

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 CRIMINAL SIDE

3  
4 INDICTMENT NO: 0042/12

5  
6 THE QUEEN

7  
8 V

9  
10 MICHAEL ANGELO DON ASHLEY

11 ~~JOHN ALFREDO MILLER~~

12 TORIA ANGELLA LAVERN TERRY

13 BARRINGTON ANTHONY ROSE

14 BIANCA NANETTE VEGA

15 CLEOPATRA MELINDA WHITTAKER-CAMPBELL

16 LELIETH WELCOME-CAMPBELL



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19 **Appearances:**

Mr. Michael Snape for the Crown

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21 Ms. Prathna Boddan of Samson and  
22 McGrath for Defendant Bianca Vega

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24 Mr. John Furniss for Defendants  
25 Ashley, Terry, Rose, Whittaker-  
26 Campbell and Welcome-Campbell

27  
28 **Before:**

The Hon. Mr. Justice Charles Quin

29 **Trial:**

4<sup>th</sup> -5<sup>th</sup> March 2013

30 **Submissions heard:**

5<sup>th</sup> March 2013

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32 **RULING ON NO CASE TO ANSWER SUBMISSIONS**  
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- 34 1. At the close of the Crown's case on the 5<sup>th</sup> March 2013, Defence counsel  
35 made no case to answer submissions in respect of Michael Ashley,  
36 Barrington Rose and Bianca Vega.

1           2.       On this 14-count Indictment, all Defendants are charged on Count 1 which is  
2                   a charge of Handling Stolen Property contrary to s.260 of the Penal Code  
3                   Law (2007 Revision) and the particulars of the offence are that the  
4                   Defendants, between the 3<sup>rd</sup> September 2010 and the 22<sup>nd</sup> October 2010, in  
5                   the Cayman Islands, dishonestly received stolen goods, namely Butterfield  
6                   Bank (Cayman) Limited cheques, in the name of Edward Miller, being the  
7                   property of Edward Miller, knowing or believing the same to be stolen  
8                   goods.

9           3.       Defendant Bianca Vega is also charged on Counts 3 and 7 and both counts  
10                  are charges of Obtaining Property by Deception contrary to s.247 of the  
11                  Penal Code Law (2007 Revision). The particulars of Count 3 are that Bianca  
12                  Vega, on or about the 3<sup>rd</sup> day of September, in the Cayman Islands,  
13                  dishonestly obtained from Butterfield Bank (Cayman) Limited, the sum of  
14                  CI\$4,500.00, being property belonging to Edward Miller, thereof, by  
15                  deception, namely by falsely representing that the cheque number #07870  
16                  was authorised for payment. The particulars of Count 7 are that Ms. Vega, on  
17                  or about the 15<sup>th</sup> day of September, in the Cayman Islands, dishonestly  
18                  obtained from Butterfield Bank (Cayman) Limited, the sum of CI\$5,000.00,  
19                  being property belonging to Edward Miller, with the intention of  
20                  permanently depriving Edward Miller thereof, by deception, namely by  
21                  falsely representing that the cheque number #07910 was authorised for  
22                  payment.

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1       4.       Defendants Michael Ashley and Barrington Rose are also charged on Counts  
2               13 and 14, respectively, and both Counts are charges of Attempting to Obtain  
3               Property by Deception. The particulars of Count 13 and 14 are that, Michael  
4               Ashley and Barrington Rose, on or about the 22<sup>nd</sup> day of October 2010 in the  
5               Cayman Islands, dishonestly attempted to obtain from Butterfield Bank  
6               Cayman Limited the sum of CI\$4000.00, being property belonging to  
7               Edward Miller, with the intention of permanently depriving Edward Miller  
8               thereof, by deception, namely by falsely representing that cheque #08033 (in  
9               the case of Count 13) and cheque #08036 (in the case of Count 14) were  
10              authorised for payment.

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**SUBMISSIONS FROM THE DEFENCE**  
**ON BEHALF OF DEFENDANT BIANCA VEGA**

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4 5. Ms. Bodden on behalf of Defendant, Bianca Viaga, made this no case to  
5 answer submission pursuant to the classic principles of Lord Lane in **R v.**  
6 **Galbraith** 73 Cr. App R. 124.

7 6. Lord Lane in **R v. Galbraith** 73 Cr. App. R. 124 stated:

8 “1. *If there is no evidence that the crime alleged has been*  
9 *committed by the Defendant there is no difficulty – the*  
10 *Judge will stop the case.*

11 2. *The difficulty arises where there is some evidence but it*  
12 *is of a tenuous character, for example because of*  
13 *inherent weakness or vagueness or because it is*  
14 *inconsistent with other evidence.*

15 a. *Where the Judge concludes that the prosecution*  
16 *evidence, taken at its highest, is such that a jury*  
17 *properly directed could not properly convict on*  
18 *it, it is his duty, on a submission being made, to*  
19 *stop the case.*

20 b. *Where however the prosecution evidence is such*  
21 *that its strength or weakness depends on the*  
22 *view to be taken of a witness’ reliability, or*  
23 *other matters which are, generally speaking*  
24 *within the province of the jury, and where on*  
25 *one possible view of the facts there is evidence*  
26 *on which the jury could properly come to the*  
27 *conclusion that the Defendant is guilty, then the*  
28 *Judge should allow the matter to be tried by the*  
29 *jury.”*



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31 7. First M.s Bodden submits that pursuant to the first limb of **Galbraith**, there is  
32 no evidence that the crimes alleged have been committed by Ms. Vega.

33 8. Ms. Bodden submits that the Crown has to prove that the cheques were  
34 stolen and that the Defendant, Ms. Vega, knew or believed the cheques to be  
35 stolen. Counsel states that this applies to Count 1, to Count 3 – for the cheque

1 on the 3<sup>rd</sup> September 2010 for CI\$4,500.00, and to Count 7 – for the cheque  
2 in the sum of CI\$5,000.00.

3 9. Ms. Bodden also submits that there is no evidence that Ms. Vega knew the  
4 other Defendants or interacted with the other Defendants. Additionally, on  
5 this point counsel states that the only other Defendant to make reference to  
6 Ms. Vega in her statement is Defendant Toria Terry who stated that she was  
7 aware that Ms. Vega was given cheques, however, at the same time, Ms.  
8 Terry confirms that she was not present when Ms. Vega purportedly received  
9 the cheques.

10 10. In relation to the cheques which are the subjects in Counts 3 and 7, counsel  
11 submits that Ms. Vega could not have been aware that they were obtained  
12 from Aaron Bush.

13 11. Counsel for Defendant Vega makes reference to Ms. Vega's interview in  
14 which she, Ms. Vega, states that she returned the money to the man who had  
15 given her the cheques and, additionally, there is no evidence before the Court  
16 that Ms. Vega profited from either of the cheques. On this point counsel adds  
17 that Ms. Vega is a Defendant with no previous convictions and is a person of  
18 good character.

19 12. On the second limb of *Galbraith* counsel for Ms. Vega argues this no-case to  
20 answer submission by submitting that even if the Court accepts there is some  
21 evidence, it is of such a tenuous nature because of its inherent weakness,  
22 vagueness and inconsistencies, that, when taking the Crown's case at its  
23 highest, a jury, properly directed, could not properly convict on it and  
24 therefore the Court should stop the case. Counsel relies on *R v. Shippey*



1 [1988] Crim L. R. 767 and points out that examining the evidence is not  
2 about taking out the plums and leaving behind the dross, but it must involve  
3 looking at the evidence as a whole.

4 13. In relation to Count 3 and the cheque on the 3<sup>rd</sup> September 2010, the only  
5 evidence is that the Defendant signed the cheque, wrote on it her telephone  
6 number and then cashed it.

7 14. In relation to Count 7 and the cheque on the 17<sup>th</sup> September 2010, the  
8 Defendant wrote on it her Butterfield Bank account number, deposited the  
9 funds and then withdrew the funds within an hour afterwards.

10 15. Counsel for Ms. Vega submits that this Defendant gave a full account of  
11 what had transpired in relation to these transactions in her interview, and  
12 counsel submits that there was no evidence of suspicious behaviour on Ms.  
13 Vega's part.

14 16. Counsel stated that the person who asked Ms. Vega to execute the  
15 transactions was someone called "AJ" whom she had met in a club a few  
16 times, did not know him particularly well, and, the Defendant did it for him  
17 as a favour.

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***SUBMISSIONS FROM THE DEFENCE***  
***ON BEHALF OF DEFENDANTS ASHLEY AND ROSE***

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17. Counsel on behalf of Michael Ashley and Barrington Rose, Mr. Furniss, also submitted that there is no case to answer in relation to these two Defendants.
18. In relation to Count 1, Mr. Furniss’ submission is that there is no evidence that the Defendants knew that the cheques were stolen property and further, in relation to Counts 13 and 14 – attempting to obtain property by deception – there is no evidence that Mr. Ashley and Mr. Rose were dishonest. Mr. Furniss also submits that there is also no evidence that they knew that their respective cheques were stolen cheques and that the Defendants were falsely representing that the cheques were authorised for payment.
19. Further, Mr Furniss submits the behaviour of these Defendants was not dishonest or questionable as, when they were asked to wait in the bank while the cheques were being examined, they “*simply sat and waited.*”





*CROWN'S SUBMISSIONS*

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20. Mr. Michael Snape on behalf of the Crown resists the applications in relation to all three Defendants and submits that these Defendants knew that the cheques were stolen or “wrong” based on the “starting position” that the cheques were placed in their hands by someone asking them to cash them.

21. Mr. Snape submits that all the cheques had Mr. Edward Miller’s name on them. The Crown submits that a cheque with the name Edward Miller is different from the name of the person or persons who handed the Defendants the cheques to transact. Indeed, the cheques in the name of Edward Miller were given to each of the accused, and the evidence is that Mr. Miller did not know any of these persons. The Crown therefore submits that the jury can infer that the Defendants did not know Mr. Miller and therefore should have questioned why they were being given his cheques to change.

22. The Crown submits that these are very significant amounts of money, in that, the case is not about cheques in the low hundreds, it is about cheques in the thousands, which should raise deep suspicion. Mr. Snape contends that the size of the amounts, and the fact that the cheques were not given to the Defendants by Mr. Miller, demonstrate that something was wrong and something looked wrong.

23. In Ms. Vega’s case the Crown submits that this Defendant was given the cheques by an acquaintance whom she states she did not really know. The Crown states, “*She [Ms. Vega], explains it by saying it is someone she hangs out with. She says he is not a friend but an acquaintance, yet she doesn’t*

1           *know his first name or his last name. She just knows him as AJ*” and she  
2           executes the transaction for him because *“he has lost his ID.”*

3           Mr. Snape continues to outline that this person for whom Ms. Vega is doing  
4           the transaction does not go into the bank with her. Mr. Snape continues by  
5           saying, *“She doesn’t know him [AJ] and yet, as soon as she leaves the bank,*  
6           *she gets the money to him.”*

7           24.       The Crown submits that with cheques of these significant amounts -  
8           CI\$4,500 and CI\$5,000 - the circumstances were so suspicious that the  
9           logical conclusion is that Ms. Vega knew *“this was not right”* and therefore  
10          must have known that the cheques were not legitimate.

11          25.       The Crown submits that the second transaction provides an added layer of  
12          knowledge on the part of Ms. Vega and submits the fact that Ms. Vega  
13          carried out a second transaction, in the context of the same suspicious  
14          circumstances, some two weeks after the first transaction – one on the 3<sup>rd</sup> and  
15          the other on the 17<sup>th</sup> September – indicates knowledge on her part of  
16          wrongdoing.

17          26.       In relation to Mr. Ashley, the Crown points that Mr. Ashley is given the  
18          cheque by a stranger – a person whom he knew for about a month, and who  
19          owed him for work done for him. Mr. Ashley does not know the person’s  
20          name. Mr. Ashley has no telephone number for this person and yet the person  
21          trusts Mr. Ashley to go into the Bank to get CI\$4,000.00, from which he, Mr.  
22          Ashley, would return to that person CI\$3,700.00. Crown counsel states that  
23          what is purported by Mr. Ashley is so “extraordinary” that he urges the Court  
24          to reject it.



1        27.    In relation to Mr. Rose, the Crown submits that Mr. Rose says he is at his  
2                cousin's house and a man comes there with cheques asking persons to  
3                change them. The Crown states that there is clear evidence of the uncertainty  
4                as to whether the cheques are valid. These cheques are in Mr. Edward  
5                Miller's name and they are for large amounts. Again the Crown submits that  
6                the circumstances are so suspicious and so wrong that the logical inference is  
7                that Mr. Rose knew that the cheque was stolen.



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*CONCLUSION*

28. For Count 1, the Crown must prove that the Defendants handled stolen cheques, knowing or believing them to be stolen and then dishonestly received the cheques or dishonestly undertook or assisted in their retention, removal, disposal or realization by or for the benefit of another person, other than the person who was the rightful owner of the cheques.

29. On the evidence before me I reject the submission by counsel for Ms. Vega on the first limb of *Galbraith*, that there is no evidence that the crime alleged has been committed by Ms. Vega.

30. In relation to the submissions on the second limb of *Galbraith*: Whilst the Court accepts that some of the evidence is tenuous, due to weaknesses and vagueness, the jury will have to consider carefully the evidence of Mr. Miller, the exhibits, the admissions and most importantly the evidence of all three Defendants in their interviews with Sgt. Montague at the Financial Crime Unit.

31. I do find that the prosecution evidence is such that its strength or weakness depends on the view to be taken of witness reliability and other matters which are generally speaking within the province of the jury, and further, on one possible view of the facts, there is evidence on which the jury could properly come to conclusion that the 3 Defendants are guilty.



1        32.     I find this is so of all three Defendants on behalf of whom no-case-to-answer  
2                submissions have been made, and therefore I deem these to be matters which  
3                are within the province of the jury. Accordingly, I dismiss the applications  
4                and allow the case to continue in relation to all three Defendants.

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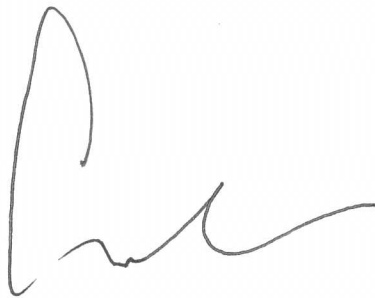
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7     **Dated this the 6<sup>th</sup> March 2013**

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11     **Honourable Mr. Justice Charles Quin**  
12     **Judge of the Grand Court**