

Michaelmas Term
[2026] UKPC 36
Privy Council Appeal No 0031 and 0031/A of 2025

JUDGMENT

Warren Cassell (Respondent) *v* The King (Appellant) (Montserrat); The King (Appellant) *v* Warren Cassell (Respondent) (Montserrat) No 2

From the Court of Appeal of the Eastern Caribbean Supreme Court (Montserrat)

before

Lord Briggs
Lord Burrows
Lord Snowden

JUDGMENT GIVEN ON
22 October 2026

Heard on 9 July 2026

Appellant/Respondent – The King
Richard Jory KC
Madeleine Pinto
Oris Sullivan
(Instructed by Blake Morgan LLP)

Respondent/Appellant – Warren Cassell
Thomas Roe KC
Dr David Dorsett
Rory Turnbull
(Instructed by David Dorsett)

LORD SNOWDEN:

1. On 22 June 2022, after a trial before the Eastern Caribbean Supreme Court (John J ("the Judge") and a jury), Warren Cassell was convicted of a single count of concealing the proceeds of criminal conduct contrary to section 33(1)(a) of the Proceeds of Crime Act 1999 ("POCA 1999"). Mr Cassell was sentenced to a term of imprisonment of three years and six months. He was refused bail pending appeal and served his sentence.

2. After an appeal hearing in September 2024, on 27 February 2025 the Court of Appeal of the Eastern Caribbean Supreme Court (Price-Findlay JA, Ward JA and Farara JA (Ag)) quashed Mr Cassell's conviction, set aside his sentence, and declined to order a retrial.

3. The Court of Appeal's reasons for quashing Mr Cassell's conviction, in brief, were that the Judge had permitted the prosecution to refer to a number of documents when opening the case to the jury, and that those documents were not subsequently validly admitted into evidence. The Court of Appeal held that without such documents there was insufficient evidence upon which a jury, properly directed, could properly have convicted, and so the Judge ought to have acceded to a submission by Mr Cassell that he had no case to answer. It also held that permitting the documents to be shown to the jury in opening before they were formally admitted into evidence was a material irregularity which rendered the conviction unsafe and unsatisfactory. In the light of its decision to quash Mr Cassell's conviction for the reasons it gave, the Court of Appeal did not address various other grounds on which he had also appealed against his conviction.

4. With permission granted by the Board, the Crown appeals against the decision to quash Mr Cassell's conviction. Mr Cassell cross-appeals on grounds which the Court of Appeal did not consider, arguing that the indictment against him was bad in law and that the Judge misdirected the jury.

5. For the reasons that follow, the Board is of the opinion that the Crown's appeal should be allowed, but that Mr Cassell's cross-appeal should also succeed. In consequence, a verdict of acquittal should formally be entered.

The background facts (in outline)

6. This is the latest, and hopefully final, instalment in an extraordinary saga that began almost 20 years ago in 2007. Over that time there have been two trials and now two appeals that have reached the Privy Council.

7. The case concerns Mr Cassell's dealings with a number of plots of land at Providence Estate, St Peters, Montserrat. The plots formed part of about 53 acres of land owned by a Montserrat company called Providence Estate Limited ("PEL"). PEL had been incorporated in 1989 by two Americans, Messrs Wood and Rooney, who held 60% and 40% of its shares respectively and were its only directors.

8. PEL obtained a licence to develop the land at Providence Estate into about 40 upmarket residences in 1990. The plans were, however, thwarted by Hurricane Hugo in 1989 and the eruption and continued activity of the Soufrière Hills volcano on Montserrat between 1995 and 1997. Thereafter Mr Rooney submitted a proposal for an alternative development of over 500 affordable houses. However, this also did not proceed and PEL became dormant with unpaid tax liabilities to the Government. It was struck off the Register of Companies in Montserrat in 2001.

9. Mr Cassell was an attorney practising in Montserrat as a partner in the firm of Cassell & Lewis. His cousin, Ken Cassell, was a real estate agent. In January 2007 Mr Cassell attempted to contact Messrs Rooney and Wood, who were by then both resident in the USA, offering to buy their shares in PEL. This did not lead to any substantive communications between Mr Cassell and Mr Rooney, but it did lead to a meeting between Mr Cassell and Mr Wood in Virginia, USA on 30 July 2007.

10. At that meeting Mr Wood and Mr Cassell executed an agreement under which Mr Wood purported to sell his 60% shareholding to a newly formed Montserrat company called Cassell & Lewis Inc ("C&L"), which was wholly owned and controlled by Mr Cassell. The price was EC$810,000. That agreement was entered into without the knowledge of Mr Rooney and without Mr Wood's shares having first been offered to Mr Rooney as would have been required by PEL's articles of association if PEL had not been struck off the Register.

11. About a week later, on 9 August 2007, Mr Cassell applied for PEL to be restored to the Register of Companies. Mr Cassell stated on the application that he was a director of PEL.

12. At around this time Mr Cassell arranged for PEL's land at Providence Estate to be advertised for sale through his cousin's real estate agency as part of a proposal to develop up to 15 up-scale luxury villas in a gated community on the site. Mr Rooney was alerted by a third party to the advertisement and purported sales of the land at Providence Estate in early August 2007. He wrote to Mr Cassell to complain and further correspondence then ensued between Mr Rooney and lawyers who Mr Cassell purported to instruct on behalf of PEL. Among other things, the lawyers claimed that Mr Rooney had not in fact paid for his shares in PEL at the outset.

13. On 24 September 2007, Mr Cassell filed a notice of a change of directors in relation to PEL at the Companies Registry. That notice stated that Mr Cassell had been appointed as a director of PEL on 21 September 2007 and that Messrs Wood and Rooney had ceased to hold office as directors on the same date.

14. Between August 2007 and February 2008 Mr Cassell executed a number of land registry transfers of plots of land on the Providence Estate, in each case purporting to act as a director or "president" of PEL. In total, the purchasers paid EC$855,380.54 by cheques for the plots of land. Mr Cassell caused such cheques to be paid into a bank account in the name of "Cassell & Lewis" which he had opened in December 2006 and which he controlled.

15. On 15 November 2007, Mr Rooney filed a civil action against Mr Wood, Mr Cassell and PEL in the Circuit Court for Fairfax County, Virginia, USA. In that complaint, Mr Rooney alleged that the agreement for sale of shares from Mr Wood to Mr Cassell in July 2007 was invalid for failure to comply with the articles of PEL and should be avoided. He also alleged that Mr Cassell had engaged in an unlawful conspiracy with Mr Wood and that he should account for his dealings with the plots of land owned by PEL.

16. In December 2007 Mr Cassell filed a further document at the Companies Registry that purported to be a minute of the resolutions passed at a meeting of the members of PEL on 21 September 2007. The minute stated that the meeting had been attended only by Mr Cassell (described as a shareholder) and one Meredith Lynch (described as interim secretary). It also claimed that Mr Rooney was "refusing to return to Montserrat and not having made any contact with the members of the company for several years". The resolutions purportedly passed on 21 September 2007 were for the removal of Messrs Wood and Rooney as directors and for the appointment of Mr Cassell as sole director of PEL "with immediate effect from the 1st day of July 2007" (sic.).

17. In April 2008, Mr Rooney's lawyers applied to the Land Registry in Montserrat, stating that Mr Rooney remained a director of PEL and that PEL's lands were being sold by Mr Cassell without Mr Rooney's consent. Mr Rooney asked for a restriction against further dealings with respect to PEL to be placed on the Land Register. Mr Cassell's lawyer wrote to the Land Registry objecting to such restriction, claiming that Mr Rooney was not a director of PEL and that the plots of land had been sold to bona fide purchasers.

18. Mr Cassell did not respond or take any step in relation to Mr Rooney's proceedings in the USA. Accordingly, on 3 October 2008, Mr Rooney applied for and obtained a default judgment and order against him. The order declared C&L's purchase of Mr Wood's 60% of the shares in PEL to be null and void, and provided for damages and an account against Mr Cassell and C&L.

The first trial and appeal

19. Mr Cassell was arrested in Montserrat on 4 November 2008. He was charged with conspiracy to defraud, procuring the execution of valuable securities by deception, and money laundering under the Proceeds of Crime Act 2010 ("POCA 2010"). Mr Cassell stood trial on these charges in 2012. He declined to give evidence but made a brief unsworn statement from the dock. He was convicted on all counts. He was sentenced to imprisonment for five years on the money laundering charge and concurrently to imprisonment for two years on the charges of procuring the execution of valuable securities by deception.

20. Mr Cassell's conviction for money laundering was quashed by the Court of Appeal in January 2013. The Court of Appeal held that the charge had been wrongly laid under POCA 2010, which had not been in force at the time of the events in question, and which was in materially different terms to POCA 1999 which it had replaced. The remainder of Mr Cassell's convictions were quashed by the Privy Council in 2016: see *Cassell v R* [2016] UKPC 19; [2017] 1 WLR 2738. In a judgment delivered by Lord Hughes, the Board held that there had been a number of serious misdirections by the trial judge. These included the judge giving his own views during his summing up on the central issue of Mr Cassell's state of mind and dishonesty; and confusing what the jury might have concluded that Mr Cassell actually knew with the judge's view of what, as a practising lawyer, he "ought to have known". By that stage, however, Mr Cassell had served 485 days in prison on account of his original sentences.

Mr Cassell is charged under POCA 1999

21. When quashing Mr Cassell's conviction for money laundering in 2013, the Court of Appeal indicated that it intended to order a retrial. When quashing the remainder of the convictions, the Privy Council pointed out that no order for a retrial for money laundering was necessary given that Mr Cassell had never in fact been charged under POCA 1999. The matter was considered by the prosecuting authorities in Montserrat and, in May 2019, Mr Cassell was charged with a single count of concealing the proceeds of criminal conduct contrary to section 33(1)(a) POCA 1999. Mr Cassell challenged the bringing of this new charge against him, but in a judgment given on 25 October 2019 Morley J determined that it was appropriate for a second trial to proceed.

The Indictment

22. The indictment (as amended at trial) ("the Indictment") read as follows:

"WARREN CASSELL is charged with the following offence:–

STATEMENT OF OFFENCE

CONCEALING THE PROCEEDS OF CRIMINAL CONDUCT, contrary to section 33(1)(a) of the Proceeds of Crime Act 1999, Cap 4.04.

PARTICULARS OF OFFENCE

WARREN CASSELL between the 1st day of January 2007 and the 4th day of November 2008, in the British Overseas Territory of Montserrat, concealed or disguised property, namely Eight Hundred and Fifty Five Thousand Three Hundred and Eighty Eastern Caribbean Dollars and Fifty Four Cents [EC$855,380.54] transferred from investors into the bank account of Cassell & Lewis for the sale of land at Providence Estate, St Peters, which was, in whole or in part, directly or indirectly, the proceeds of criminal conduct, namely the fraudulent conduct of Warren Cassell in dishonestly

i. representing that he was a legitimate Director of Providence Estate Limited, and/or

ii. representing that he was legally entitled to sell land at Providence Estate, and/or

iii. filing a Change of Directors application with the Companies Registry regarding Providence Estate Limited, and/or

iv. receiving funds into the bank account of Cassell & Lewis for the sale of land at Providence Estate,

For the purpose of avoiding prosecution for an offence or the making or enforcement of a confiscation order."

The pre-trial hearing in 2020

23. The form of the Indictment was one of the issues addressed at a pre-trial hearing before Morley J on 26 May 2020. At that time Mr Cassell was represented by counsel.

24. The primary concern raised at the pre-trial hearing was that the Indictment did not contain a second "predicate" count alleging commission of a specific criminal offence or offences of which the EC$855,380.54 were said to be the proceeds. The Crown resisted the inclusion of a predicate count, arguing that this was unnecessary as a matter of law and that the prosecution was not required to establish that the property was the result of a particular crime or crimes. The Crown did acknowledge, however, that, as indicated in *Director of Public Prosecutions of Mauritius v Bholah* [2011] UKPC 44; [2012] 1 WLR 1737, fairness to Mr Cassell required particulars of the criminal activity upon which it relied to be given.

25. One of the other matters ventilated at the pre-trial hearing was the Crown's intention to provide bundles to the jury of the relevant documents upon which it relied. The note prepared by counsel for the Crown for the pre-trial hearing stated:

> "Jury bundle
>
> The Crown propose to rely on those documents served within the Exhibit bundles 1 and 2, but we will seek to reduce the documentation further to what is considered essential or important for trial. Some of the documentation is poorly copied and will be copied so that the content is legible. Other documents are simply inadmissible. It is proposed that a large detailed plan, showing the layout of, and plots within, the Providence Estate will be provided at trial to assist the Court and jury. An updated schedule, setting out the financial transactions making up the figure in the Count, will also be served in due course."

26. Exhibit bundles 1 and 2 included about 130 documents comprising almost 700 pages that had featured in evidence at Mr Cassell's first trial in 2012. Each of the documents had been individually numbered and marked with the initials of the prosecution witness that had produced the document and exhibited it to their witness statement that had been disclosed to Mr Cassell. Mr Cassell was provided with Exhibit bundles 1 and 2 prior to the pre-trial hearing and raised no objection to them, either at that hearing or when the finalised bundles of copy documents were subsequently lodged with the court for the trial.

27. At the pre-trial hearing before Morley J, the Crown also undertook to provide a detailed note of its proposed opening in advance of the trial. That note was duly provided in June 2020, two years before the trial in fact commenced in 2022. The note included a verbatim script for the prosecution's opening, with numerous cross-references to documents in the exhibit bundles, making it clear that the intention was to refer the jury

to those documents during the opening. In spite of Morley J indicating that any other evidential points or objections should be raised before the trial commenced, Mr Cassell made no objection to that note or the course proposed at any time until the prosecution opened its case to the jury at the second trial in June 2022.

The course of the second trial

28. At some point before the second trial commenced, Mr Cassell dispensed with the services of his lawyers. At the trial he pleaded not guilty and represented himself.

29. Early in his opening address to the jury, Mr Jory KC for the Crown asked that the jury be given the two files of copy documents that had been lodged with the court (the "jury bundles"). Mr Cassell objected, and (in the absence of the jury) asserted that it was unprecedented in Montserrat for a jury to be given documents that had not first been admitted into evidence. He contended that the only thing that the prosecution could give to the jury at the outset of the trial was the indictment. In response to questions from the Judge, Mr Cassell twice confirmed that his objection was not to the documents themselves, but simply to them being shown to the jury before they had been properly admitted into evidence.

30. Mr Jory replied that in a case involving numerous documents it was standard practice for the prosecution to show the jury some of the documents in opening so that the jury could understand what the case they were going to hear was about. He added that the documents had been with Mr Cassell for a long time without objection. In response to a question from the Judge, Mr Jory confirmed that the purpose of handing the documents to the jury was simply to refer to them in opening and was not to have them admitted into evidence at that stage. He accepted that if in due course a witness said that they did not recognise a document, "we can rip it out [of the bundles]".

31. The Judge then ruled—without giving reasons—that the jury bundles could be handed to the jury. The opening was completed and trial proceeded, with each of the prosecution's witnesses giving evidence under oath in the usual way. Most witnesses were present in court, but Mr Rooney gave evidence by Zoom from the USA. Mr Rooney's attorney, Mr Hogarth Sargeant, had died, so his witness statement was read to the jury. The witnesses were each examined in chief by reference to the paginated numbers of the copy documents in the jury bundles. The Registrar of Lands and the bank officers were taken through and identified the copy documents that they had each produced from the Land Registry and bank records. Other witnesses were taken to copies of documents that they had authored or received and similarly identified the documents expressly or by implication in their evidence.

32. During this process, none of the copy documents were formally marked with new exhibit numbers when they were referred to or identified by a witness. Instead, the final prosecution witness, who was the police officer in the case, gave evidence that she had looked at all of the exhibits to the witness statements and had collated the documents in the jury bundles from those exhibits.

33. No objection was taken by Mr Cassell to the authenticity or admissibility of any of the copy documents. He also did not object to the method by which the witnesses were taken to the documents when giving evidence in chief, and he cross-examined some of the witnesses by reference to the documents in the jury bundles in the same manner.

34. At the close of the prosecution case, Mr Cassell submitted to the Judge that he had no case to answer because none of the documents in the jury bundles had been properly tendered or admitted into evidence. Mr Cassell submitted that the only way in which the documents could properly have been admitted into evidence was if the court had itself given a fresh exhibit number to each individual document as and when it was identified by a witness. Mr Cassell added that it did not suffice for the police officer in the case to have given evidence as to how she had produced the jury bundles from the exhibits to the witness statements. He contended that without such documentary evidence, the jury could not properly convict.

35. The Judge rejected Mr Cassell's submission and ruled that he had a case to answer. He indicated that he would give his reasons in writing at a later stage, but in the event he did not do so.

36. Mr Cassell then exercised his right not to give evidence or call any witnesses. In light of the fact that Mr Cassell had been unrepresented and had not called any witnesses, counsel for the Crown did not seek to make a closing speech to the jury. Mr Cassell did make a speech to the jury to the effect that the prosecution had not proved its case.

37. The Judge then summed up the case. The Judge narrated the evidence and then stated:

> "So that Members of the Jury in brief is the Crown's case against the defendant. If you believe that the actions of the transfer of shares, the change of directors, the Minutes of the extraordinary meeting were all falsified, he advertised when he had no authority to advertise, collected moneys so if you believe that those actions were dishonest actions or fraudulent actions the proceeds that came from them were proceeds of the crime those acts that he did to secure the money were all criminal acts."

38. After adjourning overnight, the Judge outlined the individual elements of the offence charged and Mr Cassell's response to them:

> "You recall when Mr Jory for the Crown opened the case one of the things he did was to refer to the indictment … and they are set out there disjunctively and/or so any one is sufficient to find the accused guilty. In his final address to you Members of the Jury the defendant Cassell said he was rather short but the gist of it was that at all times he thought he was acting lawfully; that he did nothing wrong; he was not dishonest in any way. Members of the Jury if you accept what he says that he did nothing wrong, that he was not acting dishonestly or fraudulently you must acquit him because it means that the Crown has not satisfied you to the extent that you feel sure. If you are in reasonable doubt on what he has said, could it be true, could it you know got reasonable doubt again resolve the doubt in his favour; acquit him. But it doesn't mean because you don't believe what he has said to you in his address that he is guilty you have to go back to the Crown's case the prosecution's case and examine it and see whether there is dishonesty and you may find dishonesty Members of the Jury in the transfer of the shares. It's a matter for you. As I said before Cassell is a practising attorney and he ought to know, we call it the right of pre-emption and you may very well find that he knew or he ought to have known that that purported transfer was illegal. You may very well find on the evidence as led in this case that the purported change of director making himself the sole director of PEL was dishonest but that is a matter for you. The Minutes of the extraordinary general meeting you will decide is that genuine. You may say how could it be genuine because he's not a director. He has no dealings with PEL."

39. In the absence of the jury, the Judge then asked counsel and Mr Cassell whether they thought that there was anything he had omitted to draw to the jury's attention. Mr Jory indicated that there were matters missing in relation to the definition of dishonesty and the requirement that Mr Cassell should have had the purpose of avoiding prosecution. Mr Jory invited the Judge to read in full the closing part of a document that he had provided to the Judge which contained a "route to verdict".

40. After the jury returned, the Judge addressed the jury, in part from the route to verdict document as requested. After directing them that the EC$855,380.54 transferred into the account of Cassell & Lewis was property, the Judge continued:

> "Were those funds that is the funds in the account in whole or in part, directly or indirectly the proceeds of criminal conduct? That is the question you have to ask yourself. Members of the jury that [EC]$855,380.54 becomes criminal property and would represent the proceeds of criminal conduct if all or part of it was transferred as a result of the fraudulent conduct of the defendant and fraudulent conduct really means criminal conduct, deception, dishonesty. In this case the conduct is said to be fraudulent in the following ways, four ways. Cassell acted dishonestly when he held himself out as a legitimate director of PEL, when he represented that he was legally entitled to sell land in Providence Estate, when he filed a change of directors application at the Company's Registry regarding PEL and fourthly when he received funds into the account of Cassell & Lewis from the sale of lands of Providence Estate. These four acts, I've said this before, are set out disjunctively. That is to say proof of any one of them would be sufficient to indicate that the funds were indeed the proceeds of criminal conduct. As long as you are satisfied the act in question amounted to fraudulent conduct and that in doing so the defendant acted dishonestly. In deciding whether the defendant acted dishonestly you must consider what was the defendant's actual state of knowledge or belief as to the facts and was his conduct dishonest by the standards of ordinary, decent people."

41. The Judge concluded by addressing the questions of what amounted to concealing or disguising the property for the purposes of section 33(1)(a) POCA 1999 and whether that had been done for the purpose of avoiding prosecution.

42. After retiring, the jury returned a unanimous verdict of guilty. As indicated in para 1 above, Mr Cassell was sentenced to three years and six months' imprisonment. He was refused bail pending appeal.

The Court of Appeal allows Mr Cassell's appeal

43. Mr Cassell appealed against his conviction and sentence on 14 grounds. These included (i) that the Indictment was duplicitous, (ii) that the Judge wrongly permitted the jury to look at the documents in the jury bundles in the course of the prosecution's opening and subsequently wrongly rejected the submission of no case to answer because none of those documents had been properly admitted into evidence, and (iii) that the conviction was unsafe and unsatisfactory because of a number of errors in the Judge's summing up.

44. Mr Cassell's argument on duplicity was that, in alleging in the Particulars of Offence that he had "concealed or disguised property", the single count in the Indictment alleged two separate offences, namely "concealing" criminal property or "disguising" criminal property. It was contended that these were separate and different activities and that Mr Cassell did not know which alternative was alleged against him.

45. The Court of Appeal rejected that argument on the basis that it was clear from the Statement of Offence in the Indictment (set out in para 22 above) that Mr Cassell was being charged with "concealing" the proceeds of criminal conduct. The Court of Appeal held that the wording of the Particulars of the Offence merely reflected the wording in the 1999 Act and that it was clear what was alleged was a single activity which covered a course of conduct over a period of time.

46. Mr Cassell's second argument was essentially that none of the documents in the jury bundles had ever been properly tendered, admitted into evidence and marked as exhibits by the court, and hence could not be relied upon as evidence by the prosecution. He contended that, without such documents being admitted into evidence in this way, there was insufficient evidence of the particulars of the offence alleged, so that the Judge should have accepted the submission of no case to answer. He further contended that permitting the jury to be shown the documents in opening and to retain them during the trial and their deliberations was a material irregularity that rendered his conviction unsafe.

47. The Court of Appeal accepted these arguments. Price-Findlay JA (with whom the other judges agreed) commented, at para 67:

> "It is trite law that all documents, photographs and reports used as evidence must satisfy the requirements of the law to be admitted as evidence. During a trial, each piece of evidence should be marked and formally admitted. Such exhibits must be marked and formally admitted into evidence before they can be considered by the judge and jury."

48. At para 71, Price-Findlay JA then agreed with Mr Cassell's submission that allowing the prosecution to show documents in the jury bundles before they had been admitted into evidence was "unprecedented" and "unorthodox". She noted, at paras 73–76 that, although the witnesses had been taken through the various documents in the jury bundles and the police officer in the case had given evidence as to how she had compiled the jury bundles from the exhibits to the witness statements, none of the documents had been formally tendered and marked as exhibits by the court. She held, at paras 77 and 79:

> "77. This procedure is highly irregular and unusual in either civil or criminal matters. In the absence of agreement of the

> parties that documents were not being challenged, the documents ought not to be shown to the jury unless and until they have been properly tendered and marked as exhibits. Only where there is such advanced agreement should documents be deployed before they have been formally tendered, marked and exhibited.
>
> …
>
> 79. In this matter, the learned trial judge erred in allowing the jury to be shown documents relative to the matter during the Crown's opening address and further allowing the jury to highlight or identify certain portions of those documents before they were properly tendered as exhibits in the matter."

49. As a consequence of her findings, Price-Findlay JA concluded, at para 85:

> "85. Failure to produce the necessary documents in support of their case left the Crown's case bare of the necessary proof required to show to the jury that the appellant did what they presented that the appellant did. There was as a result no evidence that the appellant represented that he was a director of Providence Estate or that he was entitled to sell land on behalf of the company. There was also no evidence of the appellant filing any documents for or on behalf of the company nor that any bank accounts were opened or that monies were received into bank accounts for or on behalf of Cassell and Lewis. Indeed, there was no evidence that an account existed in the name of Cassell and Lewis. Shorn of this documentary evidence, it left the Crown with no evidence with which to show that the appellant had done anything which would satisfy the various components of the wrongdoing with which he was charged."

50. This inevitably led to the conclusion, at paras 98–99, that the Judge should have accepted the submission of no case to answer and should have withdrawn the case from the jury.

51. In addition, at paras 109 and 113, Price-Findlay JA accepted that there had been a material irregularity rendering Mr Cassell's conviction unsafe and unsatisfactory:

> "In this matter there was a material irregularity when the learned trial judge not only allowed the jury to be shown documents which were not admitted into evidence at the opening of the case for the Crown but further those documents remained with the jurors throughout the entirety of the trial and also during their deliberations, without ever having been admitted, tendered or marked as exhibits by the court."

52. Having reached that conclusion, the Court of Appeal found it unnecessary to consider any of the other grounds of appeal raised by Mr Cassell.

The use of documents and their admission into evidence

53. There are two issues raised by the Crown's appeal in relation to the use of jury bundles and the submission of no case to answer. The first is whether any documents should have been shown to the jury in the course of the prosecution's opening, and the second is the method by which documents were admitted into evidence during the trial. The Crown contends that the manner in which the Judge permitted the prosecution to refer to the documents in the jury bundles during its opening and the manner in which they were subsequently admitted into evidence was entirely conventional and fair to Mr Cassell and the Court of Appeal was wrong to hold otherwise.

54. On the first point, stripped down to its essentials, Mr Roe KC's argument on behalf of Mr Cassell is that unless a defendant gives express consent—which he has an absolute right not to do—the prosecution cannot show any documents to a jury in opening a criminal case.

55. Section 158 of the Criminal Procedure Code of Montserrat provides that, after the accused has been given in charge of the court, counsel for the prosecution may open the case against him or her. The purpose and scope of a prosecution opening is summarised in John Sprack & Michael Engelhardt-Sprack, *A Practical Approach to Criminal Procedure*, 16th ed (2019) at paras 20.21–20.22:

> "After the accused has been put in the charge of the jury, prosecuting counsel opens his case. The prosecution opening gives the members of the jury an overall view of the case …
>
> After his explanation of the charges, counsel summarizes the evidence he intends to call. In his brief, counsel has copies of the statements of prosecution witnesses. Basing himself on these he tells the jury the main facts which (he hopes) his

> various witnesses will prove, and indicates how the pieces of testimony fit together so as to show, beyond reasonable doubt, that the accused committed the offence charged. Having had a general picture of the case, the jury will be able to appreciate the significance of each witness's evidence as it is given …"

56. To similar effect is the provision in rule 25.9(2)(b) of The Criminal Procedure Rules of England and Wales which provides that in their opening speech, the prosecution advocate "may summarise the prosecution case, concisely outlining the facts and the matters likely to be in dispute".

57. The obvious expectation is, therefore, that in the ordinary course of the prosecution's opening, the jury will be told in outline of the main evidence that the prosecution hopes its witnesses will give. By definition, such evidence will not, at that stage, have been given by any of the witnesses. But in this respect, there is no reason why the law should draw any distinction between oral evidence which the witnesses are expected to give from their own recollections, and evidence which is to be derived from documents to which the witnesses intend to refer.

58. There is also no logical justification for saying that the prosecution should be able to describe the contents of relevant documents, but not show copies of them to the jury if that would be a more comprehensible means of explaining the case. That would be particularly important in a case which is document-heavy or in which the contents of certain documents are central to the offences charged. Subject to the caveats (i) that the judge always has the power to intervene to ensure fairness to the defendant, and (ii) that the prosecution should not refer to any evidence the admissibility of which is in dispute (see below), the prosecution should be able to give the jury a comprehensible overview of the case that they are to try.

59. Accordingly, far from being "unorthodox" as Price-Findlay JA held at para 71 of her judgment, the practice of permitting the prosecution to show the jury unchallenged documents in the course of its opening speech is entirely principled. It is also routinely employed in jury trials in common law jurisdictions such as England and Wales.

60. As indicated, the ability of the prosecution to show the jury copy documents in its opening speech must be qualified as regards documents whose admissibility is in dispute. As *Blackstone's Criminal Practice* (2026) explains at D16.13:

> "If defence counsel has intimated that there is an objection to some of the prosecution evidence, no reference should be made to that evidence in opening. If the opening speech cannot be made coherently without reference to the disputed evidence, the

> judge should be invited to determine whether or not the evidence is admissible as a preliminary issue."

61. The Board therefore rejects Mr Roe's submission that by the simple expedient of refusing to agree, a defendant has an absolute right to prevent the prosecution from showing the jury any documents in the course of its opening.

62. Such an argument was particularly unmeritorious in the instant case. The copy documents in the jury bundles had been introduced in evidence in the first trial and they had been provided again to Mr Cassell at the pre-trial review over two years before the second trial commenced. He also had ample notice of the fact that the prosecution intended to deploy those documents in the course of its opening speech from the detailed note of the opening with which he was provided shortly afterwards, and he did not object to that course at any time prior to the trial commencing.

63. More importantly, even when Mr Cassell did raise his objection at the start of the second trial, it was purely procedural in nature. He told the Judge on several occasions that he was not objecting to the documents themselves, and at no time did he explain why it was unfair to him that the jury should have the benefit of seeing some of the relevant documents when the prosecution was explaining the case to them. Mr Jory also quite properly accepted that the documents would not be in evidence just because he had referred to them in his opening, and that if a witness did not come up to proof in relation to a particular document, it could be removed from the jury bundles.

64. There was, in short, nothing remotely unfair to Mr Cassell in the way in which the prosecution was permitted to open its case by reference to the copy documents in the jury bundles.

65. In passing, the Board notes that it may be particularly important for the prosecution to be entitled to show the jury documents in opening in a case in which, as in the instant case, the defendant is unrepresented. In such a situation, although there is no hard and fast rule, it has conventionally been the case that prosecuting counsel does not make a closing speech: see *R v Cojan* [2014] EWCA Crim 2512, especially at paras 12–13. There is no good reason why an unrepresented defendant should have a right of veto to prevent prosecution counsel showing the jury copies of any documents in opening, thereby forcing counsel to seek permission to break with convention in order to be able to explain the relevance of such documents in a closing speech.

66. The second basis upon which the Court of Appeal allowed Mr Cassell's appeal related to the way in which documents were admitted into evidence during the trial. The Court of Appeal accepted Mr Cassell's argument that the only way in which documents could have been admitted into evidence would have been if, every time a witness had

been taken to a document in the course of their evidence, it had been specifically identified and authenticated by the witness, and then separately marked as an exhibit by the court with the witness's initials and a consecutive number, and formally pronounced to have been admitted as evidence by the court.

67. The only authority relied upon by Price-Findlay JA for this view was a decision of the Indian High Court of Allahabad in *Gulabpati v Smt Pushpa Rani Pandey* (2019) 11 ADJ 769 (ALL). That was a family law case in which there had been a wholesale failure by the parties and the lower court to produce or deal with documents in the manner required by the relevant Indian court rules. It provides no assistance on the manner in which documents should be dealt with in criminal proceedings in Montserrat.

68. The basic approach of the common law to the admission of documents into evidence in a criminal trial was explained by Dickson CJ in a dissenting judgment in the Supreme Court of Canada in *R v Schwartz* [1988] 2 SCR 443 at 476:

> "Before any document can be admitted into evidence there are two obstacles it must pass. First, it must be authenticated in some way by the party who wishes to rely on it. This authentication requires testimony by some witness; a document cannot simply be placed on the bench in front of the judge. Second, if the document is to be admitted as evidence of the truth of the statements it contains, it must be shown to fall within one of the exceptions to the hearsay rule …
>
> One of the hallmarks of the common law of evidence is that it relies on witnesses as the means by which evidence is produced in court. As a general rule, nothing can be admitted as evidence before the court unless it is vouched for viva voce by a witness. Even real evidence, which exists independently of any statement by any witness, cannot be considered by the court unless a witness identifies it and establishes its connection to the events under consideration. Unlike other legal systems, the common law does not usually provide for self-authenticating documentary evidence."

69. The substantive point made by Dickson CJ was that documents need to be authenticated by a witness before they can be treated as evidence in a criminal trial. The Board agrees. But there is no formal requirement in the Criminal Procedure Code of Montserrat as to how that authentication is to be done. The Board is of the opinion that it was properly done in the instant case when the various witnesses were shown copy documents in the jury bundle and either expressly identified and vouched for them, or

implicitly did so in the course of answering questions about their contents. In that regard it is also important to appreciate that at no point did Mr Cassell suggest that any of the documents in the jury bundles were not accurate copies of authentic original documents.

70. When properly analysed, Mr Cassell's objection was simply that the copy documents had been placed into a composite bundle prepared by the prosecution, rather than being individually marked as exhibits by the court as and when each copy document was authenticated by a witness during the course of the oral evidence.

71. Whilst it is plainly necessary that there should be a proper process for identifying documents that have been authenticated by a witness, and for recording that this has occurred, the Board does not consider that there is any set process as to how this should be done. If there were only a few documents in a case, or if a particular document was said to have some unique characteristic (eg, it was said to have contained forged writing or a stain requiring forensic analysis), it might well be appropriate to treat such documents in the same way as a physical object and for them to be individually marked as an exhibit by the court. But where there are a large number of documents without such distinguishing features, it would make no practical sense and would be disruptive of the flow of evidence if every time a witness was referred to a new document, they had to go through some formal process of validating the document and for the court itself to give the document a separate identifying mark as an exhibit. An entirely conventional way in which such documents can be identified and referred to in the course of a criminal or civil trial is for copies to be made and collated into a paginated and indexed bundle, and for witnesses to be referred to such copy documents by page number in the bundle when they give evidence. That is precisely what occurred in the instant case, and the Board sees nothing wrong or unfair to Mr Cassell in how this was done.

72. In passing, the Board would observe that if a copy document or documents are included in a jury bundle but are not subsequently authenticated by a witness, or are otherwise held to be inadmissible, the proper course would be for such documents to be removed from the jury bundle before the jury retired to consider the case. That was indeed what Mr Jory suggested to the Judge in the instant case. The judge should also deal with such matters in his summing up: see *R v Jackson* [1953] 1 WLR 591. Whether a failure to follow this course might be a ground for quashing a conviction would depend upon whether, and if so, to what extent, the defendant was prejudiced: see *Blackstone's Criminal Practice* (2026) at D16.13. In the instant case, however, Mr Cassell did not ask for any documents to be removed from the jury bundles before the jury retired, and Mr Roe did not suggest that Mr Cassell had been prejudiced by a failure to remove any particular document(s) from the jury bundles at any stage.

73. The result is that the Board considers that the Court of Appeal was wrong to hold that the documents in the jury bundles were not properly in evidence or that there had been any procedural irregularity in the way in which the jury had been shown copies of

them in the prosecution's opening. With those documents in evidence, subject to the cross-appeal concerning the form of the Indictment, there was clearly sufficient evidence upon which the jury could properly have convicted Mr Cassell, so that the Judge was right to allow the case to go to the jury in accordance with the test in *R v Galbraith* [1981] 1 WLR 1039. It follows that the Court of Appeal was wrong to quash Mr Cassell's conviction for the reasons that it gave.

Mr Cassell's cross-appeal against conviction

74. That leads to Mr Cassell's cross-appeal against conviction. Mr Cassell asks the Board to determine the remaining grounds of appeal that the Court of Appeal did not consider, together with some further grounds that Mr Roe sought to raise for the first time before the Board. Although unusual, the Crown did not object to that course and the Board was content to hear argument on those issues.

75. The first of the new grounds raised by Mr Roe was based on a further attack on the form of the Indictment. He contended that the Indictment was defective and/or Mr Cassell's conviction was unsafe because the Indictment invited the jury to convict Mr Cassell on the basis of conduct that was not an offence under section 33(1)(a) POCA 1999, and the Board cannot be sure that the jury did not convict on that basis.

76. At the relevant time, section 33(1) POCA 1999 provided:

> "(1) A person commits an offence if he—
>
> (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of criminal conduct, or
>
> (b) converts or transfers that property or removes it from the jurisdiction,
>
> for the purpose of avoiding prosecution for an offence to which this Act applies or of avoiding the making or enforcement of a confiscation Order."

77. The concept of "concealing or disguising" was defined, non-exhaustively, in section 31(3):

> "In subsections (1) and (2) the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it."

78. The concept of "proceeds of criminal conduct" was also defined, non-exhaustively, in section 2(1) as including:

> "… a reference to any property real or personal, heritable or movable including things in action and other intangible or incorporeal property which in whole or in part, directly or indirectly represents in his hands his proceeds of criminal conduct …"

79. "Criminal conduct" was defined by section 2(1) as meaning:

> "… conduct which constitutes an offence to which this Act applies or would constitute such an offence if it occurred in Montserrat …"

80. Finally, section 3(2) provided that:

> "(2) References in this Act to an offence to which this Act applies are references to all indictable offences except drug trafficking offences."

81. Mr Roe's key point was that the definition of "criminal conduct" in section 2(1) POCA 1999, taken together with the meaning of "an offence to which this Act applies" in section 3(2) POCA 1999, made it clear that to constitute an offence under section 33(1) POCA 1999, it was necessary for the property in question to have been the proceeds of the commission of some *indictable* offence or offences (other than drug trafficking).

82. Although Mr Roe accepted that the prosecution did not need to show that the property was or represented the proceeds of commission by Mr Cassell of a *particular* offence on a particular occasion (*R v Sabharwal* [2001] EWCA Crim 392), he contended that it would not suffice if the conduct from which the proceeds were alleged to have derived was conduct that amounted only to a *summary* offence or offences. He pointed out that in that respect, POCA 1999 differed from POCA 2010 which contains a definition of "criminal conduct" that omits the requirement that the offence be an indictable offence

and the exclusion of drug trafficking offences: see section 2(1) POCA 2010. Mr Jory did not seriously dispute that analysis, and the Board accepts that it is correct.

83. Against that background, Mr Roe referred to the Particulars of Offence in the Indictment, which alleged that the following was criminal conduct for the purposes of section 33(1)(a) POCA 1999:

> "the fraudulent conduct of Warren Cassell in dishonestly
>
> i. representing that he was a legitimate Director of Providence Estate Limited, and/or
>
> ii. representing that he was legally entitled to sell land at Providence Estate, and/or
>
> iii. filing a Change of Directors application with the Companies Registry regarding Providence Estate Limited, and/or
>
> iv. receiving funds into the bank account of Cassell & Lewis for the sale of land at Providence Estate"

84. Mr Roe submitted that this form of the Indictment was defective, since there was no general offence of "fraud" under the law of Montserrat. He further contended that, even if done dishonestly, at least one of the four acts alleged—filing an inaccurate change of directors application form at the Companies Registry in relation to PEL—would only have been a summary offence. That latter submission was based upon section 530 of the Companies Act 1998 that provides:

> "530. (1) A person who makes or assists in making a report, return, notice or other document—
>
> (a) that is required by this Act or the regulations to be sent to the Registrar or to any other person; and
>
> (b) that—
>
> (i) contains an untrue statement of a material fact; or
> (ii) omits to state a material fact required in the report, return, notice or other document, or necessary to make a

> statement contained therein not misleading in the light of the circumstances in which it was made,
>
> is guilty of an offence and liable on summary conviction to a fine of $5,000 or to imprisonment for a term of three years, or to both.
>
> (2) A person is not guilty of an offence under subsection (1) if the making of the untrue statement or the omission of the material fact was unknown to him and with the exercise of reasonable diligence could not have been known to him."

85. Mr Roe therefore submitted that the Indictment was defective because the conduct of which Mr Cassell was accused in sub-paragraph (iii) of the Particulars of Offence did not amount in law to an offence under section 33(1)(a) POCA 1999.

86. Mr Roe also contended that such defect was important given the manner in which the Indictment was presented to the jury in opening and referred to by the Judge in his summing up. Mr Jory opened the case on the basis that the four sub-paragraphs of the Particulars of Offence were disjunctive ("and/or"), so the jury could convict Mr Cassell if satisfied that he had behaved dishonestly in any one of the ways set out in those four sub-paragraphs. Moreover, as set out in paras 38 and 40 above, the Judge explicitly repeated that point twice in his directions to the jury shortly before they retired.

87. The Board accepts these arguments. Although it is possible that the jury might have concluded that Mr Cassell had behaved dishonestly in some of the other ways specified in the other three sub-paragraphs of the Particulars of Offence, the Board cannot be satisfied that this is so. Because the jury was invited to treat the sub-paragraphs of the Particulars of Offence disjunctively, it is entirely possible that the jury convicted Mr Cassell simply on the basis that he filed the change of directors form: but even if done dishonestly, that would not have amounted to an indictable offence which satisfied the requirements of the offence charged under section 33(1)(a) POCA 1999.

88. Indictments stating facts that do not amount to an offence known to the law, or stating facts which are incapable of amounting to the offence charged, are defective: see the cases referred to in *Archbold* (2026) at para 7-74. The consequence of this in the instant case is that Mr Cassell's cross-appeal must be allowed and his conviction quashed.

89. In light of that conclusion, it is unnecessary for the Board to express any view on the other criticisms made by Mr Roe of the Judge's summing up.

Conclusion

90. The result is that the Board will humbly advise His Majesty that the Crown's appeal should be allowed, but that Mr Cassell's cross-appeal against conviction should also be allowed, so that the Court of Appeal's order quashing Mr Cassell's conviction should stand. That being so, the Board will also humbly advise His Majesty that a judgment and verdict of acquittal should be entered.