this article we consider the affect on the working relationship between the police and the DPP in the region.

The facts of this matter relate to the issuance of an Antigua and Barbuda passport in the name of Tyrel Dusty Brann found in the possession of Jamaican national, Shane Allen, with a photograph of the likeness of Allen. The police started an investigation and upon review of the application form for the passport, discovered that Mr Steadroy Benjamin had countersigned that the photograph was a true likeness of Brann, who he declared he had known for two years. However Mr Brann had died several months previously.

Mr Benjamin provided a statement to the police, believing that this would be used in a prosecution against those who applied for the passport. In this statement Mr Benjamin explained that he had countersigned the application believing that his statements were true.

The Police were going to charge Mr Benjamin with an offence contrary to the Forgery Act, when the DPP became aware of this decision. The DPP reviewed the Police file and resolved that guilt couldn't be established and instructed that Mr Benjamin shouldn't be charged. The Police aware of this instruction, continued to lay a complaint and a summons was issued against Mr Benjamin.

Mr Benjamin filed an application for leave to apply for judicial review of the Police Commissioner's decision to lay complaints against him. This was on the basis that the Commissioner's decision was unlawful considering the DPP's instruction. Harris J in the High Court ruled that the DPP didn't have the power to prevent the Police from laying complaints.

The Court of Appeal reversed this decision and held that the DPP was able to guide the Police on whether to institute proceedings by way of charge.

In summary the Court of Appeal held (see page 2 of Judgment HCVAP 2009/023):

"When one considers the full amplitude of the powers conferred upon the Director of Public Prosecutions, it would take an overly austere reading of the Constitution to hold notwithstanding the power to discontinue proceedings brought by police, the Director of Public Prosecutions lacks the power -



a power which arises by necessary implication - to instruct the police not to institute criminal proceedings against an individual. The nature of a constitution requires that a broad, generous and purposive approach be adopted to ensure that its interpretation effects the deeper inspiration and aspiration of the basic concepts on which it is founded. A construction of the Constitution which leads to the police disregarding instructions of the Director of Public Prosecutions not to prosecute by relying on the power to institute proceedings under the Police Act would be narrow, ungenerous and not purposive."

Therefore the question for the Privy Council was: Does the DPP have a general power to prevent the police from instituting criminal proceedings?

The Board, following the minority decision of the then Pereira J.A. in the Court of Appeal, answered negatively and found difficulty with the majority decision that a DPP has the power to prevent the Police from instituting proceedings as implicit in his power under the Constitution to discontinue proceedings. The Board, reconciled that as persons and authorities other than the Police can institute proceedings, such as Inland Revenue or the Immigration Department and there is no power to prevent them issuing proceedings, logically the power to prevent cannot be derived from the power to discontinue (paragraph 26)

However, Lord Wilson who delivered the Judgment on behalf of the Board, held that (paragraph 33):

"The Board's conclusion does not disable it from stressing the importance of a good, mutually respectful, working relationship between the police and the Director. Unresolved conflict between them of the sort exemplified in this appeal damages public confidence in the administration of justice. The Director can generally be expected to have a wider perception than the police of whether, for example, a proposed prosecution is in the public interest. The Director cannot instruct but he can request. The police would be wise to tread with care before deciding to reject a request by the Director not to institute proceedings."

The issue remains, that whilst the DPP occupies a paramount position according to the Constitutions of the region, will the Police will follow any such "request"?

Continued on page 4

THE POWER TO REQUEST

The police would be wise to tread with care before deciding to reject a request by the Director

Paragraph 33 from the Judgment refers to an example of applying the public interest test. What about consideration of the evidence for those most serious of offences so there is a robust prosecution case? Where evidence is complex will the Police be best placed to decide charges? In cases involving a well known public figure, is the DPP best placed to advise on charge due to his independence?

The answer to the consideration of evidential issues must be that the Police and DPP work together as a “*Prosecution Team*” applying objective and coherent policies, such as the Code for Prosecutors (or Guide in Antigua and Barbuda), on the most serious, complex and notorious matters. There should be a “*cradle to grave*” approach from investigation to prosecution, to confiscation of assets. Then any future damage to public confidence in the administration of justice will be significantly reduced.

It would seem sensible that both the Police and the DPP work consistently and know how their respective decisions are made applying the Code. This will then prevent conflicts, as each know why they are making their respective decisions or requests, using a benchmark test.

This is the exact purpose of the Code for Prosecutors. Making a decision applying the two stage evidential and

public interest stages, (known as the “*Full Code Test*”) means the DPP and the public would know that a decision has been made using objective principles. Conversely, if the Police can’t justify a decision, but they still intend to continue to charge, then following the principles in paragraph 33 of the Board’s Judgment and the Code, the DPP would be well within his or her rights to request that the person isn’t charged.

However will a DPP’s request be followed, if before charging, further evidence is needed to satisfy the DPP that there is a reasonable prospect of conviction as stipulated in the Evidential Stage of the Full Code Test? The Board’s Judgment makes it clear that the Police would be wise to follow the request from the DPP, who would have a “*wider perception*” of public interest issues. In appropriate matters this should also extend to evidential issues, which are complex, sophisticated and involve difficult questions of law. As the Codes of the region state in the DPP’s introduction:

The Director cannot instruct but he can request

“Great care must always be taken by those who decide these issues, always remembering that wrong decisions may destroy lives and undermine confidence in the criminal justice system as a whole. A decision to prosecute should only be taken after the evidence and the surrounding circumstances have been fully considered.”

CODE FOR PROSECUTORS	ANTIGUA AND BARBUDA	DOMINICA	GRENADA	ST KITTS AND NEVIS	ST LUCIA	ST VINCENT AND THE GRENADINES
The Code has a two stage test: Evidential and Public Interest as detailed in all the following Codes in the region	Launched on 1st January 2013	Draft approved for use as of 1st January 2012	Launched on 1st January 2013	Launched on 21st March 2012	Code of Conduct for Crown Counsel – 2nd Edition launched on 29th September 2011	Launched on 16th August 2011

PAYING FOR OUR SECURITY

By Nicola Suter

Today the Eastern Caribbean, in common with all other countries in the world, faces mounting costs of resourcing, training and improving the efficiency of their criminal justice agencies to maintain a high level of citizen and border security.

The threat from drug trafficking, and all associated crimes, continues to be particularly pernicious in this region. One of the most important means of combatting transnational criminal organizations (TCO) is by seizing their illicit wealth, which we know many TCO members fear more than jail time. Combatting this sort of serious crime takes dedication, innovation and money.

In times of global austerity, meeting these costs is hard. Assistance from international partners can never guarantee that these vital agencies have the capacity to do their job effectively in the future.

There is a way to help meet these costs, while combatting serious crime at the same time. Using recovered proceeds of crime to resource your criminal justice agencies is not only possible (it is already being done in many jurisdictions around the world) but it is vital, especially in developing economies. To be sure, the primary reason for asset seizure, whether civil or criminal, is to combat transnational organized crime. Still, channelling those illicit proceeds back to reinforce law enforcement, prosecutors, victim restitution, and drug abuse prevention and treatment are important ancillary benefits that can provide Eastern Caribbean governments with the means to assure the integrity of their borders and the security of their citizens.

The Eastern Caribbean is steadily strengthening its proceeds of crime legislation. Civil recovery powers have now been introduced in three jurisdictions in the Eastern Caribbean in the last year. **Dominica Proceeds of Crime (Amendment Act 2013)**, **Saint Vincent and the Grenadines (Proceeds of Crime Act 2013)** and **Antigua and Barbuda Proceeds of Crime (Amendment) Act 2014**.

All the island States of the Eastern Caribbean have had legislation to allow for post-conviction confiscation for at least a decade.

Many jurisdictions in the region have funds in place designed to receive the proceeds of confiscation and/or forfeiture orders. These funds can be used to resource certain criminal justice agencies. Some jurisdictions have recently introduced an even more structured type of asset sharing to ensure that any money recovered pursuant to a confiscation, recovery or forfeiture order is plowed back into the criminal justice system, in predetermined percentages, to supplement the amount paid to criminal justice agencies under the national budget.

The **Dominica Proceeds of Crime (Amendment) Act 2013** contains provisions that provide for all money recovered pursuant to a confiscation, recovery or forfeiture order to be placed into the Asset Forfeiture Fund. This Fund must be used exclusively to supplement resources allocated to criminal justice agencies and drug rehabilitation

and education programmes, with a maximum of ten percent going to the Consolidated Fund.

Similarly, the **Saint Vincent and the Grenadines Proceeds of Crime Act 2013**, contains new provisions relating to the Confiscated Asset Fund. That Fund (which already existed under the previous Act) now operates in such a way that all proceeds of a confiscation, forfeiture or civil recovery order (after certain priority payments such as compensation or amounts owing to foreign jurisdictions pursuant to asset sharing agreements) will be paid, according to predetermined percentages, and in addition to amounts allocated under the budget, to the Coast Guard, Customs, Regional Security Service, Police, Financial Intelligence Unit, National Prosecution Service, Chambers of the Attorney General, Court and drugs education and awareness programmes.

These are certainly positive steps for this region. It now remains for the proceeds of crime to be finally recovered and the proceeds placed into the funds. Freezing, restraining or seizing assets is an interim measure and does not transfer the ownership of the assets. Despite the time post-conviction legislation has existed in this region, only two confiscation orders have been made. No money has been recovered pursuant to these orders.

To be successful in stripping criminals of their ill-gotten gains and using these illicit assets to better resource our crime fighting agencies, this region must view post-conviction confiscation and pre-conviction civil recovery as a top priority. It should be a routine part of every case. In the case of civil recovery, it is not even necessary to achieve a conviction to recover assets, provided that the High Court is satisfied that they have been obtained through unlawful conduct.

The **UNODC** estimates that in 2009, \$2.1 trillion in crime proceeds were generated globally. Countries in the Caribbean were the most important destination for laundering cocaine trafficking-related income, with annual net inflows of around \$6 billion, according to a 2011 **UNODC** research report estimating illicit financial flows - transnational organised crimes. Confiscation or civil recovery of even 1% of this amount could make a huge difference to the security and stability of this region.

The small island states of the Eastern Caribbean are working hard to introduce robust proceeds of crime and structured asset sharing legislation. They have the tools at their disposal to make a huge difference in this region. **Now is the time to use them to their full effect.**

Nicola Suter is the Financial Crimes Advisor to the US Embassy and consults on implementation of civil recovery in the region.

INVESTIGATION ANONYMITY: PROTECTING WITNESSES IN GRENADA

In March, Parliament in Grenada passed the Protection of Witnesses Act 2014. This is the first Act of its type in the region that also allows for protection of those assisting inquiries through investigation anonymity. Here is a short summary:

Applications for witness anonymity can be made pretrial under sections 4 to 10 of the Protection of Witnesses Act 2014 in Grenada. The orders known as investigation anonymity orders can be requested at the very start of an investigation thus providing early certainty to people, who may have relevant information, that their identities will not be disclosed.

Investigation anonymity orders are only available in limited circumstances, which are:

(a) That a qualifying offence, defined in section 4 as an offence where the maximum penalty is ten years or more imprisonment, has been committed;

(b) That the person to be anonymised can provide information and more likely than not, will provide that information for a criminal investigation into the qualifying offence;

(c) That the person to be anonymised has reasonable grounds to fear intimidation or harm if they were identified as assisting the investigation;

(d) That the person likely to have committed the offence is aged over 18 and a member of a group engaging in criminal activity where the majority of its members are at least 18 years old

Applications can be made to a Magistrate by the Commissioner of Police or the DPP and can be considered on the papers rather than at a hearing.

A precedent application form is provided in Annex Z7 of the Guide to Investigation and Prosecution of Serious Organised Crime, Fifth Edition and replicated on page 7 - please note this has more detail than the form (1) prescribed in the Act.

If the application is refused by a Magistrate, an appeal can be made to the High Court. An appeal can only be made if an indication is given in the application that an appeal will be made or at the hearing of the application before the Magistrate. When such notice is provided, the Magistrate will grant an Investigation Anonymity Order pending the High Court appeal.

The granting of an investigation anonymity order does not guarantee that anonymity will be granted at the trial. A separate application has to be made for a trial anonymity order under Part 3 of the Protection of Witnesses Act 2014

GRENADA: PROTECTION OF WITNESSES ACT 2014	INVESTIGATION ANONYMITY	WITNESS ANONYMITY	SPECIAL MEASURES	VIDEO LINK FOR WITNESS OUT OF STATE
	<p>Section 4: Qualifying Offence Section 5: Qualifying Criminal Investigations Section 7: Application Section 8: Conditions for making Order Section 9: Appeal against Refusal to Make an Order Section 10: Discharge of Order Application at Form 1 (see page 7 below)</p>	<p>Section 11: Abolition of Common Law Rules Section 13: Application Section 14: Conditions for making Order Section 15: Relevant Considerations Section 16: Discharge or Variation Order Section 17: Privacy as to Address Application at Form 4 (see Page 8 below)</p>	<p>Section 23: Live Link Section 24: Evidence in Private Section 25: Video Recorded Evidence Section 26: Video Recorded Cross Examination Section 27: Examination through an Intermediary Section 28: Aids to Communication Application at Form 7 (see pages 9-11 below)</p>	<p>Section 34 Application at Form 9 (see page 12)</p>

Application for an investigation anonymity order

IN THE

[NAME OF COURT]

[DPP or Chief of Police]

Applicant

(1) Application is made that there are reasonable grounds for believing that the following conditions are met.

(a) That the following qualifying offence has been committed:

- ☐ murder;
- ☐ attempted murder;
- ☐ manslaughter;
- ☐ robbery;
- ☐ attempted robbery;
- ☐ rape
- ☐ attempted rape

(b) That the person who would be specified in the order has reasonable grounds for -

- ☐ fearing intimidation or harm if identified as a person who is or was able or willing to assist the criminal investigation as it relates to the qualifying offence – PLEASE DETAIL

(c) That the person who would be specified in the order –

- ☐ is able to provide information that would assist the criminal investigation as it relates to the qualifying offence – PLEASE DETAIL; and
- ☐ is more likely than not, as a consequence of the making of the order, to provide such information;

(d) That the person likely to have committed the qualifying offence is –

- ☐ a person who was at least 18 years of age at the time the offence was committed;

(e) That the person likely to have committed the qualifying offence is likely to have been –

- ☐ a member of a group falling within section 8 (3) at the time the offence was committed.

(f) If the Application is refused an appeal will be made to the High Court

- ☐ Yes
- ☐ No

An investigation anonymity order is applied for.

[Signed]

Applicant

Application for witness anonymity order

[Form 4 of Protection of Witnesses Act 2014]

IN THE [NAME OF COURT]

[name]

Applicant

v

[name]

Defendant

Application is made that a witness anonymity order is necessary for the measures below (check boxes as appropriate) to be used –

- ☐ Name and other identifying details of the witness are withheld and removed from materials disclosed to any party to the proceedings
- ☐ Witness use a pseudonym
- ☐ Witness is not asked questions of [specify description of questions] that might lead to the identification of the witness
- ☐ Witness is screened to [specify extent]
- ☐ Voice of the witness is subject to modulation to [specify extent]

in order to protect the safety of the witness [name of witness] or [name of another person] or to prevent any serious damage to property or to prevent real harm to the public interest, whether affecting the carrying on of any activities in the public interest or the safety of a person involved in carrying on such activities, or otherwise;

and

having regard to all the circumstances, the taking of the measures above would be consistent with the defendant receiving a fair trial;

and

it is necessary to make the order in the interests of justice by reason of the fact that it appears to the court that it is important that the witness should testify and the witness would not testify if the order was not made.

A witness anonymity order is applied for.

[Signed]

Complainant.

Taken and sworn this day of , 20

Application for a Special Measures Direction

[Form 7 of Protection of Witnesses Act 2014]

IN THE

[NAME OF COURT]

[name]

Applicant.

v

[name]

Defendant

Application is made that the witness [name of witness and date of birth] is eligible for assistance because of fear or distress, [give details and explain why the quality of the evidence for the witness is likely to be diminished because of that].

Explain why special measures would be likely to improve the quality of the evidence of the witness.

Which measure(s) would be likely to maximize so far as practicable the quality of the evidence of the witness? (check boxes as appropriate)

Evidence by live link ☐

Evidence in private ☐

Video recorded evidence ☐

Video recorded cross-examination or re-examination ☐

Intermediary ☐

Aids to communication ☐

Evidence by live link (complete if special measures direction is for evidence by live link)

Do you want the witness to give evidence:

Using the court's own live link? ☐ or

From somewhere else? ☐

Tick which you propose.

Explain why you want the witness to give evidence from somewhere else. Give the address from which you propose the witness should give evidence, unless you want the court to direct that the address need not be revealed.

Who do you propose should accompany the witness while he or she gives evidence? Give that person's name, if known, and relationship to the witness (if any).

Why would that person be an appropriate companion for the witness ? (Include the witness' own views)

Evidence in private (complete if special measures direction is for evidence in private)

Explain on what grounds you want the witness to give evidence in private.

Video recorded interview as evidence in chief (complete if special measures direction is for video recorded interview as evidence in chief)

When was the interview ? (date)

Was the interview conducted through an intermediary ?

☐ No

☐ Yes If yes, complete

Was any aid to communication used in conducting the interview ?

☐ No

☐ Yes If yes, give details.

How long is the full version of the recording ? (hours/minutes)

Has an edited version been prepared for use in evidence ?

☐ No

☐ Yes

When did you serve:

(a) the full version? (date)

(b) the edited version (if any)? (date)

Do you want the court's permission for the witness to give evidence in chief otherwise than by means of the recording ?

☐ No

☐ Yes

If yes, explain why.

Intermediary (complete if special measures direction is for intermediary)

Describe the witness' communication needs, and the proposed arrangements for questioning the witness. Attach any relevant report, including an intermediary's assessment if available. 'Ground rules' for questioning must be discussed between the court, the advocates and the intermediary before the witness gives evidence, to establish (a) how questions should be put to help the witness understand them, and (b) how the proposed intermediary will alert the court if the witness has not understood, or needs a break.

Give the proposed intermediary's (a) name and (b) (if relevant) occupation, skills and professional qualifications.

Is the intermediary known, or related, to the witness?

☐ No

☐ Yes

If yes, give details.

Has the intermediary been used in any other part of the investigation or pre-trial preparation?

☐ No

☐ Yes

If yes, give details.

Where a video recorded interview was conducted through an intermediary:

(a) was that intermediary the person named above? ☐ No ☐ Yes

(b) did that intermediary make a declaration? ☐ No ☐ Yes

Aids to communication (complete if special measures direction is for aids to communication)

What device is proposed as a communication aid?

Might the use of this device affect the conduct of the trial ?

☐ No

☐ Yes If yes, give details.

A special measures direction is applied for.

Dated this day of , 20

[Signed]
Prosecutor or Defendant/
Defendant's [attorney-at-law]

Application to use Live Link for a Witness out of State

[Form 9 of Protection of Witnesses Act 2014]

IN THE
[NAME OF COURT]

[name]
Applicant

v

[name]
Defendant

Application is made that the witness [name of witness and date of birth] is eligible to give evidence via the live link because they are out of State, [give details and explain why out of State].

Explain why you want it is expedient for the witness to give evidence via the live link rather than giving evidence in State

Give the address from which you propose the witness should give evidence, unless you want the court to direct that the address need not be revealed.

[Signed]
*DPP or Defendant/
Defendant's [attorney-at-law]*

PROVING THE POINT!

Saint Vincent and the Grenadines lead the way again with the launch of their new publication: Points to Prove.

This new publication, now a standard issue to police and to the training school will help officers to:

1. Know all the points to prove when taking a witness or victim statement;
2. Best practice for identification parades;
3. Know all the points to prove when interviewing a suspect;
4. Know powers of arrest;
5. Know powers of search; and
6. Asset recovery powers

The “Points to Prove” P2P Booklet was made available through a collaboration between the Office of the Director of Public Prosecutions (DPP), the Royal Saint Vincent and the Grenadines Police Force, the British High Commission in Barbados and the US Embassy to Barbados and the Eastern Caribbean.

The Director of Public Prosecutions, Colin Williams handed over the document to Commissioner of Police, Michael

Charles during a Media event at the Police Headquarters in Kingstown.

Some 1000 copies were printed and published in Barbados after three months of compilation by the National Prosecution Service, from June to September 2013.

DPP Colin Williams said the “Points to Prove” will be a good reference guide for Police Officers as over 30 offences are covered in the document, including newer offences such as money laundering and human trafficking.

He said the document represents a collaborative effort between investigators and prosecutors and is an important step forward in positively enhancing the criminal justice system.

Meanwhile, Point Person for the Booklet within the Office of the DPP, Crown Counsel Tammika McKenzie said her experiences from several courts here, have showed that all elements of an offence were often not properly identified during criminal investigations. She added that the idea is that each Police Officer can have the booklet as a reference point.

(Source: NBC SVG 6th March 2014)

You can view the Points to Prove within the Guide to Investigation and Prosecution of Serious Organised Crime, Fifth Edition.



The Launch of the P2P

Top: Tammika Mc Kenzie, the author of the Saint Vincent and the Grenadines P2P with Commissioner Charles

Middle: The new P2P

Bottom: Colin Williams (Right - DPP) and Colin John (Left - Assistant DPP) at the media launch

A SURVIVOR'S STORY

FACT:

1 IN 3 WOMAN WILL

SUFFER DOMESTIC

VIOLENCE IN THE

CARIBBEAN

FACT:

WE NEED TO END THE

SILENCE ON DOMESTIC

VIOLENCE.

This short film produced by the British High Commission and US Embassy hears from a survivor of domestic violence.

The film is not only about suffering but also hope that we can come together to speak out against Domestic Violence

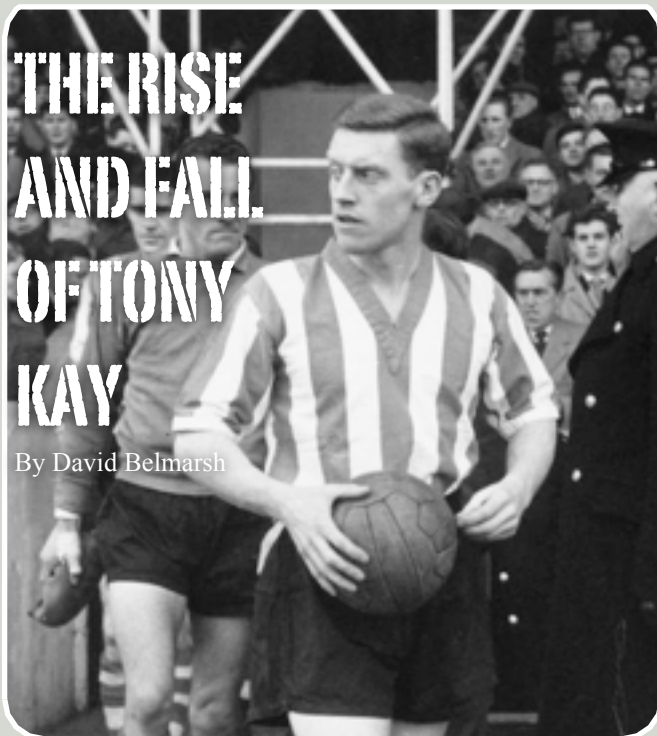
The film is now available on YouTube at: <http://youtu.be/HM35vjPdgb4>



The Film

Stills from the film (above) with Lisa-Marie, the "Survivor" speaking out (left)





Betting scandals are currently the cause of great concern throughout world football, but this is far from being a new phenomenon in the sport.

Tony Kay will forever be remembered as the footballer who threw away the chance to play in a World Cup Final for £100.

In 1963 he helped Everton to their first League Championship win in nearly a quarter of a century and he also won what was expected to be the first of many full England caps in an 8-1 win over Switzerland.

In August of that same year the combative red-haired midfielder embarked on his first full season with the Merseyside club and having settled in so well to his new surroundings manager Harry Catterick further rewarded his club's inspirational new star by appointing him as team captain. At the age of 27 he was at the very peak of his powers.

Then in April 1964, Kay's world imploded - and his past caught up with him.

On December 1, 1962, his previous club Sheffield Wednesday travelled to Ipswich for a routine First Division league match. Wednesday, at this particular time, were in the midst of a run during which they were destined to go fully nine matches without a win. Kay claims that he was approached by team-mate David "Bronco" Layne at some point and

encouraged to place a £50 bet on his own team to lose the match at Portman Road by two goals to nil. Kay, Layne and Peter Swan – an established England international and a member of his country's World Cup squad in the 1962 finals in Chile – were all involved in the plot. Ipswich duly won the match 2-0 and the three picked up a tidy £100 profit each.

On 22 December, Wednesday travelled to Goodison Park and drew 2-2 with Everton. Five days after that "Toffees" boss Harry Catterick, who had managed Kay at Wednesday, paid a British record fee of £55,000 for a wing-half to bring him to Merseyside. Kay, who had played just over 200 games for the "Owls" had not requested a transfer and was therefore entitled to a percentage of the fee. With the maximum wage now abolished he would also have received a hike in both wages and bonus payments on joining the "Bank of England" club, as the hugely ambitious Everton was dubbed in those days.

The signing of Kay proved to be the icing on the cake as Everton literally skated to the title in what became the most protracted season ever, after the worst winter in living memory had caused havoc with the fixture list. The following season they competed as England's representatives in the prestigious European Cup, unluckily going out to eventual winners Internazionale Milan after two close-fought tactical battles. Over the 180 minutes of attrition, only a solitary goal from Brazilian star Jair separated the teams.

By this time Kay had pulled on an England jersey and scored his first goal for his country.

England were due to take part in the "Little World Cup" in the summer of 1964 with games in South America against Brazil, Portugal and Argentina and Kay was fully expected to be in manager Alf Ramsey's plans for that tournament which was a taster to the Finals in England two years later.

Everything in his football garden was rosy.

But just as the 1963-64 season neared its end the bombshell struck. The "Sunday People" newspaper ran a sensational front page story alleging major corruption in football and naming Kay and his co-conspirators Layne and Swan - as well as seven others - in what they properly described as "the scoop of the year." Kay and Swan took centre stage in the match-fixing expose as they were the most high profile of the players named and shamed. This article continues on page 16

THE RISE AND FALL OF TONY KAY

But just as the 1963-64 season neared its end the bombshell struck. The "Sunday People" newspaper ran a sensational front page story alleging major corruption in football and naming Kay and his co-conspirators Layne and Swan - as well as seven others - in what they properly described as "the scoop of the year." Kay and Swan took centre stage in the match-fixing expose as they were the most high profile of the players named and shamed. This article continues on page 10

It transpired that the famous crusading newspaper had been approached by an ex- player named Jimmy Gauld who had been a journeyman inside-forward with a number of clubs – Charlton, Everton, Plymouth, Swindon, St. Johnstone and Mansfield (alongside Layne) – and offered the story.

Gauld having masterminded the whole betting scheme - which is said to have cost bookmakers a small fortune - was perfectly placed to give the newspaper chapter and verse on everyone and everything involved. This 'Judas of self-interest' got £7,000 for selling his soul.

Based on Gauld's information, Kay was lured into a car for a private chat by a reporter named Mike Gabbett, who claimed to be a friend of Gauld's , and was somehow encouraged to talk in some detail about the incriminating Ipswich bet. Little did he know that Gabbett had a tape recorder running.

When the story broke Kay was immediately put on "gardening leave" and some seven months later, having initially pleaded not guilty to the charge of conspiracy to defraud, he and the other nine involved, were all found guilty after a jury trial at Nottingham Crown Court.

Kay was sentenced to four months imprisonment and fined £150. On release he also received a life ban from football by the Football Association.

Pools coupons were huge business in those days and the very fact that matches could be rigged was potentially enormously financially damaging to the likes of Littlewoods. It is hugely ironic and entirely co-incidental that John Moores - the man behind the Littlewoods empire - should also happen to be the man who bankrolled Kay's transfer to Everton in his capacity as chairman of the Merseyside club!

This article continues on page 17



Jimmy Gauld



Harry Catterick



David "Bronco" Layne (left)
Peter Swan (right)

THE RISE AND FALL OF TONY KAY

Kay's life ban was lifted after just seven years but by that time age had well and truly caught up with the fallen star and there was to be no way back for him.

He is reported to have said at some point that he got involved in the Ipswich bet because they (Wednesday) had never done well at Portman Road. That, on examination, is not strictly accurate. Whilst they did lose home and away to Ipswich during season 1961-62 when the East Anglian team were surprise winners of the 1st Division title, on the previous occasion the two sides had met there on League business Wednesday had come away with a 2-0 win.

He also spuriously claimed as part of his own defence that he had been named "man of the match" in the, by now, notorious fixture by the very newspaper which was to prove to be his nemesis. That proved nothing and could be said to have been simply the extra effort expended by him to ensure that the pre-arranged result was indeed achieved. The match reporter, obviously unaware of any bet, would doubtless have regarded Kay's great endeavours as positive rather than the converse.

Whilst Kay may have thrown his career away for a piffling hundred quid the real losers were Everton and Football.

Everton lost their team captain and the huge money they had invested in him just 16 months before, whilst Football lost a level of integrity from which, if truth be told, it has never fully recovered.

Many pundits have since expressed the view that the sentence meted out to Kay and his cohorts was particularly harsh but Tony Kay better than anyone must have known what he stood to lose – if he was ever to be caught.

After all he was a gambler and for him the gamble failed.

For the lawyers amongst you, the tape recorded admissions which Gabbett obtained from Kay during the course of his 'sting' were adduced into evidence in court. This is believed to be amongst the first times this had ever been done

in a British court of law. Following his release from prison Kay was "invited" to London to meet notorious East End gangsters the Kray Twins as they were "professionally" interested in hearing first-hand from the disgraced footballer how he had come to incriminate himself without a policeman in sight.

On 30th July 1966 as the joyous England players ran around Wembley with the World Cup in their hands, Kay, whom many felt could have been in the side at the expense of the less gifted Nobby Stiles, must have deeply regretted the day he "sold the jerseys".



On his release, after serving ten weeks, Tony Kay was banned from football for life by the Football Association though the ban was rescinded seven years later. Kay was 28 years old when released from prison. He never returned to the professional game, but did play some amateur football. He later spent twelve years in Spain, avoiding arrest for selling a counterfeit diamond. On his return to the UK Kay was fined £400 and in later years he worked as a groundsman in south east London

STOP THE PRESS

Grenada

An anti-drug operation by the Royal Grenada Police Force on 10th March 2014 yielded its biggest drug haul yet with a record 60 kilos of cocaine. The drugs worth an estimated 6 million dollars (EC) was discovered in a fishing trawler in the Lagoon Road area. Two persons have been arrested and charged to date with investigations continuing.

(Read more at Now Grenada: <http://nowgrenada.com/2014/03/record-drug-bust/>)

Saint Kitts and Nevis

A former teacher was charged along with five others with Possession of Cannabis and Possession of Cannabis with Intent to Supply after a cannabis seizure at Port Zante's Marina. The Nevisian woman was allegedly involved when at about 1:30 p.m. on Wednesday (Apr. 9) a vehicle that she is believed to have driven dropped off a box to the Nevisian Spirit, a vessel owned by the Four Seasons Resort on Nevis. The Nevisian Spirit was at the time docked at the Port Zante's Marina and members of the Royal Saint Christopher and Nevis Police Force and the Saint Kitts-Nevis Customs and Excise Department boarded the vessel and a search of the box found two bails of compressed marijuana. The six accused had appeared before a City Magistrate on Friday (Apr. 11) and were each granted bail to the tune of \$250 000 with two sureties.

(Read more at SKN Vibes: <http://www.sknvibes.com/news/newsdetails.cfm/86774>)

Saint Vincent and the Grenadines/UK

Following the report in Indictment 9 of the death of a Vincentian in the UK after drinking cocaine laced fruit juice: <http://www.bbc.co.uk/news/uk-england-hampshire-25548952> - a UK national (Nathon Smith) and Lisa Hooper have been found guilty of an unrelated incident of possession with intent to supply, conspiracy to export and conspiracy to traffic 1.2 kg of liquid cocaine. Smith, who pleaded guilty, was sentenced to 2 years imprisonment and Hooper who was found guilty after trial was sentenced to a fine and two years imprisonment suspended for three years.

Antigua and Barbuda

A Guyanese national Ndrew Greaves had his matter committed to the September assizes by the Chief Magistrate on 1st April 2014. The charges relate to an operation led by the ONDCP on June 13, 2013, after 20 kg of cocaine was found in a car in which Greaves was travelling. The car in a parking lot that was being kept under surveillance by the ONDCP led to the major drug

bust. It was said that Greaves, a Guyanese who lives in the USA, pulled up, opened the vehicle, checked a bag and then drove off with it. When the law enforcement agents allegedly found the drug, he is said to have claimed that he did not know what was in the bag. He allegedly said that the person who asked him to collect it told him that tools were in the bag. Instead cocaine with an estimated street value of \$600,000 was found inside

(Read more in the Caribarena Antigua at: <http://www.caribarenaantigua.com/antigua/news/police/106329-guyanese-stands-alone-in-major-drug-bust.html>)

Dominica

One Dominican and a Vincentian were arrested by police following a major drug bust which took place south of Dominica on 16th April 2014. Some 678 pounds of alleged cannabis and 6 pounds of alleged hashish, with a street value of \$680,000 XCD, were seized during the bust. According to police PRO, Inspector John Carbon, the illegal substances were discovered around 8:00 am on Wednesday (April 16) during anti-drug operations conducted by members of the Drug Squad and Coast Guard. During the operation an open keel boat, named 'Slick' with registration number J7-178-PMH and powered by a 75 and a 85 horse power engine, was also seized.

(Read more at Dominica News Online: <http://dominicanewsonline.com/news/homepage/news/crime-court-law/two-charged-cannabis-bust/>)

Saint Lucia/UK

A woman who smuggled £47,000 worth of cocaine in her vagina and was caught at Gatwick Airport in January has been jailed. Estelle Brett, 20, was returning from St Lucia and was arrested by Border Force officers after swab tests on her luggage produced a positive reaction for cocaine. Brett, from Brockley, refused to have an X-ray but admitted she had swallowed the drugs and waited for them to pass through her system to collect during the flight. She then hid the cocaine in her vagina. She pleaded guilty to drug importation charges at Croydon Crown Court and was jailed for 32 months. Carole Upshall, of the Border Force, told International Business Times: "This case shows the lengths smugglers will go to in their attempts to bring Class A drugs into the UK. Those who swallow packages like this are effectively risking their own lives."

(Read more at AOL: <http://travel.aol.co.uk/2014/03/15/estelle-brett-smuggle-cocaine-vagina-gatwick-airport/>)

Follow for regional legal updates at: <https://twitter.com/IndictmentEC>

LEGAL NEWS FROM THE REGION - NEW LAWS

The first quarter of 2014 saw new laws in Grenada, Antigua and Barbuda, Dominica and Saint Lucia.

Grenada

The Protection of Witnesses Act 2014

Investigation Anonymity:

See from page 6 of this edition of Indictment for detail on the application of these important new provisions for those assisting investigations.

Witness Anonymity:

An application to the Magistrates or High Court for anonymity (section 13) must satisfy conditions stipulated in section 14. These include that an order is necessary to protect the safety of the witness, another person or serious damage to property (section 14(1)(a)(i)) or to prevent real harm to the public interest (section 14(1)(a)(ii)). When considering the safety of the witness or another person, the court will have regard to any reasonable fear on the part of the witness that they will suffer death or injury or there would be serious damage to property if the witness was identified (section 14(2)). This of course must be balanced with the right of the defendant to have a fair trial (section 14(1)(b)) and the court must consider the credibility of the witness. This last point is to be distinguished from reliability and a useful commentary on the distinction can be found in **Donovan and Kafunda v R** [2012] EWCA Crim 2749 see: <http://www.bailii.org/ew/cases/EWCA/Crim/2012/2749.html> Also see the Guide to Investigation and Prosecution of Serious Organised Crime Part 1 from 5.5 for more detailed analysis and preparation of applications

Special Measures

The Act also provides for the use of special measures for vulnerable witnesses. To determine if a witness is eligible, section 19 details the considerations for the Magistrates or High Court. Special measures will include

a live link (video-link) to give evidence (section 23); giving evidence in private (section 24); and video recorded evidence in chief (section 25) or pre-recorded cross examination (section 26).

Witness out of State:

Section 34 provides for witnesses out of State, who may not be vulnerable, to apply for use of the live link.

The Interviewing of Suspects for Serious Crimes Act 2014

Interviewing of Suspects

New provisions are made for electronically recording of suspect interviews. This is a mandatory requirement for the serious offences listed in the First Schedule. Section 11 also provides for an adverse inference to be made by the court or jury when the suspect fails to mention any fact relied upon in his defence when interviewed or charged.

Antigua and Barbuda

The Proceeds of Crime (Amendment) Act 2013

This new Act amends the Proceeds of Crime Act No.13 of 1993. The Act will allow for confiscation in the Magistrates Court (section 18 - subject to a maximum of \$100,000 XCD), committal for confiscation (section 18(3), pre charge restraint (section 31). Significantly the Act allows for the recovery of the proceeds of crime through the civil courts (Part IIIA). This again follows the passage of similar legislation in Dominica and Saint Vincent and the Grenadines and marks a positive reform to take the profit out of crime.

Dominica

The Criminal Law and Procedure (Amendment) Act of 2014

This amendment inserts a new section 13A to allow for a controlled delivery of

money or other property that authorised officers reasonably suspect, is being used to commit an offence under the Act.

An authorised officer is defined in section 13A(4) and includes those authorised by the Commissioner of Police or Comptroller of Customs.

At section 13A(3) the Act specifically confirms that an authorised officer will not commit an offence where engaged in the investigation of a suspected offence and the offence involves money or property the officer reasonably suspects is being or may be used to commit an offence. However it would appear that the relevant Minister will need to issue Regulations for the provision to apply.

Eastern Caribbean Supreme Court Civil Procedure (Amendment) Rules 2013

These rules gazetted on 30th January 2014 will allow Appeals by way of Case Stated after repeal and replacement of a new Part 61. These are essential reading for those pursuing an Appeal by way of Case Stated in Dominica.

Saint Lucia

Anti-Gang Act No.4 of 2014

This Act will be a defence Attorney's dream! Whilst debating in Parliament Prime Minister Anthony said that the judiciary would determine whether or not suspects accused of committing an offence were indeed members of a gang.

"I'm not saying that this piece of legislation is perfect. As a matter of fact (Opposition legislator Richard Frederick) may be right that the lawyers will have a field day (with it)....But I would prefer that the legislation be in place and they have a field day than it is not in place to deal with the problems that we have."

(Read more at Jamaican Gleaner at: <http://www.jamaicaobserver.com/latestnews/St-Lucia-Govt-wants-strong-message-sent-to-criminal-gangs>)

LEGAL NEWS FROM THE REGION - DECISIONS

Sentencing - Unlawful Sexual Intercourse and Child Pornography

The Queen v Sylon Forbes BVI High Court Case No.5 of 2013 - This judgment delivered on 9th April by Byer J. provides a very useful analysis of the sentencing guidelines for sexual offences including the consolidated criminal cases of **Winston Joseph v The Queen**, **Benedict Charles v The Queen** and **Glenroy Sean Victor v The Queen**.

IByer J at paragraph 27 agrees with Stephenson – Brooks J in the case of **R v Webster Edmond** that: “...this is a very serious offence that merits a custodial sentence of a length sufficient to punish the offender, deter others and to emphasize the need to protect young girls from sexual exploitation and corruption.” and imposed a sentence of 5 years for the offence of sexual intercourse with a girl over the age of 13 and under the age of 16. In relation to the child pornography offence this was the first conviction since the legislation was passed in 2007. Therefore Byers J looks to sentencing authorities from Canada (**R v Sharp** 2001 SCC 2) and Australia (**R v Booth** [2009] NSWCCA 89; **R v Missions** [2005] NSCA 82; and **Mouscas v R** [2008] NSWCCA 181) for assistance in resolving a sentence of three years imprisonment. There is also a helpful discussion for practitioners from paragraphs 49 -54 on totality and whether the sentence for the child pornography should run consecutively. http://www.eccourts.org/wp-content/files_mf/sentencing_judgment_sylon_forbes_amended_31.pdf

For another sentencing judgment, delivered on 14th March 2014 that provides a useful commentary on the sentencing principles for unlawful sexual intercourse see **The State v TP** Dominica High Court

Sentencing - Rape

The Queen v Coleman Baptiste Grenada High Court Case - This judgment delivered on 27th March by Persad J goes through well trodden ground on sentencing principles and guidelines for rape. However the judgment is interesting in relation to the discussion on

time spent on remand from paragraphs 25 - 33 with an analysis on **Callachand v The State** [2008] UKPCA 49 and the Barbadian case before the Caribbean Court of Justice **Romeo de Costa Hall v The Queen** CCJ Appeal No. Cr. 1 of 2010 [2011] CCJ 6 (AJ) http://www.eccourts.org/wp-content/files_mf/thequeenvcolemanbaptiste.pdf

Sentencing - Indecent Assault

The Queen v Walter Cameron BVI High Court Case No.7 of 2013 - This judgment delivered on 14th March by Byer J. details the principles of sentencing and the relevant authorities. The facts relate to touching over clothing towards the vagina area of the victim, aged 43, who was the defendant's neighbour. The defendant, who was convicted after trial, was a man of good character, married with three children and aged 62. The sentence imposed in view of the aggravating features of age difference, breach of trust and the unwanted advances which occurred three times was 12 months imprisonment suspended for 18 months and a fine of \$5,000. http://www.eccourts.org/wp-content/files_mf/final_draft_walton_cameron3.pdf

Unlawful Search

Gomes and Francis v Commissioner of Police and Attorney General Antigua and Barbuda High Court - This Judgment refers to an alleged strip search in contravention of the first claimant's rights guaranteed under section 10 of the Constitution and a search of the second claimant's property in contravention of the same section. In relation to the first matter Cottle J finds (paragraph 10): “Without wishing to lay down any general guidelines as to the lawfulness of strip searches, it would seem to me that if a search is carried out for a valid objective in the pursuit of criminal justice, such as the discovery of evidence, and the search is not done in an abusive fashion then such a search may well be justified under section 10” In relation to the second matter, where a search was conducted of a premises in the name of business, Cottle J had no hesitation in lifting the corporate veil, and determining

that the claimant and the business were one and the same person. http://www.eccourts.org/wp-content/files_mf/untitledattachment00052.pdf

Murder - Provocation and Accident

Che Gregory Spencer v DPP St Kitts and Nevis Court of Appeal 2009/13A - Following misdirections by the trial Judge to the jury on provocation and accident the conviction was quashed and an order made that the DPP be at liberty to retry Mr Spencer. In short the trial Judge had failed to direct the jury that provocation can still be a defence to murder even where a defendant intends to kill or cause grievous bodily harm to the deceased. By directing the jury that the appellant had been “for the moment not master of his mind” would have effectively conveyed to the jury that he would not have been able to form the necessary intention to kill or cause grievous bodily harm. On the evidence presented the jury may have easily found that the appellant had formed an intention to kill. As a result, the appellant might have been deprived of a verdict of not guilty of murder but guilty of manslaughter. In relation to accident the Judge should have made it clear to the jury that it wasn't for the appellant to prove, but for the prosecution to negative so as to make them feel sure beyond all reasonable doubt that it was not an accident and was a wilful act. http://www.eccourts.org/wp-content/files_mf/chegregoryspencervthedppskbfinal.pdf

Murder - Identification

Yourrick Furlonge v The Queen Antigua and Barbuda Court of Appeal 2009/13A - In this appeal identification/recognition evidence was central to the prosecution case. It was held that: “A trial judge is not required to slavishly use the words set out in the case of *R v Turnbull* in directing a jury on identification/recognition evidence. All that is required is for the judge to use words which assist the jury in their approach to the assessment of the evidence; it will suffice if the judge's “directions comply with the sense and spirit of the *Turnbull* guidelines.” http://www.eccourts.org/wp-content/files_mf/anuyourrickfurlongevthequeenfinalapproved.pdf

LEGAL NEWS FROM AROUND THE WORLD - PART 1

Confiscation

R v Mackle [2014] UKSC 5

This judgment from the Supreme Court relates to consent orders for confiscation orders on the duty evaded for importation of cigarettes. The questions of law of general public importance from the Court of Appeal were:

1. Is a defendant who pleaded guilty to being knowingly concerned in the fraudulent evasion of duty and who consents, with the benefit of legal advice, to the making of a confiscation order in an agreed amount in circumstances which make clear that he does not require the Crown to prove that he obtained property or a pecuniary advantage in connection with the charged criminal conduct bound by the terms of the confiscation order?
2. Does a defendant, who knowingly comes into physical possession of dutiable goods in respect of which he knows the duty has been evaded and plays an active role in the handling of those goods so as to assist in the commercial realisation of the goods, benefit from his criminal activity by obtaining those goods for the purposes of section 158 of the Proceeds of Crime Act 2002?

Lord Kerr gave the Judgment of the Court: As to the first question, the prosecution had firmly espoused the case that the benefit obtained by the appellants took the form of a pecuniary advantage derived from evasion of the duty on the cigarettes. This basis of benefit was, unsurprisingly, accepted uncritically by the sentencing judges. But since the appellants' liability to pay duty could not be established this was not a correct legal basis on which to find that the appellants had obtained a benefit [47].

In holding that they might nonetheless be bound by the orders, since they were made with the appellants' consent, it appears that the Court of Appeal had not been referred to decisions of the House of Lords and the Court of Appeal of England and Wales which established that an appeal ought to be available to defendants who

had made a plea on a mistaken legal basis [48–49].

It is to be remembered that a court must itself decide whether the convicted person has benefited from his particular criminal conduct. The power to make a confiscation order arises only where the court has made that determination. A defendant's consent cannot confer jurisdiction to make a confiscation order. This is particularly so where the facts on which such a consent is based cannot as a matter of law support the conclusion that the defendant has benefited. On the other hand, if it is clear from the terms on which a defendant consents to a confiscation order, that he has accepted facts which would justify the making of an order, a judge, provided he is satisfied that there has been an unambiguous acceptance of those facts from which the defendant should not be permitted to resile, will be entitled to rely on the consent. This is not because the defendant has consented to the order. It is because his acceptance of facts itself constitutes evidence on which the judge is entitled to rely [50].

It would be manifestly unfair to require the appellants in this case to be bound by their consent to the confiscation orders when the only possible explanation for the consent was that it was given under a mistake of law. That was the explanation they had put to the Court of Appeal, and the prosecution had not challenged it [53]. And the confiscated amounts corresponded exactly to the duty and VAT evaded.

Lord Kerr therefore reframed the first certified question to reflect the circumstances of this case: 'Is a defendant precluded from appealing against a confiscation order made by consent on the ground that the consent was based on a mistake of law, as a result of wrong legal advice?' The answer is, 'No.' [54]

As to the second question, the Court of Appeal dismissed the appeals because it considered the appellants could have been found to have benefited from their admitted criminal conduct. But it advanced this view

only on the basis of findings that might have been made by the trial judge, but were not in fact. The trial judge would have had to have been satisfied that the appellants had in fact benefited from the offences in such a way, having given them the opportunity of responding to that suggestion [55–56].

In any event it was clear from previous House of Lords authority that merely handling goods or being involved in a joint criminal enterprise does not in itself confer a benefit. Lord Kerr therefore answered the second question, 'Not necessarily. Playing an active part in the handling of goods so as to assist in their commercial realization does not alone establish that a person has benefited from his criminal activity. In order to obtain the goods for the purposes of section 156 of POCA 2002 or article 8 of the Proceeds of Crime (Northern Ireland) Order 1996, it must be established by the evidence or reasonable inferences drawn therefrom that such a person has actually obtained a benefit.' [57–68].

The Court therefore quashed the confiscation orders and remitted the cases to the trial courts to proceed afresh in light of this judgment [69].

See more at: <http://www.bailii.org/uk/cases/UKSC/2014/5.html>

Abuse of Process

Morris v DPP [2014] EWHC 105 (Admin) – Useful judgment detailing principles of abuse of process and application where it was submitted that the appellant couldn't have a fair trial where the police failed to interview potential witnesses. See more at - <http://www.crimeline.info/case/morris-v-director-of-public-prosecutions>

Joint Enterprise

L v Crown Prosecution Service [[2013] EWCA 4127 (admin) – Essential reading for those who want to understand the guiding principles for joint enterprise. See more at: <http://www.crimeline.info/uploads/cases/2013/lvcps.pdf>

LEGAL NEWS FROM AROUND THE WORLD - PART 2

Money Laundering

Holt v Attorney General [2014] UKPC 4 -

This appeal relates to a solicitor who was representing a prominent client (Baines) and his wife and whether she became involved in an arrangement where the legal fees her firm and counsel were paid, were in their hands, the proceeds of crime. The Privy Council found that the Deemster's (Judge in the Isle of Man) directions to the jury were deficient and fatal to the safety of the convictions. In giving his judgement, Lord Hughes said:

"...The jury might well have thought this an unlikely scenario if she was acting dishonestly in support of suspected crime by Baines. Moreover, the jury might well have thought that to take active steps to enquire about security for a loan, to ascertain the terms as to interest, and to draw up a formal agreement all once again involving her colleague Ms Dudgeon, were events more consistent with a lack of guilty knowledge than with its presence...It does not appear to have been suggested that Ms Dudgeon knew or suspected criminal origin of the £400,000. The appellant had after all been taken in by Baines just as the bank had." See more at: http://jcpc.uk/decided-cases/docs/JCPC_2012_0046_Judgment.pdf

R v Pace and Rogers [2014] EWHC Crim 186 - This maybe of academic interest to those interested on the often disagreed upon principles of attempt. However, in view of possible application to money laundering in the region, it was held that a mere suspicion is not sufficient to support a conviction for the offence of attempting to conceal, disguise or convert criminal property, contrary to section 327(1) of the Proceeds of Crime Act 2002. The prosecution must prove that the defendant knew the property to be criminal property. The Court observed that this may or may not create problems for prosecutors. They observed that there in any event may well be, in an appropriate case, other charges potentially available: such as, for example, attempted handling. Those necessarily will, require proof of a higher level of mens rea than suspicion: and of course defendants

can be expected to be astute to emphasise that to a jury. Even so, as observed by Lord Hope in paragraph 62 of his speech in **Saik**, the margin between knowledge and suspicion is perhaps not all that great, at all events where the person has reasonable grounds for his suspicion. Where a defendant can be shown deliberately to have turned a blind eye to the provenance of goods and deliberately to have failed to ask obvious questions, then that can be capable, depending on the circumstances, of providing evidence going to prove knowledge or belief. However, all this will be something for the prosecutors to consider by reference to the circumstances of future cases. See more at -<http://www.crimeline.info/case/r-v-pace-and-rogers>

Abuse of Process

R v Downey Central Criminal Court – Abuse of process judgment delivered by Sweeney J on 21st February 2014 in the Hyde Park Bombing trial. See more at: <http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/r-v-downey-abuse-judgment.pdf>

Confiscation

R v Onuigbo [2014] EWCA Crim 65 - there maybe some relevance for the region for the following issues raised: (1) How to decide which confiscation scheme applies (see paragraphs 31-36) in view of amendments and new Acts, (2) The determination of benefit was flawed due to prosecutor error and unfairness during the proceedings, (3) The procedure where solicitors previously instructed sought to exercise a lien over papers. See more at: <http://www.bailii.org/ew/cases/EWCA/Crim/2014/65.html>

Elsayed v The Crown [2014] EWCA Crim 333 - This appeal raises a point about the valuation of benefit for drugs. The judge decided, in the circumstances of the case, that the value of the drugs obtained by the appellant was to be assessed on a retail basis. The appellant contended that the judge was wrong to do so. It was argued on his behalf that the judge was obliged to value the drugs on a wholesale basis. It was

held that the answer will depend on the circumstances, including when the drugs were obtained and by whom. This is a matter to beware of as it may have implications for other cases of this particular kind. For example price of "vincy weed" in Saint Vincent and its price outside of Saint Vincent. See more at <http://www.bailii.org/ew/cases/EWCA/Crim/2014/333.html>

R v King [2014] EWCA Crim 621 - A confiscation order with a benefit figure of £109,970 (based on turnover of a business that was criminal in nature), where the profit would have been approx. 10% of that figure, was 'severe but not disproportionate'. If the transaction is inherently unlawful because of the manner in which it is conducted, that finding militates in favour of making an order that is directed at the gross takings of the business. See more at <http://www.bailii.org/ew/cases/EWCA/Crim/2014/621.html>

Restraint

ARA v Rose [2014] JMSC Civ 11 - This is an important authority from Jamaica on what should be a straight forward issue - i.e. applying for a restraint order in State A where criminally acquired assets are located but where the substantive criminal proceedings are in State B. The Jamaican Court of Appeal made it clear a restraint cannot be applied for under their Proceeds of Crime legislation on the basis of a conviction in another jurisdiction (Canada) where there is no present investigation or proceedings before the courts in the jurisdiction the restraint is applied for (Jamaica). The proper course of action is to apply for registration of an overseas restraint order through the appropriate procedures for mutual legal assistance. With Thanks to Chief Magistrate Smith for sending this Judgment.

If you have any other Judgments from the region or elsewhere, that would be useful to share, please don't hesitate to contact Indictment so we can include in the next edition.
(dansuter1975@yahoo.com)

INDICTMENT AWARDS

In January ASP Cuffy (Dominica), ASP James (Saint Vincent and the Grenadines), Director of Public Prosecutions Anthony Armstrong (Antigua and Barbuda) and Director of Public Prosecutions Colin Williams (Saint Vincent and the Grenadines), were presented with their honorary plaques for their Indictment Awards. ASP Cuffy (pictured below) when presented with his award said, "I'm very much delighted to be selected by the persons of high office...this award is one that is a true manifestation of hard work,"



LAUNCH OF THE PRISON VIDEO LINK IN ST LUCIA

On 9th April the Chief Justice of the Eastern Caribbean Supreme Court Hon. Dame Pereira, launched the British High Commission funded prison video link. This

demonstrates a commitment to greater access to justice and its use should see court delays reduced. The Practice Directions for all practitioners on the link's use are available at: <http://www.eccourts.org/wp-content/uploads/2012/09/ECSC-Practice-Direction-1-of-2014-PVL-SLU-Final.pdf>

SENTENCE INDICATIONS

Also in another effort to reduce delays a sentence indication Practice Direction is now in force in Saint Lucia and Saint Vincent and the Grenadines see: http://www.eccourts.org/practice-directions/public_info/other/Indictment3.pdf

NEW WEBSITE COMING SOON!

In an effort to bring you more access to legal updates our Indictment website will be available soon! This will include the new **Fifth Edition of the Guide to Investigation and Prosecution of Serious Organised Crime** and other tools to improve case preparation, assist witnesses/victims and improve asset recovery.

....AND FINALLY

Is this the world's toughest cop? <http://www.dailystar.co.uk/news/latest-news/376131/Meet-the-man-who-thinks-he-the-world-s-toughest-cop>



**"Now,
all the criminals
in their coats and
their ties are free to drink
Martinis and watch the sun
rise"**

**Bob Dylan lyrics from protest
song "Hurricane" penned after
the imprisonment of Rubin
Carter for a crime he didn't
commit and who died on
20th April 2014**

INDICTMENT

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Please send us articles

We are always looking for interesting news to share and experiences to demonstrate good practice to others in the region.

If you have had any great results or would like the region to know about what you are doing in the efforts against organised crime then please contact Indictment at:

dansuter1975@yahoo.com or <https://twitter.com/IndictmentEC>