THE COURT OF APPEAL

UNAPPROVED **NO REDACTION NEEDED**

[206/2019]

Neutral Citation Number: [2021] IECA 160

The President

Edwards J

McCarthy J

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

SIMON GOLD

APPELLANT

JUDGMENT of the Court delivered (*via* electronic delivery) on the 2nd day of June 2021 by Birmingham P.

1. Following a 28-day trial which ran during May and June 2019, the appellant was convicted of counts involving money laundering, deception, having custody or control of a false instrument and using a false instrument. Subsequently, on 31st July 2019, he was sentenced to a term of seven and a half years imprisonment on each of the money laundering counts, and to terms of three years imprisonment on the deception counts with all sentences to run concurrently. He has now appealed against conviction.

2. It is a feature of this appeal that the appellant has sought to stay as far away as possible from any issue as to his guilt in relation to the matters charged. Indeed, the same

observation could be made with equal force in relation to the appellant's approach at trial. It is likely that this is as a result of the fact that when the accused was interviewed in relation to these matters by Gardaí, he made extensive, indeed, it might be said, unrestrained admissions.

3. Before dealing with the individual grounds of complaint, it is appropriate to say that a consistent theme of the defence has been that there was an over-eagerness, or over-enthusiasm, on the part of the prosecution and that this has resulted in prosecution overload and a trial that was unfair and unsatisfactory. This over-arching theme feeds into a number of the individual grounds of appeal.

Background

4. At trial, the prosecution case was that the appellant had represented himself using various different names and aliases as a highly-qualified financier or merchant banker. The different names referred to include Simon Gould, Simon P. Magnier and Niall O'Donoghue. The accused operated a number of companies, including Anglo Irish Global and Anglo Irish London Ltd. Despite the similar-sounding names, these companies had no connection whatsoever with the former Anglo Irish Bank plc. However, the company logo used on documentation from Anglo Irish Global was strikingly similar to the logo of Anglo Irish Bank plc. Other entities that the appellant had an involvement with were Belgravia Ltd, and a company called Elite Bank Group. When the appellant's home at Esker View in Delvin, County Westmeath was searched, business cards were recovered in relation to the Elite Bank Group in the names of Simon P. Magnier, Niall O'Donoghue and Simon Gold. Simon P. Magnier was described as head of banking, private banking and wealth management. Niall O'Donoghue was described as director of investments and global banking operations, while Simon Gold was described as director of investments, private banking and wealth management.

5. The appellant also operated a company called Irish Nationwide Bank. Again, despite the similarity of name, it is important to stress that this entity had no connection whatsoever with the Irish Nationwide Building Society. When the appellant's home was searched, one of the documents seized was what purported to be a bank statement in the name of Jason Pienaar. The closing balance on the account was recorded as €2.7 million.

6. The indictment contained a number of documentary offences, which offences related to what purported to be bank drafts drawn on the Irish Nationwide Bank, as well as counts relating to the use of false instruments (an ESB bill to open an Ulster Bank account and a British Driving Licence to finance the purchase of the computer). The most significant counts on the indictment related to five victims, four Irishmen and a wealthy Danish businessman.

7. Count five on the indictment related to an Irish victim, a Mr. JR. In 2010, JR had been operating a quarry business. The business was in difficulty and he needed a large amount of money in order to refinance and get his business back on its feet. He was advised to call a man by the name of Simon P. Magnier and JR subsequently spoke to a man who represented himself as Simon P. Magnier. He was described as having an English accent and as having been well spoken. Simon P. Magnier said he was a director of Anglo Irish Global. Simon P. Magnier, also known as Simon Gold, told JR that a large loan could be arranged for him but a down payment of £10,000 sterling would be required. JR transferred the specified amount to Simon P. Magnier. JR was told to produce an amount of documentation, including valuations of the quarry, tax clearance certificates, a schedule of works in progress and a statement of assets and liabilities. When the home of the appellant was searched and a computer seized and examined, the documents that JR had sent to smagnier@angloirish.com were on that computer. JR also received a letter from Simon P. Magnier purportedly approving him for a loan of €4 million from the Israeli National Bank. That letter was on the notepaper of Elite

Banking Group. The account manager on the letter, purportedly approving the loan, was Niall O'Donoghue.

8. The second Irish victim was Mr. EO'T, a dairy farmer. In 2011, he was anxious to take advantage of the abolition of milk quotas, and for that purpose, to invest significantly in his business. He was friendly with JR and JR told him about Simon P. Magnier. Contact was made by the injured party with Simon P. Magnier (also known as Simon Gold). The person purporting to be Simon P. Magnier asked EO'T for a schedule of assets and documentation. Once again, the documentation provided was located on the computer found at the appellant's home. Mr. EO'T had also transferred £10,000 sterling.

9. Count six on the indictment related to a Mr. JB who was involved in farming and construction. He felt that he needed a loan for €40 million. In his case, he was dealing with a man by the name of TT and was told that he would get a loan for €40 million by making a down payment of €800,000. He did not have that amount but he was eventually told that if he came up with €28,000, this would open the door to the loan of €800,000 and would ultimately lead to a loan of €40 million. TT requested that the sum of €28,000 be transferred to a bank account belonging to Belgravia Consultants UK Ltd. It was not the prosecution case that Simon Gold was TT. TT was somebody who did exist but, as in the other cases, documentation that JB was required to provide was found on the appellant's computer when Gardaí searched his home. Also found on the computer was: (i) a letter to JB on Belgravia headed paper, stating that a loan facility of €800,000 would be made available within 24 hours of €28,000 clearing in Belgravia's account, and (ii) a letter from Simon P. Magnier, described as head of banking on the notepaper of Irish Nationwide Bank, to TT claiming that JB and GB had almost €1 million on deposit with Irish Nationwide Bank.

10. The final Irish victim was a Mr. FG who was involved in construction. In the course of the recession, he too found himself in significant financial difficulty. He reached out to TT

who put him in contact with a man by the name of Simon Gold who was operating a company called Anglo Irish Global Ltd. FG told Simon Gold that he was looking for a €300,000 loan and Simon Gold indicated that 10% of that, or £30,000 sterling, would be required. The specified amount was sent in two instalments, £10,000 sterling and then £20,000 sterling. There were some additional features to this offence, in that Simon Gold suggested that FG should travel to London to meet one of his associates by the name of Jason Pienaar. While the £30,000 sterling had been paid over, the loan of €300,000 was not forthcoming. However, in this case, what set it apart from other cases was that £10,000 sterling of the £30,000 sterling was returned to FG, and Simon Gold told FG that he was returning it out of his own pocket because Jason Pienaar had run off with £30,000 sterling.

11. The counts on the indictment relating to Kurt Lauridsen related to a sum of €1.6 million split in two tranches of €800,000. Mr. Lauridsen had entered into an arrangement with a German lawyer. It was envisaged that Mr. Lauridsen would put the sum of €1.6 million on deposit in an account that lawyer, Dr. BB, had access to. It was suggested that Mr. Lauridsen would see a return of 25% on the €1.6 million every month for 12 months. The suggestion was that the €1.6 million would rise to €4.8 million over the 12 months. If the investment did not work out, he was to get his €1.6 million back, plus 20% of that which totalled €400,000. Mr. Lauridsen transferred his €1.6 million in two tranches of €800,000 to an account at Ulster Bank, College Green. This was an account of Anglo Irish Global. It was an account that had been opened by Simon Gold using a false ESB bill. On the day the money came into the account, the appellant transferred a sum of €10,000 to the account of Niall O'Donoghue in AIB Navan (Niall O'Donoghue being another of the identities used by the appellant). Further transfers took place to Niall O'Donoghue and to Anglo Irish Global. Other transfers were made to a man referred to in the course of this judgment as SR and a

man referred to as WW. Within the three days of the first €800,000 hitting the account, approximately €673,000 was transferred to a number of different accounts.

Grounds of Appeal

Ground (i): The trial judge erred in law by refusing the appellant's application for separate trials in relation to certain counts on the indictment.

12. At trial, the appellant was faced with a 22-count indictment. He contended that the offences with which he was charged fell into three separate and distinct categories, or three separate tranches, of offences *viz*: (i) money laundering and theft offences relating to a named individual (Mr. Lauridsen); (ii) deception offences relating to three other individuals; and (iii) the documentary or false instruments offences. The appellant submitted that there were no common features to the offences, or no commonality between the offences, and that the effect of trying all the matters together was to paint a general picture of dishonesty which would make the task of the jury more difficult when considering each individual count on its merits. The judge felt that it was appropriate that all matters should be considered by the jury. He felt that there were crossover issues and that there were "commonalities".

13. In this Court's view, the approach taken by the trial judge was clearly correct. We agree with the submissions of the Director that the evidence in relation to each count would have been admissible even if there had been separate trials for the different offences. By way of example, if the offences involving Mr. Lauridsen had been tried separately, then evidence of false documentation found in the appellant's home and evidence of the nature of his dealings with other persons would have been admissible to rebut a suggestion that the appellant had been running a legitimate business. Allowing the matters to be tried together meant that the jury was presented with a fuller picture, and that they were, for example, made aware of the fact that the appellant was operating under a number of false names or aliases. If

the jury was to be given any opportunity to understand what was going on, then they had to be allowed to hear evidence that it was one and the same individual who was operating under different aliases. In responding to the ground of appeal which complains about the trial judge's failure to sever the indictment, the Director points out that the trial judge had actually severed the indictment; that the trial had not proceeded in respect of a number of counts that were then before the trial court; and that the counts that were severed would be the subject of a separate trial. The Director emphasises that the counts that were not severed, but which were permitted to be tried together, were counts where the evidence was cross-admissible.

Ground (ii): The trial judge erred in law by admitting evidence of voice recordings where it was accepted by the prosecution that said recordings had been made illegally by a third party, in circumstances where neither party to the conversations were aware the conversations were being recorded.

14. The background to this issue is that the prosecution adduced evidence at trial of digital audio files found on an Acer laptop taken possession of during a lawful search of the home of one SR. The recording was of what appeared to be a telephone conversation, though there were indications that the conversation had taken place on an internet platform rather than on a traditional telephone line. The prosecution contended that those engaged in the recorded conversation were the appellant and another man, a Mr. WW. In the course of the appeal, WW was described as a confederate of SR. It was not really in dispute that the conversation involved detailed discussions about criminal activity, but the appellant did not accept that he was one of those involved in the conversation. The assumption was that the recording was made by SR. The issue arises as to whether the exclusionary rule relating to unlawful or prohibited or unconstitutional acts extends beyond actions taken by agencies of

the State. The appellant is very critical of the trial judge for not engaging in a balancing act in order to determine whether the recordings that had been found should be admitted.

15. This is potentially of some significance as it raises the question of whether the Postal and Telecommunications Services Act 1983 (as amended), which makes it a criminal offence to intercept telephone messages without consent, was applicable. The appellant says that even if it is the case that the 1983 Act did not apply, the interception was prohibited under the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011. The appellant says that in those circumstances, the exclusionary rule, as it emerged from cases such as *DPP v. O'Brien* [1965] IR 142 and *DPP v. Kenny* [1990] 2 IR 110 and as reformulated more recently in *The People (DPP) v. JC* [2015] IESC 31, should be applied. At one level, the appellant appears willing to accept that this would represent a new departure, but says that the focus is and should be on the breach of constitutional rights and individual rights rather than on the identity of the actors responsible for the breach. In response to the argument by the Director that the exclusionary rule deals only with breaches of rights by agencies of the State, the appellant says that if that view was to be accepted, it would have the effect of promoting the use of vigilante groups, or sting operations, with those involved in such activity then presenting the fruits of their actions to the Gardaí. In what might seem a flight of fancy, or at least a flight to a factual context far removed from the present case, there was reference to the engagement of mercenaries in war zones.

16. The starting point for consideration of this issue has to be that the laptop on which the audio file was located was taken possession of during the course of a lawful search of the home of SR. Also to be noted is that there is no suggestion that any agent of the State had any involvement whatsoever in the creation of the recording. On the other side of the coin, the recording was of potentially significant probative value, involving detailed discussions

between the participants in relation to criminal activity. That, in circumstances where the prosecution case was that one of the individuals involved in the conversation was the appellant, though that was something that was denied by him. In a situation where the recording is created without any State involvement, and where there was not even a suggestion that the State was complicit in unconstitutional actions taken by a private party to introduce evidence, it seems to us that the judge's approach to the issue was the appropriate one. As acknowledged on behalf of the Director, that is not to say that evidence generated by a third party will always be admissible; that will depend on the circumstances of the case, but certainly, in our view, there is no rule of automatic exclusion. In this case, the judge approached the issue on the basis that he had a discretion to exercise and addressed the factors that he had to consider in deciding how to exercise that discretion. We are satisfied that his approach was the correct one and that the decision to admit the evidence was a proper decision. Accordingly, we dismiss this ground of appeal.

Ground (iii): The trial judge erred in law by refusing to allow the appellant's legal team to instruct a computer expert to examine material that had been served late as additional evidence, specifically in relation to exhibit TV7.

17. It should be noted that this ground of appeal focuses specifically on exhibit TV7 which was a USB 2.0 HDD external box hard drive seized by Garda Tom Victory on 22nd October 2012 at Esker View. However, written and oral submissions are couched in broader terms and raise issues in relation to a Samsung tablet designed RC1, and the Acer laptop OM 21 WY 31.

18. The Samsung tablet was found during the course of a search at Windy Ridge House, Athlone, on 25th May 2018. The prosecution were anxious to adduce evidence of an 18-second WhatsApp video found on the tablet which showed a male speaking over the video

and appeared to show the reflection of that male in a computer display. It was the prosecution case that the male in question was the appellant. The admissibility of the video was the subject of a *voir dire* on days 4 and 5 of the trial. During the course of the *voir dire*, counsel on behalf of the appellant argued that he required the services of an expert in computer analysis. The response of the trial judge was to indicate that he would hear evidence as to the manner in which Gardaí accessed the video on the tablet. He heard evidence from Detective Garda Ciaran Byrne that he came upon the video file in question by turning on the device, manually scrolling through videos contained on the tablet and playing them. The process did not rely on specialist extraction software and no expertise was required to access the files which were not password-protected in any way. The prosecution asserted that it was open to the trial judge to pick up the tablet and access the video himself and, indeed, that any juror who wanted to could do so. Ultimately, the judge concluded that while the Detective Garda in question was possessed of expertise, the particular exercise that he undertook on this occasion was not the preserve of an expert. In the Court's view, his conclusions in that regard seem eminently sensible.

19. There is a second sub-issue relating to evidence from another Garda who was also a computer expert, Detective Garda Laide. The book of evidence had contained a statement from Detective Garda Laide and there were many exhibits which were documents accessed as a result of examinations of a computer. The written submissions had appeared to suggest that the focus was on the Acer laptop recovered from the home of SR, but it now seems to be accepted that the focus was in fact on material located on a computer seized from the appellant's home. In any event, the complaint is that while there was a statement from Detective Garda Laide in the book of evidence, the material of significance exhibited was not a statement from the Detective Garda as to how he had accessed the material of interest, and that issue was dealt with only in a statement of additional evidence served some days before

the trial was due to start. The trial judge took the view that it was clear that computers and material accessed on computers was going to feature in a major way at trial, and if the defence had felt that there was a need for an expert to review the techniques employed by investigators, then they had an opportunity to engage an expert.

20. In the course of the appeal hearing, members of this Court enquired as to whether, even at this stage, the defence had engaged an expert and were in a position to establish that material had come to light which showed that they had been actually disadvantaged at trial. The appellant's response was to say that they had not taken any steps to see if there had been anything there waiting to be discovered because they felt that to do so would be a misuse of legal aid funds and public money. While avoiding the misspending of public money is obviously highly laudable, we do not see this response as a valid one. The trial judge took the view that the defence were not disadvantaged in dealing with the evidence of either Detective Garda Byrne or Detective Garda Laide by the absence of an expert. He was either right or wrong in that regard. If a subsequent examination could prove that he was wrong and that there was material available to be discovered which would actually assist the defence, as distinct from having a theoretical possibility of doing so, this would change the complexion of the case entirely. However, it seems that a conscious decision was taken not to seek out material which might have established that there was substance to the complaints made at trial. In the absence of such information, we have not been persuaded that the judge's approach was an impermissible one and so we must dismiss this ground of appeal.

Ground (iv): The trial judge erred in law in allowing the prosecution to adduce the entirety of the appellant's memorandum of interview prior to any of the substantive evidence relating to the memorandum being heard, thus preventing the appellant from challenging the inclusion of certain material contained therein.

21. The background to this ground is that the appellant had made very extensive and comprehensive admissions when interviewed by Gardaí. Counsel for the prosecution was anxious to put the memorandum of interview in evidence at a very early stage in the trial. He explained that his reason for wanting to do so was because it "sets out the whole background to the case". Defence counsel objected to the proposed course of action. He argued that the prosecution should be required to call the primary evidence in the case first, before adducing evidence of the memorandum. Adopting that course would avoid the risk that the jury might hear evidence of certain matters being raised with the appellant in interview that might later be deemed inadmissible. The judge felt that what was being raised was a fair procedures issue and he canvassed with counsel the provenance of documents put to the appellant in interview. He said he would allow the prosecution to proceed in the manner it wished but, significantly, he cautioned counsel for the prosecution that there were inherent risks in the course of action they proposed, pointing out that in due course, matters would need to be proved in the normal way and if an issue arose as to the adequacy of proof, that might precipitate an application from the defence which would have to be dealt with. In effect, he was warning the prosecution that the course of action they were proposing to embark upon might open the door to an application for a discharge of the jury at a later stage in the trial. The reaction of defence counsel to this was to say that for the record, he was addressing the fact that, subliminally, if a court was faced with a decision between excluding evidence, which perhaps, correctly, should be excluded, but thereby having to discharge the jury, that a court might be tempted to admit that evidence and thereby maintain the efficacy of the trial. He added the postscript that he knew the Court would not fall into that trap. The appellant says that what was permitted to occur represented a departure from normal practice.

22. The appellant says that, in this case, and in contrast to ground of appeal (iii), the procedure followed had practical consequences which disadvantaged the defence. In that

regard, this issue overlaps with the grounds of appeal that will be considered next but, in essence, the complaint is that the appellant was asked about, and indeed made admissions in respect of, a transaction at Harvey Norman's in the course of interview, during which the prosecution contended that a false instrument, being a British driving licence in the false name of Niall O'Donoghue, was produced as a form of identification to obtain finance for the purchase of a computer.

23. It seems to this Court that, generally speaking, at trial, each side decides how to present its own case and decides in what order it will call witnesses. It is not for one side to dictate to the other. In this case, the prosecution took the view that there were advantages in being able to offer the jury an early overview of the case. They took that view even though they had been warned by the defence, and indeed by the trial judge, that if witnesses called did not "pass muster", that this would present difficulties in the sense of precipitating an application for a discharge which would have to be ruled on.

24. Implicit in the arguments in relation to this ground of appeal is a supposition on the part of the defence that if evidence was not admitted grounding an individual question, that the question was to be automatically excluded. In this Court's view, that does not at all follow. Questions may be asked in the course of an interview which are permissible and perfectly proper. If, at trial, it turns out that in respect of some issues raised, there is no evidence to ground a question, then that is a matter to be addressed on a case by case basis. In some situations, it may mean that the question loses its validity, but this will by no means always be the case. In the present case, the appellant was asked whether he had used a particular driving licence and freely and unequivocally admitted that he did. It does not seem to us that this aspect of the memorandum of interview was rendered invalid by subsequent rulings. In the circumstances, we are not prepared to uphold this ground of appeal.

Ground (v): The trial judge erred in law in failing to give a direction in relation to count 21 on the indictment when he had previously ruled that the evidence supporting the count was inadmissible; and

Ground (vi): The trial judge erred in law by allowing the jury to consider evidence relating to count 21 on the indictment, which was contained in the memo of interview in the form of an admission by the appellant, where the evidence supporting that count had been deemed inadmissible by the trial judge.

25. These two grounds were dealt with together and they are closely linked with the issues raised in ground (iv). Count 21 had involved an allegation that on 7th October 2012 at Harvey Norman in the Blanchardstown Centre, the appellant used a false instrument which he knew to be false in the form of a UK driving licence in the name of Niall O'Donoghue as a form of identification to obtain finance from Flexirent for the purchase of a computer to the value of €1,375. The prosecution had called a witness from Harvey Norman in Blanchardstown, a Mr. Stephen Carpenter. Following a *voir dire* in relation to the relevance of the Criminal Evidence Act 1992, the evidence of Mr. Carpenter was excluded by the trial judge. On that basis, the defence sought a direction on the count. However, the prosecution responded by contending that the appellant had clearly admitted his involvement in the offence. Therefore, the prosecution said, there was evidence to be considered by a jury. The prosecution point to the fact that the memorandum of interview recorded that Detective Garda Padden had said at one stage:

> "I'm now showing you exhibit SC 3." Mr Gold: "Yeah." Detective Garda Padden: "A copy of UK driving licence in the name of Niall O'Donoghue. This driving licence was produced by you as a form of identification for the finance agreement between you and the finance company Flexirent for the purchase of this computer from Harvey Norman, correct." […] "I put it to you that this UK driving licence is false. What do

you have to say to that?" Mr Gold: "You'd be right there." Detective Garda Padden: "Okay, I like those ones, those short ones." Mr Gold: "Listen, I'm learning, otherwise we'll be here until next week."

26. This Court is in no doubt that there was evidence, indeed, cogent evidence, available to be considered by the jury. On the face of it, the appellant had admitted all the ingredients of the offence charged and it was for the jury to decide whether to act on foot of the admissions. We therefore reject these grounds of appeal.

Ground (vii): The trial judge erred in law in failing to address, adequately or at all, the issues raised by the appellant in terms of the definition of 'false' and 'instrument' in respect of counts 9 to 17 on the indictment, in circumstances where the prosecution failed to engage in any meaningful way with these issues. Furthermore, the trial judge erred in law by failing to instruct the jury on this issue.

27. Counts 9 to 18 on the indictment related to allegations of possession of false instruments, namely, electronic documents styled as bank drafts which were found on a hard drive in the appellant's home. The counts were laid as being contrary to s. 29(2) of the Criminal Justice (Theft and Fraud Offences) Act 2001. At trial, the appellant sought a direction on these counts, contending that the documents did not constitute false instruments within the meaning of s. 30 of the Act.

28. Section 30 of the Criminal Justice (Theft and Fraud Offences) Act 2001 provides:

"(1) An instrument is false for the purposes of this Part if it purports—

(a) to have been made in the form in which it is made by a person who did not in fact make it in that form,

(b) to have been made in the form in which it is made on the authority of a person who did not in fact authorise its making in that form,

(c) to have been made in the terms in which it is made by a person who did not in fact make it in those terms,

(d) to have been made in the terms in which it is made on the authority of a person who did not in fact authorise its making in those terms,

(e) to have been altered in any respect by a person who did not in fact alter it in that respect,

(f) to have been altered in any respect on the authority of a person who did not in fact authorise the alteration in that respect,

(g) to have been made or altered on a date on which, or at a place at which, or otherwise in circumstances in which, it was not in fact made or altered, or

(h) to have been made or altered by an existing person where that person did not in fact exist.

(2) A person shall be treated for the purposes of this Part as making a false instrument if he or she alters an instrument so as to make it false in any respect (whether or not it is false in some other respect apart from that alteration)."

29. At trial, it was contended on behalf of the appellant that an instrument could only be false if it came within one or more of subsections (a) to (h). It was contended that it was incumbent on the prosecution to identify which of the eight criteria were relied on. The respondent says that the documents were false instruments, pointing, in particular, to subsections (a), (b), (c) and (d) in that regard:

- Count nine related to an Irish Nationwide Bank ('INB') bank draft payable to Bayadir Al-Khair Trading in the sum of €2 million.
- Count 10 related to an INB bank draft, dated 1st April 2011, payable to Dr. Majid Koja in the sum of €3,250,000.

- Count 11 related to an INB bank draft, dated 1st September 2011, payable to FMA (Financial Market Adviser) in the sum of €7 million.
- Count 12 related to an INB bank draft, dated 10th January 2011, payable to John Peters in the sum of €20 million.
- Count 13 related to an INB bank draft, dated 1st April 2011, payable to Mohammed Sedeeq Mohammed in the sum of €13 million.
- Count 14 related to an INB bank draft, dated 30th December 2011, payable to FMA (Financial Market Adviser) in the sum of €13 million.
- Count 15 related to an INB bank draft, dated 1st September 2011, payable to Mohammed Sedeeq Mohammed in the sum of €20 million.
- Count 16 related to a blank INB bank draft, as did Count 17.
- Count 18 related to what purported to be a bank statement issued by INB in respect of an account held by Jason Pienaar.
- Count 19 related to an ESB bill addressed to Simon Gold at Westside Centre, Main Street, Leixlip.

30. The respondent says that the bank drafts were false in a number of significant respects. In particular, they purported to guarantee payment of particular amounts; purported that Irish Nationwide Bank was in fact a legitimate bank with authority to guarantee such payments; purported to show that Irish Nationwide Bank had an address at 13, Upper Baggot Street, Dublin 4; and purported to show that a particular manager there had endorsed the drafts, when in fact the drafts had not been made by such a manager, or banks. Thus, it is said that the purported drafts: (i) fell within the terms of s. 30(1)(d), in that they were purported to have been made in the terms in which they were made on the authority of a person who did not, in fact, authorise their making in those terms; (ii) fell within s. 30(1)(a) as they purported to be made in that form by a person who did not, in fact, make them; (iii) fell within s.

30(1)(b) as they purported to have been made in the form in which they were made on the authority of a person who did not, in fact, authorise their making; and (iv) fell within s. 30(1)(c) as they purported to have been made in the terms in which they were made by a person who did not, in fact, make them in those terms.

31. The appellant is critical of the trial judge for failing to engage with the issues raised by the defence, either at the point at which a direction was being sought in respect of these counts, or later when charging the jury. The appellant points out that when reminded of the issue about the drafts, the judge ruled on the issue in very terse, indeed, dismissive terms. The judge had stated:

> "The drafts, I think the drafts are very clear. I take a simple view in most things. They were on the computer. I think they're within the definition of documents and obviously the letter charge was taken or put because there were -- and obviously we do know that Mr Gold did use INB documents. We do know that. We don't know whether he was ever going to use these documents at all. But they were there and I'm satisfied these documents or these charges can be put to lesser counts.
>
> Now, obviously it seems it could be assumed they were in his arsenal. I don't know why he was doing it. But they're not -- I don't think they're accidently there. I don't think he was doodling. I don't think there's evidence that he wasn't doodling, that they were there for some reason. So, I think they were properly there."

32. The appellant says that the ruling did not do justice to, or properly address, the submissions that had been made by counsel for the then accused. The appellant says that the failure of the trial judge to engage with the submissions and to provide an appropriate ruling meant that there was a failure to furnish reasons. It is said that what occurred fell below the standards of fairness expected in a criminal trial. In response, the respondent points out,

correctly, in the view of this Court, that while the ruling may have been a brief one, it came against a background of extensive engagement with the submissions.

33. It seems to the members of this Court that focus on the quality of the engagement should not be allowed to distract from the fact that the documents on their face were clearly false in a number of respects and were of a general character that the appellant had made use of on other occasions.

34. Accordingly, we are not prepared to uphold this ground of appeal.

Count (viii): The trial judge erred in law by allowing the prosecution to amend the dates relating to count 20 on the indictment after the appellant's counsel had made submissions in relation to a deficiency of evidence in relation to that count.

35. The 'particulars of offence' in relation to count 20 were as follows:

> "Simon Gold, on a date unknown between 1st day of January 2012 and 5th day of March 2012, both dates inclusive, at a place unknown within the State, did use an instrument which is and which you knew or believed to be a false instrument, with the intention of inducing another person to accept it an [*sic*] genuine and by reason of so accepting it to do some act, or to make some omission or to provide some service to the prejudice of that person or any other person to wit: used a false instrument which you knew to be false in the form of an ESB bill addressed to Simon Gold at West Side Centre, Main Street, Lexslip [*sic*], County Kildare with a total due of €321.67 payable by 24th January 2012 to induce Ulster Bank to accept it as genuine and open a bank account in the name of Anglo Irish Global Limited, account number 13818810."

36. On 31st May 2019, in the course of a direction application, counsel on behalf of the appellant referred to various documentation which he accepted showed that there was a meeting held at Westside Centre on 5th March 2012, and that some forms were completed on

that day. However, he submitted that it did not necessarily mean that the ESB document was submitted on that day. Indeed, he drew attention to the fact that two bank date stamps appeared to be dated 12th March 2012, which was outside the period covered in the indictment. The judge's response was to ask, "Could a jury not infer that they were submitted when the application was submitted and that was signed on that date?" Counsel for the defence said no, the only inference that could be drawn was that the documents were submitted to the bank between 5th and 12th March 2012 – no earlier than 5th and no later than 12th. This caused the judge to ask, "Could the Court just not extend the indictment?" The judge then went on to refer to the Court's discretion to amend an indictment. In response to the application for a direction, counsel for the prosecution pointed out that the offence was the use of the documentation, and that therefore, a jury could infer beyond a reasonable doubt that the document was used on the day it was signed and submitted, but said that insofar as the defence were making the point that stamps indicated it may have been a few days later before the bank staff in the branch actually assessed the documentation, that it was right and proper for the prosecution to make an application to amend the indictment to extend the dates by two weeks so as to ensure that it falls within the date range.

37. In this Court's view, the judge was correct when he ruled that this was a proper case in which to accede to the application to amend. The kernel of the offence was the reliance on a false document to open a bank account. The precise date on which that happened was of little consequence. The Court is in no doubt that this was an amendment that was capable of being made without doing injustice and we accordingly reject this ground of appeal.

Count (ix): The trial judge erred in law by failing to address, adequately or at all, the submission made in respect of count 20 that there had been no evidence that the instrument, the subject matter of that count, had been used within the State.

38. As till immediately be apparent, this ground is closely linked to the previous ground, involving, as it does, the use of a false instrument – an ESB bill – in order to open a bank account with Ulster Bank. At trial, the point was made that the application was considered at Ulster Bank Head Office in Belfast. However, the prosecution argued that the count related to the actual use of the document rather than what happened with the document after it was received. The prosecution contended that there was sufficient evidence for the jury to be satisfied that the submission of the document took place within this State. As in the case of the previous ground, the appellant is critical of the extent to which the trial judge engaged with his submissions. It must be said there was undoubtedly evidence in the case which would entitle a jury to be satisfied beyond reasonable doubt that the ESB bill was used within the State. During interview, the appellant admitted opening an Ulster Bank account at the College Green branch in Dublin 2, signing the necessary paperwork and dating it 5th March 2012. Moreover, there was evidence indicating that the appellant, both on 5th March (the day on which the Ulster Bank documentation was signed) and on the days around then, was involved in numerous routine transactions in the State, and in particular, he was involved in a number of transactions in the Navan area. Again, we do not believe that the complaints about a lack of engagement by the trial judge, or a failure to provide adequate reasons, are well-founded. Once the issue about whether there was evidence of the offence being committed within the State had been raised, it was then a very straightforward question as to whether there was or was not sufficient evidence for the jury to consider. The trial judge felt that there was, and so ruled. In the view of this Court, he was clearly correct in so doing. We therefore reject this ground of appeal.

Count (x): The trial judge erred in law by failing to accede to an application for a direction on the basis of a general unfairness in the manner in which various pieces of

documentary evidence were deployed by the prosecution over the course of the trial. Specific issues included:

(x)(i) a failure to address the evidence adduced under the Bankers Evidence Act, in particular, meeting notes between the appellant and bank officials which consisted of a narrative contrary to the one pursued by the prosecution.

39. This ground of appeal involves the appellant contending that the judge fell into error in not acceding to a so-called *P.O'C.* application (*The People (DPP) v. P.O'C.* [2006] 3 IR 238) that was made by the appellant on Day 17 of the trial. The sub-ground relating to the Bankers Books Evidence Act 1879 (as amended) arises in circumstances where a number of documents were placed in evidence pursuant to s. 3 of that Act, which provides that "a copy of any entry in a banker's book shall in all legal proceedings be received as primâ facie evidence of such entry, and of the matters, transactions, and accounts therein recorded". One of the documents put in evidence were notes of a meeting conducted with the appellant on 23rd October 2012 at the Ulster Bank office in Belfast. Counsel for the appellant submitted that the records of the meeting set out the appellant's defence to the money laundering charges. It was contended that documentary evidence adduced pursuant to s. 3 of the 1879 Act is tantamount to calling a witness of truth in relation to the assertions made in the document and that, accordingly, there existed *prima facie* evidence called by the prosecution in support of the appellant's defence.

40. In response to the submission of counsel which, it has to be said, was a brave, if not an audacious one, the judge enquired, "Sure, then I should just acquit him, should I on that basis?", to which defence counsel, with some élan, commented, "I would invite that, Judge, certainly on the money laundering charges", before adding, "And I know the Court … is being flippant in its comments, but --", at which stage, the judge interjected to say, "I wouldn't waste too much time on it".

41. There was evidence before the jury of what was said at the meeting in Belfast. It was for the jury to consider whether what was said was truthful, or whether they were satisfied beyond reasonable doubt that what was said was untruthful. The suggestion that because the prosecution put before the jury evidence of what was said, that meant that the prosecution was bound to accept the actual truthfulness of the evidence seems to us a remarkable one and one that is not consistent with principle. Once the evidence had been admitted, it was then for the jury to assess that evidence and make of it what they will. We are also not persuaded by the complaints about a failure on the part of the trial judge to engage with the details of the arguments. The exchanges that we have quoted involving counsel for the defence and the trial judge make clear that nobody was in any doubt about how the judge regarded the issue. For our part, we have not been persuaded that the judge's approach was incorrect.

42. Accordingly, we reject this sub-ground of appeal.

Count (x)(ii): A failure to address the numerous prejudicial documents adduced by the prosecution which the prosecution claimed were not adduced for the purposes of relying on the truth of this document; and

Count (x)(iii): A failure to clarify, adequately or at all, the purpose of the admission of the phone recordings or what the jury could use them for.

43. At trial, the *PO'C* application rehearsed the arguments in relation to severance of the indictment. The contention was that by that stage of the trial, it had become apparent that Mr. Gold could not receive a fair trial because of the way in which the prosecution had cast its net. It is said that the way the prosecution had run the trial meant that the jury would be expected to play mental gymnastics. How, asked counsel rhetorically, could the jury, when dealing with allegations made by the Irish victims, put out of their minds what happened to Mr. Laurisden? Counsel said that the difficulties in the case were compounded by the way the

documentary evidence had been adduced. He said that a lot of material had been put before the jury but with no real guidance as to how to use it. He suggested that many of the documents had no direct relevance, and if they had any relevance at all, it was marginal, in that they dealt with dishonesty generally. Counsel then focused on approximately ten documents, arguing that it was almost impossible to know what use was being made of them by the prosecution. Counsel said that the Court had been placed in an invidious position in having to charge a jury in relation to all the anomalies, and was being put in that position because of the way in which the prosecution had mounted its case. It was submitted that the trial should have been severed in the first place and there should have been some degree of analysis as to how documents were admissible and for what purpose.

44. In response, counsel for the prosecution invited the Court to assume for a moment that Mr. Gold was on trial solely in relation to the Mr. Laurisden matter, and proceeded to ask, rhetorically, whether it could seriously be suggested that if the accused was making the case of being a genuine international businessman, that it would be admissible to adduce evidence that he had, in his place of abode, documents which established that he was operating a number of companies and had drafts and documents that were false. He asked whether his colleague could be seriously contending that evidence would not be admissible to rebut a suggestion of legitimate business.

45. In relation to the audio recordings, the appellant made the point that the prosecution had adduced these as original evidence, using their contents to demonstrate Mr. Gold's state of mind. Counsel said that meant that the jury would have to listen to the recordings and use them, not to say, "…well here's Mr. Gold talking about dissipating funds or talking about bringing in or processing 1.6 million. We can't use that as evidence that he did process the 1.6 million … What we can do is say well I suppose he knew about them or knew about the transactions". Counsel said that involved a feat of mental gymnastics that he was not capable

of doing, and that while he was sure the Court would explain it very well to the jury, he felt the jury would not be able to do it either.

46. This Court is bound to say that the *P.O'C.* application involved a rehearsal of arguments that had already been advanced in the context of the application for severance and other arguments that had already been advanced and considered by the trial court in the context of rulings on admissibility issues. For our part, we cannot see that there was ever a basis on which it could be suggested with any credibility that it was a case where the trial judge had exercised his jurisdiction to stop the trial. That is a jurisdiction to be exercised sparingly. We are quite satisfied that this was not a case for doing so.

47. Accordingly, we reject this ground of appeal.

Ground (xii): The trial judge erred in law in determining that the offence of theft, contrary to section 4 of the Criminal Justice (Theft and Fraud Offences) Act 2001, can be alleged against a defendant who is also charged with money laundering, contrary to sections 7(1)(a)(ii), 7(1)(b) and 7(3) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, when the money the subject matter of each count relates to the same set of factual circumstances.

48. This ground relates to the Mr. Laurisden counts (counts one to four on the indictment). At an early stage, the prosecution had it made clear to the jury that it was asking the jury to consider first the money laundering offences. If the accused was found guilty in relation to money laundering, then the jury was not being asked to go on to consider theft which was there only as an alternative. The appellant says that this was a very clear example of the prosecution overloading the indictment. Both at first instance and before this Court, counsel on behalf of the appellant has drawn an analogy between the offences of theft and handling stolen property and the offences under consideration here, and says that just as one

cannot be both a thief and a handler, by analogy, one cannot be both a thief and a money launderer. Counsel did accept that there was no specific statutory bar to having both counts on the indictment, but contended that what was happening was not proper. The judge's approach was to say that in a situation where there was no legislative bar to both offences being charged, that he could not see any unfairness and was happy to allow the trial to proceed. We take as our starting position that there was no statutory bar, but we do not think that theft and money laundering should routinely be charged as alternatives. We do not believe that would represent best practice. However, in the circumstances of this case, we do not believe that any unfairness resulted, and we certainly do not believe that Mr. Gold suffered any injustice. Therefore, we would dismiss this ground of appeal.

49. In summary, we have not been persuaded to uphold any ground of appeal against conviction. Accordingly, we must dismiss this appeal against conviction.