

JERSEY / JUDGMENT

AG -v- Michel [2011] JRC 061 (23 March 2011)

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JUDGMENT

THE commissioner: 1. Counsel for the defendant has submitted that there is no case to answer and that the jury should be directed to return a verdict of not guilty. Counsel has drawn my attention to the test to be applied on such an application which is set out in the well-known case of R-v-Galbraith

[1981] 1 WLR 1039 and I apply that test. 2. I am conscious that I may not do justice in this short ruling to all the arguments ably deployed by Counsel for the defendant. It seems to me that the submission can be succinctly summarised as follows. 3. The trial should be stopped because the actions of the defendant, alleged in the Indictment, did not have the requisite tendency to pervert the course of justice. The actions in question may be divided into two categories:- (i) The acceptance by the defendant of the transfer of assets from his father, Peter Michel, which were the subject of a police investigation; and (ii) Alleged lies by the defendant in a letter to the Attorney General that the transfers represented payment for legal services provided to Peter Michel and that the transfers of shares in certain companies represented payment for services provided in respect of those companies. 4. Counsel submitted that acceptance of the transfers had no tendency to pervert because

- a) a person subject to police investigation is as free as anyone else to transfer or give away his property; to suggest otherwise was a breach of convention rights and caused other difficulties; b) the burden of proof in confiscation proceedings meant that the Prosecution had only to prove that the accused had benefited to a certain amount from his criminal misconduct. Once that was established a confiscation order in that amount would follow unless the accused could prove that his realisable property was less than the amount of his benefit. It followed therefore that the mere acceptance of the transfers of property did not affect the calculation of any benefit that Peter Michel might have received, nor the confiscation regime. 5. Counsel also submitted that a fair minded and properly directed jury could not conclude that the alleged lies amounted to assertions that the defendant had a contract with his father whereby the transfers were made as payment for legal services. The word "contract" was not used in the letter from the defendant to Crown Advocate Whelan; the whole thing was far too vague. 6. That last submission can, it seems to me, be shortly

disposed of. In my judgement the construction of the letter sent by the defendant is a matter for the jury. Its strength or weakness as part of the Prosecution case is within the jury's province. There is a case to go to the jury that these alleged lies were intended to demonstrate a commercial arrangement between father and son that would, if accepted, have put the assets beyond confiscation. As the Crown Advocate put it once the lie was out, assuming it was a lie, the defendant had done enough to give rise to the possibility of a perversion of the course of justice. The alleged actions have a sufficient tendency to pervert the course of justice to go before the jury. 7. I return to the submissions in relation to the acceptance of the transfers of property. Counsel relied upon a case from the Grand Court of the Cayman Islands in *Re Shapiro* [2003] CILR 443; Smellie CJ stated at paragraphs 28 and 29:- "28 The further suggestion by Mr Mitchell - in the course of his remarkably adaptable arguments - that there had been an "attempt" to pervert the course of justice on the part of Dr Shapiro and his father, was equally misconceived. Even if the prosecution had established the requisite intention (which it did not, for the reasons discussed above) and the alleged legal and other obligation on Dr Shapiro upon which any such offence must be premised, an act done with the intention of perverting the course of justice is not enough, the act must also have that tendency. And to establish that a tendency or a possibility had in fact materialized, there must be a possibility that what the accused, (here, Dr Shapiro) had done "without more might lead to injustice" see *R-v-Murray* (4) and *R-v-Firetto* (3). 29 Plainly, the mere moving of assets abroad could not lead to injustice. It did not, in itself, have a tendency to pervert the course of justice. Such an act would only take place once a false affidavit had been sworn or some other analogous unlawful conduct had been carried out which was intended to defeat a legitimate claim of the ex-wife in court proceedings." 8. It is to be noted that the facts in *Shapiro* were rather different. In particular there was no course of justice in existence. The ex-wife had not begun the proceedings which Dr Shapiro feared that she might. It is also noteworthy that Smellie CJ cited and clearly relied upon the English case of *R-v-Murray*

[1982] 78 Cr. App. R. 58. Again the facts of *Murray* were rather different but the Lord Chief Justice stated at page 3 of his judgment:- "So what the judge in the present case had to decide was, whether there was evidence which was fit to go before the jury, that first of all the appellant had the intention to pervert the course of justice, which plainly he did have, but much more importantly, whether there was evidence that what he did had a tendency to have that effect. In the view of this court, there must be evidence that the appellant has done enough for there to be a risk, without further action by him, that injustice will result. In other words, there must be a possibility that what he has done "without more" might lead to injustice." 9. I agree with Counsel for the defendant that a person under investigation is ordinarily free to give away his property to whomsoever he pleases. Unless subject to a *saisie judiciaire* no criminality is involved in any such transfer in itself. But transfers of property take their colour from the surrounding circumstances. Evidence has been heard that the defendant was present for part of the time when the warrants were being executed by the police on 5 th July, 2001, at the premises of his father, Peter Michel.

If a qualified lawyer accepts a transfer of assets from a person under investigation for serious criminality, which he knows may lead to a seizure of that person's assets and their confiscation, with a view to shielding those assets from confiscation, and he has the requisite criminal intent, he may be guilty of attempting to pervert the course of justice. Was a risk of injustice created, without anything more being done by him, when the defendant accepted these transfers of valuable property? 10. In my judgement, as a matter of law, these transfers of property created such a risk and their acceptance by the defendant therefore had a tendency to pervert the course of justice. I am not persuaded by the submissions as to the proper construction of the Proceeds of Crime (Jersey) Law 1999 that the obstacles to the successful achievement of a perversion of the course of justice affect the conclusion that the acceptance of the transfers had the requisite tendency to pervert. 11. I rule therefore that there is a case to go to the jury. Authorities R-v-Galbraith [1981] 1 WLR 1039. Re Shapiro [2003] CILR 443. R-v-Murray [1982] 78 Cr. App. R. 58. Proceeds of Crime (Jersey) Law 1999. Page Last Updated: 04 Nov 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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