Neutral Citation Number: [2014] EWCA Crim 186

Case No: 201305850 C4 & 201306279 C4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT OXFORD
HHJ PRINGLE QC
T20120404

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/02/2014

Before :

LORD JUSTICE DAVIS
MR JUSTICE BLAKE
and
MR JUSTICE LEWIS

Between :

(1) MARTIN EDWARD PACE (2) SIMON PETER ROGERS	Appellants
- and -	
THE CROWN	Respondent

MR A STEIN (instructed by Morgan Rose Solicitors) for the First Appellant.
MR JJ REILLY and MR JK REILLY (instructed by Lewis Nedas Law) for the Second Appellant.
MR S FARRELL QC and MR J LAW for the Crown.

Hearing date: 31st January 2014

Approved Judgment

Lord Justice Davis :

This is the judgment of the court.

Introduction

1. The principal issue raised on these two appeals relates to the mental element required for criminal attempt. It is one that, albeit in the context of differing underlying substantive criminal offences, has caused difficulties over the years. Various decisions of the courts in those years do not always reveal a consistency in approach and sometimes, it has to be said, reveal a possible inconsistency in approach. It is also an area which has attracted much academic debate; and there too considerable divergences in approach have been manifested.

2. This issue requires consideration of the meaning and effect of s.1 of the Criminal Attempts Act 1981 ("the 1981 Act"): a section which in the past has been judicially described as "winning no prize for lucidity". The actual offences in these particular cases before us which it is said the two appellants had attempted to commit were offences of concealing, disguising or converting criminal property contrary to s.327(1) of the Proceeds of Crime Act 2002 ("the 2002 Act"): and the meaning and effect of that statute also requires consideration. The competing arguments as to the mens rea that needs to be shown for these purposes give rise to questions of some difficulty. The outcome for these cases, furthermore, will have implications for other such cases.

3. The trial judge decided that in this case the applicable mens rea for the offences of attempt as charged was capable of being suspicion. The appellants say that he was wrong. The Crown say that he was right.

4. Just because it was perceived that the outcome of these appeals will have a significant bearing on other pending prosecutions (in circumstances which we will come on to explain) these cases, listed as applications, came on with great speed for hearing in this court. At the hearing we gave leave to appeal on two of the grounds advanced and reserved our decision. We refused leave to appeal on a number of other, discrete, grounds sought to be advanced on behalf of the appellant Rogers, saying that we would give our reasons in due course. This judgment includes those reasons.

5. The appellant Pace was represented before us by Mr Stein. The appellant Rogers was represented by Mr Reilly. The Crown was represented by Mr Farrell QC and Mr Law. We would like to acknowledge the thorough and careful arguments of counsel.

Background facts

6. Section 327 of the 2002 Act is contained in Part 7 of that Act, which is entitled "Money Laundering". But these cases have nothing to do with money laundering. They involve dealings in scrap metal. The background is this.

7. Metal theft, and the subsequent disposal of stolen metal through scrap yards, has been a problem for very many years. Scrap metal dealers accordingly have long been the subject of some form of statutory regulation; and further statutory provisions amending the law have been introduced by the recent Scrap Metal Dealers Act 2013.

The Explanatory Notes to that Act explain that the existing registration scheme under the Scrap Metal Dealers Act 1964 had not prevented the scrap metal industry from being the central market for stolen metal. In 2002/11, as it was said, the Home Office had estimated that there were 80,000 – 100,000 reported metal thefts a year, costing the economy, as it was estimated, hundreds of millions of pounds. The impact of such thefts falls on (among others) transport, electricity and telecommunication sectors, as well as heritage buildings and commercial and residential buildings. Thefts can range from, for example, stripping church roofs of their lead to removing cabling on railway lines. Since such thefts can only pay if an outlet for disposal of the stolen metal is available one obvious method of deterrence and prevention was to seek to clamp down on scrap yards. Such steps have extended from requiring registration and the keeping of proper records to (latterly) prohibition of cash payments for scrap metal and increased financial penalties, as well as other measures.

8. The problems of detection and enforcement nevertheless have remained.

9. Because of these problems, the Thames Valley police, operating in conjunction with other agencies, undertook an investigation (styled Operation Symphony) into scrap metal yards in their area. Undercover operatives were deployed to test whether scrap metal yards would accept purportedly stolen items. The present case related to a long-established scrap metal yard called TR Rogers & Sons, which was owned by the Rogers family and run by the appellant Rogers with his father. There were 15 staff, full and part-time. The appellant Pace (as well as certain others who were to be defendants in the subsequent criminal proceedings) was an employee, paid at an hourly rate, at the yard. He and other workers were involved in weighing, checking and accepting items for purchase. Neither of these two appellants had any previous convictions. They were of positive good character. There was a sign outside the yard stating that stolen goods would not be accepted. There was no history of failure on the part of the yard to comply with the Scrap Metal Dealers legislation and it was properly licensed.

10. Between March and May 2012 two undercover officers made ten visits to the yard, driving a van. They produced a waste carrier's licence. On nine of those occasions, one or more of the various defendants were involved in accepting items for purchase from them. The undercover officers wore covert recording devices which were designed to make visual and audio recordings of the meetings and conversations which they had in the yard for the purposes of the transactions. A camera was also covertly fitted to their van. The undercover officers were styled "Andy" and "Kinger". Inevitably, they provided false details of their names and addresses to the employees in the yard. Andy and Kinger themselves gave nicknames to those in the yard. The appellant Pace was styled "glasses man" and others were variously styled "clipboard man", "scales man" and "overalls man". The appellant Rogers was styled "Simon".

11. So far as the two counts on the indictment of which the appellants respectively were convicted the position was this.

12. On 16 May 2012 Andy and Kinger took in their van 26 kgs of new earthing tape marked SSE (representing Scottish and Southern Electric) and 56 kgs of power cable to the yard. Pace met them and helped them to unload. They told Pace that they had stolen the earthing tape from the back of a van while one of them distracted the driver.

Pace was, on the prosecution case, recorded as saying that he would pretend not to hear that because he would get into trouble for buying stolen metal. He continued with the transaction and the items were ultimately accepted on behalf of the yard. That transaction was to be the subject of count 7.

13. So far as count 8, relating to Rogers, was concerned, that related to a transaction at the yard on 25 May 2012. Andy and Kinger took to the yard in their van a brass war memorial plaque and 488 kgs of lead flashing. It was said that Rogers greeted them, when they arrived, as "Dodgy" and "Dodgier". Andy and Kinger showed him the plaque, describing it as "a bit naughty". Rogers refused to buy the plaque. Andy and Kinger continued to describe it as "genuinely stolen". They also had said, according to them, that the plaque and the lead had come from the same place. According to them, this was all said in the presence of, and heard by, Rogers. Another man at the yard (not one of the appellants) then completed the purchase of the lead for £415 without seeking proof of identity.

14. It is an important agreed fact, for the purpose of the legal argument on these appeals, that none of the items in question were in fact stolen property. They were the property of the police.

15. On 29 May 2012 the yard was raided by the police. The appellants (along with others) were arrested, interviewed and in due course charged. No metal or other items identified as stolen were found at the yard.

The proceedings in the Crown Court

16. The indictment contained a number of counts. The trial at Oxford Crown Court was lengthy. Three co-accused – who worked at the yard – were acquitted on the counts which they faced. Each of the appellants was acquitted of various counts of attempting to conceal, disguise or convert criminal property; in the case of the appellant Rogers, the jury were unable to agree on one further such count.

17. The sole counts on which they were convicted, by verdicts delivered on 6 November 2013, were, as indicated, count 7 (Pace) and count 8 (Rogers). Those counts were drafted in the same terms, mutatis mutandis. Taking those of count 8, that stated and particularised the offence as follows:

> "Count 8
>
> STATEMENT OF OFFENCE
>
> ATTEMPTING TO CONCEAL, DISGUISE OR CONVERT CRIMINAL PROPERTY, contrary to section 1(1) of the Criminal Attempts Act 1981.
>
> PARTICULARS OF OFFENCE
>
> SIMON PETER ROGERS on the 25th day of May 2012 attempted to conceal disguise or convert criminal property namely lead flashing, by means of accepting it and processing it for onward sale, knowing or suspecting it to represent, in whole or in part and whether directly or indirectly, the proceeds

of criminal conduct in contravention of section 327(1)(c) of the Proceeds of Crime Act 2002."

18. In due course, when passing sentence, the trial judge (Judge Pringle QC) marked his assessment of the criminality involved by fining the appellant Pace £250 and the appellant Rogers £1,500. No application for any confiscation order was made. Overall, the outcome of this particular operation, although resulting in convictions of two of the defendants on one count each, can hardly be styled a resounding success from the police point of view. Nevertheless, of course, the general problems relating to metal theft remain: and we were told that further prosecutions are current or pending, based on the activities of undercover officers, both in the Thames Valley area and also, by reason of investigations corresponding to those in Operation Symphony, elsewhere in England and Wales. It is for that reason – and assuming the counts on the indictments in those other proceedings correspond to the counts on the indictment in the present case – that these appeals came before us as a matter of urgency.

19. In the course of the trial there were a number of applications made to the judge. The defendants were, in particular, much aggrieved at the conduct of the police, considering that, among other things, the police had unfairly deployed entrapment tactics and that the proceedings should accordingly be stayed as an abuse. They were further aggrieved at the (admitted) fact that the police had caused to be wiped the CCTV recording contained in the yard's own cameras. Yet further, they submitted at the close of the prosecution case that there was no case to answer: it being argued (as it is before us) that the offences as charged and as presented at trial by the prosecution were unsustainable in law.

20. The judge rejected all those applications. The trial proceeded. The prosecution case was, in essence, that the appellants suspected that the items in question represented criminal property. The prosecution did not seek to make a case that the appellants believed the metal to be stolen nor that they knew it to be stolen (indeed, the appellants could never have known that, just because the metal was *not* stolen.) It was said that, by not asking the obvious questions any honest person would ask, the appellants were trying to mask their suspicions. Reliance was placed on the covertly recorded conversations as showing that the appellants at the least suspected that everything the undercover officers brought in was stolen. The defence case was to deny that they had such suspicions. The yard was properly run, with high standards, and no identified stolen items were found when the yard was raided and searched. They thought Andy and Kinger were legitimate contractors. The appellant Pace in addition pointed out that he was an employee only – with no financial incentive to accept stolen items – and acted in accordance with his duties. He further said that he regarded what he was told by Andy and Kinger as no more than, in effect, joshing "builders' banter".

21. When he came to sum up to the jury, the judge gave his legal directions at the outset. When dealing with the constituent elements of the counts charged, he (correctly) told the jury that the items taken to the yard were not actually criminal property or the proceeds of criminal conduct and that the full offence could never actually have been committed. Having so stated, he went on to say this to the jury:

> "However, the law of this country, both by Act of Parliament and by case law, is that a person can attempt to do the impossible, and therefore you should approach your decision on these counts on the basis of what the defendants thought to be the situation at the time rather than the true situation."

We were told that the judge's use of the word "thought" in this passage was not off the cuff. He had elected to use such word after prior legal discussions with counsel. A little later on, and after directing the jury that the acts in question needed to be more than merely preparatory, he went on to say this to the jury:

> "What do the prosecution have to prove against each defendant so that you are sure as to their state of mind at the time of their involvement in any of the counts in which they are named? The law is clear: the prosecution must prove against each defendant on each count in which they are allegedly involved that at the time of accepting, checking, weighing or paying for the goods he either knew or suspected that they were stolen or had otherwise been obtained dishonestly.
>
> Of course, the prosecution say that at the very least the circumstances in which the goods were brought into the yard, the nature and demeanour of Andy and Kinger, the nature and appearance of the goods and the comments allegedly made in the presence and hearing of the defendants by Andy and Kinger should make you sure that they must have suspected that the goods were stolen or obtained dishonestly.
>
> The defence on the other hand say this is nonsense and that there was nothing at all unusual about goods being brought to the yard in this way, about the nature of the goods being brought, about Andy and Kinger and about anything that was allegedly said by them in the hearing of the defendants which would have made them suspect, let alone know, that these goods were stolen or had been obtained dishonestly."

He went on to explain to the jury, among other things, that "suspicion...falls below knowledge or belief". He further instructed them that the suspicion did not need to be firmly grounded or even based on reasonable grounds.

22. Complaint is made by the appellants with regard to these directions: in effect replicating the substance of the complaint about the judge's refusal to accede to the submission of no case to answer.

The statutory provisions

23. The relevant statutory context is this.

24. Section 327 of the 2002 Act is in these terms:

> "327. Concealing etc

(1) A person commits an offence if he—

(a) conceals criminal property;

(b) disguises criminal property;

(c) converts criminal property;

(d) transfers criminal property;

(e) removes criminal property from England and Wales or from Scotland or from Northern Ireland.

(2) But a person does not commit such an offence if—

(a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;

(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;

(c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(3) Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it."

25. Sections 328 and 329 then deal with arrangements and with acquisition, use and possession. The applicable interpretation provisions are to be found in s.340. Those of particular relevance to this case are as follows:

"340. Interpretation

(1) This section applies for the purposes of this Part.

(2) Criminal conduct is conduct which—

(a) constitutes an offence in any part of the United Kingdom, or

(b) would constitute an offence in any part of the United Kingdom if it occurred there.

(3) Property is criminal property if—

(a) it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly), and

(b) the alleged offender knows or suspects that it constitutes or represents such a benefit.

(4) It is immaterial—

(a) who carried out the conduct;

(b) who benefited from it;

(c) whether the conduct occurred before or after the passing of this Act.

....

(9) Property is all property wherever situated and includes—

(a) money;

(b) all forms of property, real or personal, heritable or moveable;

(c) things in action and other intangible or incorporeal property.

.....

(11) Money laundering is an act which—

(a) constitutes an offence under section 327, 328 or 329,

(b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),

(c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or

(d) would constitute an offence specified in paragraph (a), (b) or (c) if done in the United Kingdom."

26. Two particular points may be noted at this stage. First, s.327 attaches "criminal property" to the specified verbs: "conceals", "disguises", "converts" and so on. But when one turns to the definition of "criminal property" in s.340(3) that is not, as perhaps one might have anticipated, couched solely in terms of the object of the verb (concealing, disguising, converting etc). Instead, the definition of "criminal property" also introduces a mental element: viz. that the alleged offender knows or suspects that it constitutes or represents benefit from criminal conduct. Second, the provisions of s.340(3)(b) specify no mental element other than knowledge or suspicion: thus, for example, there is no inclusion of belief. And as to suspicion, there is no requirement that such suspicion be based on reasonable grounds or anything like that.

27. The relevant provisions of the 1981 Act (which abrogates previous common law principles relating to attempt) are to be found in s.1. The true interpretation of such provisions, as applied to the present case, is central to the outcome of these appeals. Section 1, in the relevant respects, provides as follows:

"1. Attempting to commit an offence.

(1) If, with intent to commit an offence to which this section applies, a person does an act which is more than merely preparatory to the commission of the offence, he is guilty of attempting to commit the offence.

.....

> (2) A person may be guilty of attempting to commit an offence to which this section applies even though the facts are such that the commission of the offence is impossible.
>
> (3) In any case where—
>
> (a) apart from this subsection a person's intention would not be regarded as having amounted to an intent to commit an offence; but
>
> (b) if the facts of the case had been as he believed them to be, his intention would be so regarded,
>
> then, for the purposes of subsection (1) above, he shall be regarded as having had an intent to commit that offence.
>
> ....."

28. Finally, in this regard, we would refer to the provisions of the Criminal Law Act 1977 as amended ("the 1977 Act") relating to conspiracy. We will come on to explain the potential relevance of the 1977 Act in due course. But it can here at least be noted that s.1 of the 1977 Act, in its current form, was introduced by the 1981 Act itself (see s.5(1)). In the relevant respects, s.1 of the 1977 Act reads as follows:

> "1. The offence of conspiracy.
>
> (1) Subject to the following provisions of this Part of this Act, if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either—
>
> (a) will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement, or
>
> (b) would do so but for the existence of facts which render the commission of the offence or any of the offences impossible,
>
> he is guilty of conspiracy to commit the offence or offences in question.
>
> (2) Where liability for any offence may be incurred without knowledge on the part of the person committing it of any particular fact or circumstance necessary for the commission of the offence, a person shall nevertheless not be guilty of conspiracy to commit that offence by virtue of subsection (1) above unless he and at least one other party to the agreement intend or know that that fact or circumstance shall or will exist at the time when the conduct constituting the offence is to take place.
>
> ....."

That section, it can be said, wins no prize for lucidity either.

The rejected grounds of application for permission to appeal

29. It is convenient at this stage to give our reasons for having refused leave on various of the grounds advanced on behalf of the appellant Rogers.

30. The first such ground was that the judge had been wrong to refuse to stay the proceedings as an abuse of process. The point relied on was the admitted destruction by the police of the yard's own CCTV recording, notwithstanding a prior request of the defence solicitors for its preservation and production. It was said that this amounted to serious fault, if not indeed bad faith, on the part of the police, and was contrary to the Code of Practice issued under the Criminal Procedure and Investigations Act 1996. This was in circumstances, moreover, where such CCTV evidence might, it was said, have tended to support the appellant's case that he had not heard the words said to have been uttered in his presence.

31. The difficulty for this submission is that the judge rejected it in the exercise of his discretion. The judge declined to make a finding of bad faith on the part of the police. He accepted that the CCTV recording should have been retained but found that the police had subsequently wiped the disc, taking the view that it had no evidential value. That was, he agreed, in breach of the guidelines. But the judge's conclusion was "unhesitatingly" that that action had not had such a serious effect on the fairness of the trial, or caused such prejudice to the defence, that the proceedings should be stayed. We consider that was a conclusion properly open to him.

32. The second ground related to the other application for a stay on the ground of abuse of process. There had been a lengthy hearing on the point at the outset of the trial. The submission was that all the defendants had been entrapped by the conduct of the undercover officers: and it was not fair in such circumstances that they should be tried on these matters.

33. One can perhaps understand the sense of grievance on the part of the defendants. But the background difficulties in identifying and deterring scrap metal thefts (as outlined above) were important context here, as the judge rightly noted. Operation Symphony had been initiated precisely in order to try to stem the increase in such offending. The judge had also been reminded of, and had applied, the principles set out by the House of Lords in *Loosely* [2002] 1 CAR 29, [2001] 1 UKHL 53. This was a matter which, on the prosecution case, properly could be categorised on its particular facts as involving defendants choosing to act upon an opportunity to break the law afforded by police officers. We can see no arguable error in the judge's overall approach or in his conclusion that no stay should be ordered.

34. Certain other grounds were formulated in the written submissions on behalf of the appellant Rogers. One complaint was that the prosecution had exhibited certain samples of cables as being control samples when, so it is said, their provenance was never disclosed. Another complaint was that the judge had been wrong to allow the prosecution to adduce certain evidence in rebuttal. But Mr Reilly realistically did not seek in his oral argument to pursue those grounds, or certain other matters adumbrated in the written grounds; and we do not think that any of them – whether taken individually or cumulatively – had any arguable basis.

The appeals

35. That, then, leads to what is at the heart of these appeals: the mens rea which the prosecution was, in law, required to prove if it could make out its case of attempting to conceal, disguise or convert criminal property. (For shorthand, we will hereafter describe it as attempting to convert criminal property.) That issue comprehends both the appellants' criticisms of the trial judge's rejection of the submission of no case to answer and the appellants' criticisms of his legal instruction to the jury in the summing-up.

36. As explained, s.327 is contained in Part 7 of the 2002 Act, which is headed "Money Laundering". Section 340(11), moreover, identifies "money laundering" as an act which constitutes an offence under s.327, 328 or 329 (and as further there set out). It is perhaps surprising, then, that one can find alleged criminality in dealing with (purportedly) stolen scrap metal being prosecuted, as an attempt, by reference to the provisions of s.327. Assuming no available proceedings under the Scrap Metal Dealers legislation were available, one might have thought that other charges – such as, for example, conspiracy to handle or attempted handling – would have been the more obvious charges to bring. Moreover, the legal problems arising in the present case would not have been likely to have arisen had the offences been so charged. So why have they been so charged? It is difficult not to think, by way of an answer, that the decision to charge in this way (viz attempting to convert criminal property) was primarily prompted by the consideration that under s.327 and s.340(3), the state of mind applicable to the substantive offence is "knowledge or suspicion": whereas, of course, in cases of handling it would be, by s.22(1) of the Theft Act 1968, "knowledge or belief". Plainly suspicion involves a lesser state of awareness than belief. Thus it has been judicially observed that "to suspect something to be so is by no means to believe it to be so: it is to believe only that it may be so". (A fuller exposition can be found in Archbold 2014 ed. at para 17-49a and Blackstone 2014 ed. at para B4-183.) This distinction thus is a very real one. No doubt, indeed, it was just for that reason – and in the context of money laundering cases in particular, where the facts may be murky and proof potentially difficult – that Parliament had legislated, by the provisions of s.340(3)(b) of the 2002 Act, so as to refer to knowledge or suspicion, rather than just to knowledge or to knowledge or belief.

The parties' submissions

37. Mr Stein, in his excellent and carefully considered submissions (submissions which Mr Reilly adopted), emphasised that the prosecution case at trial of attempting to convert criminal property had been put, so far as the mental element was concerned, on the basis of suspicion. He went on to submit that, on its true construction, s.1 of the 1981 Act, which required that a defendant intend to commit an offence, precluded suspicion from being the applicable mens rea. He accepted that suspicion could be the applicable mens rea where the substantive offence of converting was charged and where there was in fact criminal property: that is, property constituting or representing benefit from criminal conduct. But there was, he submitted, no reason in principle at all why the mens rea for criminal attempt should be required to be the same mens rea as that applicable to the underlying substantive offence. On the contrary, he said, there are a number of cases which illustrate that the contrary can be the case.

38. He sought to support his argument by relying on what he said were the analogous principles relating to offences of criminal conspiracy under s.1 of the 1977 Act. He submitted that knowledge and intent was required under s.1 of the 1977 Act in situations such as these: and one would expect no different outcome for cases where attempt had been charged.

39. Mr Stein accepted that, under s.1(2) and (3) of the 1981 Act, it is possible to attempt to commit an "impossible" offence. But where that situation arises, s.1(3)(b) makes clear, he says, that the applicable mens rea is one of belief: it is not one of suspicion.

40. Mr Farrell for the Crown disputed all this. He first laid emphasis on the width and underlying purpose of the statutory provisions relating to money laundering contained in the 2002 Act and the choice of Parliament to include suspicion, as well as knowledge, as the applicable mens rea for the substantive offence.

41. Moving on from that, he submitted that it would be undesirable for there to be a different mens rea for attempt as compared to the substantive offences. Indeed, he forcefully submitted that the appellants' argument, if right, could involve a number of different levels of mens rea in the context of money laundering cases. Thus if the offence charged was the substantive offence under s.327, the mens rea would be knowledge or suspicion. If what was charged was attempting the "possible" (for example, where the acts in question were more than preparatory, but not completed, and the property in question was indeed stolen and so benefit from criminal conduct) the mens rea would be knowledge. If, again, what was charged was attempting the impossible, the mens rea potentially would be belief. He submitted that the prospect of such divergent outcomes was an indication that the appellants' argument could not be right.

42. He thus submitted that attempted money laundering can be made out, assuming acts which are more than preparatory, if the accused's state of mind is that, in making the attempt, he either knows or suspects the property to be stolen: and it is not necessary that the accused intends that the property be stolen. He submitted that there is nothing in any of the authorities to compel any other result: on the contrary, such a conclusion would accord with the approach of a constitution of this court in the case of *Khan* (1990) 91 CAR 29: a case on attempted rape to which we will come.

43. As to Mr Stein's reliance on the position relating to conspiracy under s.1 of the 1977 Act, Mr Farrell observed that that was a different statutory offence. Moreover, in s.1(2) of the 1977 Act the words included were "intend or know", thereby excluding, he said, suspicion: whereas "intend or know" does not feature in s.1 of the 1981 Act.

44. We add that both parties sought to place some reliance on the terms of s.340(11). In our view, however, that subsection does not really assist the argument either way. No-one disputes that, on appropriate facts, there can be an offence of attempted money laundering. But the subsection says nothing of the required mental element for such an offence. We apprehend, in fact, that one principal purpose of such subsection is to ensure that the lifestyle provisions, by reason of s.75(2) of the 2002 Act, can be invoked in appropriate cases of attempt, conspiracy or incitement.

Legal authorities

45. The parties sensibly confined their citation of authorities to us. There is a most detailed discussion of the general issues arising contained in the Law Commission's Report on Attempt, and Impossibility in relation to Attempt, Conspiracy and Incitement published in June 1980 (Law. Com. No 102) helpfully provided to us by the parties who asked us to consider it (as we have done). The Report was, we observe, in general terms somewhat sceptical as to drawing a distinction, in the context of cases of attempt, between "circumstances" and "results". At all events, it was that Report which was the precursor both to the 1981 Act and to the amendment of s.1 of the 1977 Act: albeit the Report and its proposed draft Bill was, it is to be stressed, by no means adopted in all respects in the statutory provisions resulting. In addition, and as is so often the case with topics of difficulty and interest in the criminal law, there is an excellent discussion of the general position in Smith & Hogan's Criminal Law (edited by Professor David Ormerod): see 13th edition at pages 405 ff.

46. A convenient starting point is this. Where the substantive criminal offence specifically requires the consequence of an act, it is well established that an attempt to commit that offence ordinarily requires proof of intent as to that consequence. To take a familiar example, the required intent for murder is either an intent to kill or an intent to cause really serious injury. The required consequence of the act is, of course, death. Accordingly, for a charge of attempted murder to be made out the intent which must be proved is an intent to kill: see *Whybrow* (1951) 35 CAR 141. That remains the case since the 1981 Act. Of course, that is an offence different from the present case. But Mr Stein is at least entitled to make the point that that case is an illustration of the proposition that the mental element required to make a person guilty of an attempted offence may well be different from, and at a higher level than, that applicable to the substantive offence itself.

47. The same point can be made with regard to the case of *Mohan* (1974) 60 CAR 272, which also antedated the 1981 Act. In that case the accused was charged with, and convicted of, an offence of attempting, having charge of a vehicle, to cause bodily harm by wanton driving. The trial judge directed the jury that recklessness was capable of being the requisite mental element for the offence and that the prosecution was not required to prove a specific intent to commit the offence. It was argued by counsel for the prosecution on appeal that, because the substantive offence (in that case, under s.35 of the Offences Against the Person Act 1861) did not require proof of an intention on the part of the accused, proof of an attempt to commit the crime likewise did not require proof of an intention. As to that, James LJ in the course of giving the judgment of the court said (at page 274):

> "The attraction of this argument is that it presents a situation in relation to attempts to commit crime which is simple and logical, for it requires in proof of the attempt no greater burden in respect of mens rea than is required in proof of the completed offence..."

Thus, in the context of that particular case, it can be said that counsel's argument (and its attraction) in this respect mirrored that of Mr Farrell's in the present case. But the court in *Mohan* would have none of it. Applying common law principles, it held that

intent was an essential ingredient of the offence of attempt. At a later stage in the judgment (at page 278) it further stated that the court "must not strain to bring within the offence of attempt conduct which does not fall within the well-established bounds of the offence".

48. We next turn to the decision in *Khan*, which did post-date the 1981 Act and on which Mr Farrell placed great reliance.

49. In that case a group of men set out to rape a girl. Rape under its then statutory definition (since changed by the Sexual Offences Act 2003) was defined as a man having sexual intercourse with a woman who at the time of the intercourse did not consent to the intercourse and at the time the man knew that she did not consent to the intercourse or was reckless as to whether she consented. Three of the men succeeded in having sexual intercourse with the girl without her consent but the appellants, although trying to penetrate her, did not succeed. The jury were directed that the principles of recklessness as to consent were the same in the charges of attempted rape as in the charges of rape. On appeal it was argued by the appellants, in reliance on s.1(1) of the 1981 Act, that recklessness was insufficient to constitute the mens rea of attempted rape.

50. The Court of Appeal rejected that argument. It noted a difference of opinion on the point between academic commentators (which involved Professor Glanville Williams, among others, disagreeing with Professor Griew, among others). It cited passages from the judgment of Mustill LJ in the case of *Millward v Vernon* [1987] Crim L.R. 393. That was a case in which it was held that the required mental element was intent, and recklessness would not suffice, where attempted criminal damage was charged. We also observe that, in *Millward v Vernon* it was stated that there was no reason why the statutory requirement (viz. under s.1(1) of the 1981 Act) should be "diluted by reference to the lower standard required by the substantive offence" and that there was "nothing anomalous" about a situation where, so far as the mental element was concerned, it was easier to prove the substantive offence than the attempt. In addition, however, the judgment in *Millward v Vernon* had, by way of proposed example, included in it a discussion of attempted rape. Mustill LJ had in that regard said:

> "When one turns to the offence of attempted rape, one thing is obvious, that the result, namely the act of sexual intercourse, must be intended in the full sense. Also obvious is the fact that proof of an intention to have intercourse with a woman, together with an act towards that end, is not enough: the offence must involve proof of something about the woman's consent, and something about the defendant's state of mind in relation to that consent.
>
> The problem is to decide precisely what that something is. Must the prosecution prove not only that the defendant intended the act, but also that he intended it to be non-consensual? Or should the jury be directed to consider two different states of mind, intent as to the act and recklessness as to the circumstances?"

51. The court in *Khan* answered the questions so posed by favouring the second version. It held that the intent of a defendant is the same in rape and attempted rape:

> "...the intent of the defendant is precisely the same in rape and attempted rape and the mens rea is identical, namely an intention to have intercourse plus a knowledge of or recklessness as to the woman's absence of consent. No question of attempting to achieve a reckless state of mind arises: the attempt relates to the physical activity: the mental state of the defendant is the same." (p.334)

52. One can see the potential support for Mr Farrell's argument that *Khan* affords. He would thus seek to derive from it the proposition that, assuming the acts here were more than preparatory, in the present cases the intention here was to convert the scrap metal (the act) and the required mental state was knowledge or suspicion that the scrap metal was stolen. But the authority of *Khan* is not decisive for present purposes: and indeed, in fairness to Mr Farrell, he did not suggest that it was. In *Khan*, the substantive offence admitted of recklessness as the mens rea: which is not the case here. In *Khan*, moreover, the appellants were charged with attempted rape solely because they had not succeeded in penetrating the victim, which is what they had intended to do. Had they succeeded in that act, as they had intended, the full offence of rape would have been made out. But that is not so in the present case. The two appellants here could never have been guilty of the substantive offence of converting criminal property: just because the property in question did not constitute or represent benefit from criminal conduct. Furthermore, the court in *Khan* had been careful to say (at p.35):

> "We recognise, of course, that our reasoning cannot apply to all offences and all attempts. Where, for example, as in causing death by reckless driving or reckless arson, no state of mind other than recklessness is involved in the offence, there can be no attempt to commit it."

53. We were also referred to, and Mr Farrell to some extent relied on, the decision of another constitution of this court in *AG's Reference (No 3 of 1992)* (1994) 98 CAR 383, which adopted broadly the same approach as in *Khan*. That too was a decision in a context different from the present case. It related to attempted arson being reckless whether life be endangered, contrary to s.1(2) of the Criminal Damage Act 1971. We have to say that we found, with respect, some of the passages in the judgment somewhat elliptical, if not self-contradictory: and the judgment is in fact subject to some adverse comment in Smith & Hogan's Criminal Law. We do not, at all events, think that it materially advances the Crown's argument. It is true that, in giving the judgment of the court, Schiemann J said (somewhat tentatively, on one view) at page 390:

> "One way of analysing the situation is to say that a defendant, in order to be guilty of an attempt, must be in one of the states of mind required for the commission of the full offence and did his best, as far as he could, to supply what was missing from the offence."

But Mr Stein himself was in a position to seek to cull from the decision at least some support for his own argument. For at page 390 Schiemann J then went on to say this:

> "If the facts are that, although the defendant has one of the appropriate states of mind required for the complete offence, but the physical element required for the commission of the complete offence is missing, the defendant is not to be convicted unless it can be shown that he intended to supply the physical elements."

And at p.392 he likewise said:

> "In order to succeed in a prosecution for attempt, it must be shown that the defendant intended to achieve that which was missing from the full offence."

Mr Stein's submission was that the "physical element" in the present case which was missing was conversion of criminal property: and it was the "supply" of that which had to be shown to be intended.

54. This, at all events, leads on to another line of authority which also bears on the present problem. That relates to cases where the attempt is to commit the "impossible" – the position here.

55. The illustrations that have been put forward over the years, and debated at length, are legion. They include, for example, the famous hypothetical instance of a man taking an umbrella from a stand with the intention of keeping it, in the belief that it belongs to another, when it in fact belongs to himself; or the example of a man putting his hand in another's pocket with a view to taking what he can find, when the pocket is in fact empty; or the example of a man having intercourse with a girl in fact over the age of 16 but in the belief that she was under the age of 16. The courts wrestled with concerns that there could be convictions for a guilty state of mind without any accompanying guilty act. But many of the problems previously identified have been resolved (albeit, in some respects, only after clarification by the courts) by the 1981 Act.

56. A false start was made to the interpretation of the 1981 Act in the House of Lords decision in *Anderton v Ryan* (1985) 81 CAR 166. In that case the defendant handled a video cassette believing it to be stolen: but there was no evidence that the cassette was in fact stolen. She thus had to be charged with attempted handling. The majority had held, adopting an approach of "objective innocence", that the defendant could not be convicted because the act, if completed, could never have constituted the substantive offence of handling. Lord Edmund Davies, however, stated in the course of his minority speech that the appellant defendant's case, accepted by the majority, failed to have proper regard to the impact of s.1(2) and (3) of the 1981 Act. He amongst other things said (at page 171):

> "The legality of [the defendant's] conduct now falls to be judged by applying the Act, her belief being vitally relevant not only to her intent but also to the quality in law of her 'objective' actions."

His overall approach is strongly supportive of the proposition that, in the case of an attempt, the required mens rea is to be derived from s.1 of the 1981 Act and not from the mens rea required for the substantive offence if completed.

57. At all events, the House of Lords speedily recanted from the majority decision in *Anderton v Ryan*: for the decision was reversed by the House of Lords in *Shivpuri* (1986) 83 CAR 178. In the course of his speech in *Shivpuri* Lord Bridge said (at p.189):

> "What turns what would otherwise, from the point of view of the criminal law, be an innocent act into a crime is the intent of the actor to commit the offence."

58. For an offence of converting criminal property the property must in fact be criminal property: s.340(3)(a) of the 2002 Act makes that clear. Indeed, in *Montila* [2005] 1 CAR 26, [2004] UKHL 50, the House of Lords had so decided, in the context of charges of concealing, disguising, converting or transferring property knowing or having reasonable grounds to suspect the property represented the proceeds of criminal conduct or drug trafficking (the offences had been charged under the relevant provisions of the Criminal Justice Act 1988 and Drug Trafficking Act 1994). It was held that, for the offence to be proved, such property must in fact represent the proceeds of criminal conduct or drug trafficking. Lord Hope, giving the opinion of the Committee, stated in terms in paragraph 37:

> "....the fact that the property in question had its origin in drug trafficking or criminal conduct is an essential part of the actus reus of the offence."

59. As will have been gathered, we consider that such reasoning must likewise apply to the money laundering provisions of the 2002 Act. Mr Farrell did refer to the concluding remarks of Lord Hope in paragraph 44 of *Montila* as potentially indicating that that may not be so where an offence of attempted money laundering was charged: but the observations there made were obiter, were in part reflecting an (unargued) concession of counsel and were not specifically directed to the issue now arising in the present case before us.

Disposition

60. Against that citation of authority we turn to the disposal of these two appeals.

61. The starting point has to be s.1(1) of the 1981 Act: indeed, as Mr Stein pointed out, it is by reference to that statutory provision that the Statement of Offence in the indictment is framed. Mr Farrell did at one stage of his argument, if we understood it aright, suggest that s.1(3) of the 1981 Act of itself provided a complete answer in favour of the Crown. But that cannot be right. That subsection only applies where "the facts of the case" had been as the accused had *believed* them to be. But in the present proceedings the Crown's case had been put not on the basis of belief but on the basis of suspicion. Accordingly, one has to revert to s.1(1). That said, we would at least agree with Mr Farrell's acceptance that the "intention" referred to in s.1(3) must be the same as the intention referred to in s.1(1): that is to say, an intent to commit the offence.

62. Turning, then, to s.1(1) we consider that, as a matter of ordinary language and in accordance with principle, an "intent to commit an offence" connotes an intent to commit all the elements of the offence. We can see no sufficient basis, whether linguistic or purposive, for construing it otherwise.

63. Once that is appreciated, the fault line in the Crown's argument is revealed. A constituent element of the offence of converting criminal property is, as we have said, that the property in question *is* criminal property. That is an essential part of the offence. Accordingly, an intent to commit the offence involves, in the present case, an intent to convert criminal property: and that connotes an intent that the property should *be* criminal property. But the Crown's argument glosses over that. Its argument connotes that the property in question which it is intended to be converted is *property* known or suspected to constitute or represent benefit from criminal conduct. It ignores the requirement for the substantive offence that the property concerned must be *criminal property* (as defined). The Crown, in effect, thus seeks to make it a criminal offence to intend to convert property suspecting, if not knowing, that it is stolen. But that is not what s.327, read with s.340(3), provides.

64. Reflecting this difficulty in the Crown's argument, there is this further point to be made. For the purpose of the substantive offence, a person may in point of fact convert property intending and believing that it is criminal property: yet he will not be guilty of the substantive offence if, in fact, it is not criminal property (*Montila*). It is most odd that, on the Crown's case, such a person who cannot on such a scenario be liable for the substantive offence can nevertheless be made liable, where his state of mind is one of suspicion only, if what is charged is, instead, an attempt to commit the offence. We have the greatest difficulty in seeing that the provisions of s.1 of the 1981 Act were designed to bring about such a result.

Conspiracy

65. We further consider, and accepting Mr Stein's submission on this, that such a conclusion is supported by the approach of Parliament taken to conspiracy cases as enunciated in s.1 of the 1977 Act, as amended, and as interpreted by the courts. Mr Farrell objected that an offence of criminal conspiracy is different from an offence of criminal attempt. So it is. But that does not preclude us, and should not preclude us, from having regard to the provisions of the 1977 Act (as amended) in assessing the reach of the 1981 Act.

66. We say that for the following reasons.

i) First, the provisions of s.1 of the 1977 Act, as amended, were introduced by the 1981 Act itself. One would therefore be predisposed to anticipate a coherence of approach in the relevant provisions of the two statutes in this regard.

ii) Second, offences of criminal attempt and offences of criminal conspiracy are both inchoate offences. Both have in common that they are looking to what is planned for the future. That remains so even if counts formulated as conspiracy counts are commonly sought to be proved by proof of the commission of substantive offences.

iii) Third, it is not difficult to envisage scenarios – not least, as it happens, in money laundering cases – where what may be charged as an attempt would be capable of being charged as conspiracy, and vice versa.

67. In this regard, we think that the approach taken by the courts to s.1 of the 1977 Act is most revealing.

68. Thus in the case of *Harmer* [2005] 2 CAR 2, [2005] EWCA Crim 1 the defendant was, with another, charged with conspiracy to convert or transfer money which, it was alleged, they had reasonable grounds to suspect represented another person's proceeds of criminal conduct or drug trafficking. It was accepted by the prosecution that it could not prove that the money in fact represented proceeds of crime or drug trafficking (and therefore the substantive charge could not be made out). Accordingly, it was not, and could not be, alleged that the defendant knew that the money represented another person's proceeds of crime or drug trafficking.

69. A constitution of the Court of Appeal held that the allegation of conspiracy required proof of an intention that the property represented the proceeds of crime, for the purposes of s.1(1)(a) of the 1977 Act. It was further held that the defendant could only be guilty of conspiracy in such a case if he intended or knew that the money would be the proceeds of crime when the agreement was made. See in particular paragraph 26 of the judgment of the court given by May LJ, where he said this:

> "...he is not to be guilty of conspiracy unless he and at least one other party to the agreement intend or know that the money will be the proceeds of crime when the agreed conduct takes place.... If the prosecution cannot prove that the money was the proceeds of crime they cannot prove that the appellant knew that it was. So s.1(2) of the 1977 Act applies and is not satisfied...."

It is further to be noted that having so decided May LJ went on to say this (at paragraph 28):

> "It may possibly be that to charge attempt would save a prosecutor who could establish that the relevant proceeds were illicit, but could not establish whether they derived from drug trafficking or criminal conduct. It could not, we think, save a prosecutor who, as in the present case, cannot establish that they are the proceeds of any crime. The same difficulty arises with s.6(4) of the 1967 Act as with s.1(1) of the 1977 Act. The prosecution have to prove that what was attempted was an offence – see also subss.1(1) and (2) of the Criminal Attempts Act 1981, where there are equivalent problems."

70. That approach of the Court of Appeal accords with the majority decision of the House of Lords in the subsequent case of *Saik* [2006] 2 CAR 26, [2006] UKHL 18. In that case the charge of conspiracy under the 1977 Act was by reference to the underlying provisions of the Criminal Justice Act 1988. It was accepted that, for the purposes of the substantive offence under those statutory provisions, reasonable grounds for suspicion that the property represented the proceeds of crime sufficed. But it was

held that in a case of conspiracy, and where the provisions of s.1(2) of the 1977 Act came into play, it had to be proved that the conspirator knew that the property was in fact the proceeds of crime or intended that it should be. Suspicion thus would not suffice.

71. In the course of his speech, Lord Nicholls emphasised that the offence of conspiracy lay in making an agreement: and that s.1(1) of the 1977 Act implicitly required that the parties intended to carry out their agreement. The offence was complete at that stage. Under s.1(1) the mental element comprised the intention to pursue conduct which would necessarily involve the commission of the crime in question: and the conspirators must intend to do the prohibited act with the intent prescribed for the substantive offence.

72. Lord Nicholls then turned to s.1(2) of the 1977 Act. Having referred to its terms, and made observations on its ambit, he said this (at paragraph 8):

> "It follows from this requirement of intention or knowledge that proof of the mental element needed for the commission of a substantive offence will not always suffice on a charge of conspiracy to commit that offence. In respect of a material fact or circumstance conspiracy has its own mental element. In conspiracy this mental element is set as high as 'intend or know'. This subsumes any lesser mental element, such a suspicion, required by the substantive offence in respect of a material fact or circumstances. In this respect the mental element of conspiracy is distinct from and supersedes the mental element in the substantive offence. When this is so, the lesser mental element in the substantive offence becomes otiose on a charge of conspiracy. It is an immaterial averment. To include it in the particulars of the offence of conspiracy is potentially confusing and should be avoided."

He went on to observe that the mental element of an offence is not itself a "fact or circumstance" for the purpose of s.1(2). At paragraph 20 of his speech he then said this:

> "...'intend' is descriptive of a state of mind which is looking to the future. This is to be contrasted with the language of substantive offences. Generally, references to 'knowingly' or the like in substantive offences are references to a past state of affairs.... Thus on a charge of conspiracy to handle stolen property where the property has not been identified when the agreement is made, the prosecution must prove that the property which was the subject of the conspiracy would be stolen property."

He then referred to the principle established by *Montila* that the provenance of the property was a required ingredient of the substantive offence. Overall, by that process of reasoning, he concluded, in the case of conspiracy to commit a money laundering offence under the Criminal Justice Act 1988, that where the property had not been identified when the agreement was made the prosecution must prove that the

conspirator *intended* that the property would be the proceeds of criminal conduct (paragraph 23). Where on the other hand the property in question was identified, the prosecution must prove that the conspirator *knew* that the property *was* the proceeds of crime (paragraph 25). Mr Stein's pithy consequential submission was accordingly that, just as you cannot "intend to suspect" or "agree to suspect" in conspiracy cases, so you cannot "attempt to suspect" in attempt cases.

73. It is interesting to note that these conclusions of Lord Nicholls, reflected likewise in the speeches of Lord Hope and Lord Brown, were reached in the face of arguments for the Crown in that case which, in many respects, reflected those of Mr Farrell in the present case: that is, involving emphasis on the purpose behind the money laundering legislation and difficulties of proof for the prosecution if a restrictive approach to the requisite mental element for cases framed in conspiracy were adopted.

74. Overall, then, this authority establishes that a conspiracy to commit an offence under s.327 of the 2002 Act (no less than an offence under the Criminal Justice Act 1988) can require a higher level of mens rea than that applicable to the actual commission of the substantive offence itself. True it is that the language of s.1 of the 1977 Act is not precisely the same as s.1 of the 1981 Act. Even so, as we have indicated, s.1 of the 1977 Act can properly be read so as to take account of the 1981 Act, and vice versa. Accordingly it makes it, in our view, all the more principled to conclude that likewise in the case of attempt a higher level of mens rea may be required under s.1(1) than is applicable to the substantive offence itself: and thus that, in the present case, proof of suspicion will not suffice on a count of attempted money laundering.

75. Further, if that interpretation is to be said to involve a narrow reading of the s.1 of the 1981 Act – although we are not sure if it is to be styled a narrow reading – then, given that the context is one of a criminal statute imposing criminal liability, reading the statute narrowly is not a vice.

Second ground of appeal

76. There was another ground of appeal for which we also gave leave. It is said by the appellants that, in reality, by the close of the evidence the prosecution case had become simply one of attempted converting, as opposed to concealing or disguising, (a proposition we gather that the prosecution do not necessarily accept). Further, so far as these two appellants were concerned, any suggestion of joint enterprise was no longer, by the close of the evidence, being pursued. In addition, so far as the appellant Pace is concerned, it is emphasised for the purposes of the argument on this point that his functions and actions, as employee, were limited. It was further emphasised, among other things, that not every act of dealing with property will necessarily involve questioning or denying the true owner's title. Overall, the argument was that such acts as had been proved, taking the prosecution case at its highest, were not capable of amounting to conversion.

77. In the circumstances, however, and given our decision on the first ground of appeal, it is not necessary for us to express a view on this alternative ground of appeal. Some quite intricate points on this emerged in argument – particularly in circumstances where it was ultimately not alleged that the appellants were party to a joint enterprise on the counts on which they were convicted – by reference to the way in which the

judge summed up on the issue of conversion. We prefer to express no views on the arguments advanced.

Conclusion

78. For the reasons we have given, we conclude that the appeals must be allowed. For the purposes of a count of attempted money laundering proof of a mental element of suspicion (only) does not suffice. We therefore think that the judge erred in his approach in his ruling on the submission of no case to answer; and, in consequence, also erred in the instruction he gave to the jury in his summing-up. In so holding, we intend no disrespect to the judge, who plainly had sought to consider the matter carefully. But since we are not able to agree with his conclusions the consequence is that we cannot consider these convictions to be safe.

79. We do appreciate the anxieties of the Crown in this context of money laundering. Such cases are by no means always easy of proof: and the choice of Parliament to set suspicion as an available mental element for the purposes of the substantive offences indicates a policy that the reach of the provisions is designed to be wide. But, as we have sought to say, the policy behind the substantive offences of money laundering cannot be allowed to distort the meaning of s.1 of the 1981 Act relating to attempts.

80. As to the pending trials and the forthcoming cases of the present kind, involving substantively impossible attempts to convert scrap metal – impossible, because the scrap metal will not have been stolen – it will be for the Crown to decide how best hereafter to proceed. We apprehend that the effect of this judgment will preclude, in such cases, the efficacy of charges of attempting to convert criminal property if (as here) the Crown considers that it is not in a position to allege more than suspicion on the part of the accused that the property was stolen.

81. That may or may not create problems for prosecutors. However, we observe that there in any event may well be, in an appropriate case, other charges potentially available: such as, for example, attempted handling. Those necessarily will, we appreciate, require proof of a higher level of mens rea than suspicion: and of course defendants can be expected to be astute to emphasise that to a jury. Even so, as observed by Lord Hope in paragraph 62 of his speech in *Saik*, the margin between knowledge and suspicion is perhaps not all that great, at all events where the person has reasonable grounds for his suspicion. Where a defendant can be shown deliberately to have turned a blind eye to the provenance of goods and deliberately to have failed to ask obvious questions, then that can be capable, depending on the circumstances, of providing evidence going to prove knowledge or belief. However, all this will be something for the prosecutors to consider in the pending cases by reference to the circumstances of those cases.

Police Disclosure

Time of disclosure:

- **Name of disclosure officer**:

- **Contact telephone no for OIC**:

WRITTEN DISCLOSURE Yes/No (if Yes record representations made for further disclosure and replies received and ask if officer has information not disclosed and what written statements (if any) they have)

SIGNIFICANT STATEMENT:
Has client made significant statement: Yes/No
Details –

Has client accepted – signed statement etc

Oral disclosure [previous interview/significant statement, what said, to whom, under caution, evidence]:
NB where relevant record representations made for further disclosure and replies received and ask if officer has information not disclosed and what written statements (if any) they have

Careless driving .

Failiing to remain and scene.
Failing to provide a specimin.
Breach of asbo- drunk in. Public place.

Theft - non specific had a boot full of 30 samsung phones.
5-6 more phones in his house.
7 fettle place road . -

Last night witness says drinving, along church road in caversham , come face to face with mr Mcdonagh driving a grey vauh wagon turan on the wrong end of the road, front end made contact. Mcdonagh continually tried to re start his car. Witnesses removed the keys. Mr Mcdonagh jumped out of the car and ran off. Witness chased him and tackled him. Mean while passenger phoned the police and arrested rm Mcdonagh. Evidence was he was drunk. To point where he couldn't walk unassisted. When tackled him. Threw Hm on the floor. He didnt get up.

Fail to provide.around 0037 (the procedure) - said willing to do it. Three attempts and failed to provide a specimen and refused to sign it. Refused to blow into it. Wasn't driving . Said wanted to speaks to solicitor.
0038 breather lister printout,
Jr asking for the custody log- cant at the moment cos computer down.

Police came and arrested him. 100 meters later. Same person.

Disposal on driving matters and bailed re mobile phones.

Bail- issue- 3 or 4 th failing to provide. Suggesting a remand in custody.

- looking at the custody record -
- 0035 police asking for the duty solicitor?
- Client continually asking for his solicitor.

Jr called at 0731-cble ing told that client is drunk and will be interviewed at 12. Noon

Calling at 1130 being told that no news at this point.

Called at 1155 told to be there for 133o and then later called by interviewing officer and asked to be there at 14:00.

Collection from sheet

Samples taken? Yes /No

- **Client's consent given**? Yes/No

- **Type of samples taken**:

- **Legal authority and reason**:

- **Request for samples** [Intimate/Non-intimate]:

- **Advised re implications of refusal to provide**? Yes/No

Searches/Seizures of property? Yes/No

- **Legal authority and reason**:

- **Proposed searches**:

- **Legal authority and reasons**:

Co-accused:

Name(s):
Arrested / Wanted / in custody?
Conflict? / Represented by?

Instructions from client regarding the offence for which arrested

Has client received advice and assistance about this matter before? Yes / No
If Yes - when and who from:
We cannot give further advice without justification and will need new DSCC reference

Personal circumstances:

- **Name**:
- **Address**:
- **Telephone**:
- **DO :Place of irth**:
- **Illnesses/disability**:
- **Ethnicity**:
- **Marital status**:
- **Partner**:
- **Telephone**:
- **Dependants**:

• **NINO**:

• **Employment and Income etc**:

• **Does client have previous cautions/convictions**? Yes/No

• **Pending case(s) in magistrates/crown courts**? Yes/No

• **Already on police bail for different matter**? Yes/No

• **On court bail for different matter**? Yes/No

• **Does client have Social worker / Probation Officer**? Yes/No

This offence:

• **Does client understand reason for arrest**? Yes/

• **Does client accept made significant statement**? Yes/

• **Has client provided samples or has property etc been seized**? No asked to

• **Does client know co-accused(s) (if any) and what is their role in matter**? – consider whether there is a conflict if we are acting for them etc

• **Does client wish to make complaint of police misconduct**? [if yes record on separate sheet the complaint, advice and action]- didnt get to speak to solicitors

Client's instructions:

The car got a puncture. Jed was driving my car. Bloke were fighting, he ran off. I was sitti in the car and the bloke punched me. Jed and the other bloke had a bit of a falling out.

The phones in the back of the car are a present from the family, bought them from a wholesales- in london. The address is in the car around hackney. Not stolen 100 per cent.

I was going back to my house. I went to see a mate of mine in reading. I went home that was it. Tire blew out when it was driving. I dont. Think it. Hit the other car.c

Careless driving ., reasonable careful drive- i wasnt driving .