

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

CACR006/2015 (Tamasa CNB)

IND 62/12

#03538/2012

CACR008/2015(Mignott)

IND 60/12A

#03466/2012

BEFORE:

**The Rt Hon Sir Bernard Rix, Justice of Appeal
The Hon Sir George Newman, Justice of Appeal
The Rt Hon Sir Alan Moses, Justice of Appeal**

BETWEEN

H.M THE QUEEN

Respondent

and

DAVID TAMASA

GEORGE ERIC MIGNOTT

Appellants

Appearances: James Curtis QC & instructed by Jonathon Hughes of Samson & McGrath for the Appellant Tamasa; Nicholas Dixey of Nelsons for the Appellant Mignott, Cheryl Richards QC, Director of Public Prosecutions and Candia James for the Crown.

Transcript of oral judgment 11 November 2016
Approved and released 6 March 2017

MOSES JA (Orally)

CICA 6/2015 (David Tamasa conviction appeal)

At the heart of this application for leave against conviction and appeal is the issue whether the jury was entitled or should have convicted this applicant of robbery when the evidence implicating him was fundamentally dependent on the evidence of an accomplice. That accomplice's credibility was so poor that, as is argued, he was incapable of belief.

Four men — Cole, Mignott, Tamasa and Burton — were convicted at a retrial of armed robbery at the Cayman National Bank on the first of January 2015, based on the evidence of a fifth robber, their accomplice, Marlon Dillon, who had earlier pleaded guilty. A sixth man, Edwards, had been convicted at the first Cayman National Bank trial, as we shall explain. The Crown allege that Tamasa organised the robbery and supplied guns for that purpose.

We say at the outset that we grant leave for appeal.

Just over a month before the robbery at Cayman National Bank, Dillon had taken part in a robbery at the premises of the Weststar television company on the 24th of May 2012.

Shortly after 9:30 am, on the 28th of June 2012, four men committed a robbery at the Cayman National Bank Buckingham Square. The identity of two of those involved was not in dispute — Rennie Cole and the Crown's essential witness Marlon Dillon. While Cole distracted the attention of the security guard, the three others arrived in a Toyota Windom, stolen two days before, entered the bank, masked and wearing construction-type clothing. Edwards was alleged to have carried what appeared to be a handgun, Mignott what appeared to be a shotgun; the Crown was never able to prove that they were real. While Mignott threatened customers with the shotgun, Edwards jumped over the counter and grabbed wads of notes from the vault area, before getting out, with some difficulty. Marlon Dillon had jumped onto the counter, demanded a bag — although he denied it — and threatened to shoot the "fucking head off the teller".

The three fled, carrying bags of cash, out of the bank to the Windom driven by Burton, but they were blocked in by a cash delivery van which had arrived at the time that the robbery was taking place. They fled around the back of the bank to Dillon's red Chevrolet Equinox parked on Esterley Tibbetts Highway, scattering cash as they ran.

Dillon's Equinox was traced to his home in Shady Lane, West Bay. He hid, but was arrested at 6:10 pm the same evening.

It is essential for the purpose of appreciating the extent and quality of the defects in Dillon's evidence to refer to the tortured history of his statements to the police following his arrest which was in part reflected by his flawed evidence as a Crown witness in the criminal trials which followed.

It was a tainted and dishonest sequence in which Dillon purported to confess, but diminish his role in the earlier Weststar robbery and in the Cayman National Bank robbery, while accusing others of being involved, some of whom were subsequently shown beyond a doubt to be innocent.

On his arrest on the day of the Cayman National Bank robbery on the 28th of June 2012, Dillon claimed he had been abducted. He persisted in that claim until, after improper threats and inducements by a police officer, two days later, on the 30th of June 2012, he admitted he had been involved in that robbery and named some others, but not Tamasa.

He did not accuse Tamasa for the first time until the witness statement on the third of July 2012.

The day after, on the fourth of July 2012, Dillon made his first statement about the Weststar robbery, in which, just as he had done initially in relation to the Cayman National Bank robbery, he sought to exculpate himself, saying he had innocently given the robbers a ride before and after that robbery had taken place at the premises of the Weststar television company.

In August 2012, Dillon pleaded guilty to participation in the Cayman National Bank robbery and handling stolen goods obtained in the Weststar TV robbery.

During the same month of 2012, he had made further statements about the Cayman National Bank robbery, whose accuracy he had confirmed on oath during extradition proceedings of one of the Cayman National Bank robbers, Ryan Edwards. He was subsequently, at the trial of others involved in the Cayman National Bank robbery, to resile from significant parts of those statements, and he falsely blamed the police for fabricating and misrepresenting what he had said.

It is also important to recall that Dillon made allegations against a manager at the Cayman National Bank, against whom no proceedings were ever brought and which were shown to be false at the first trial.

That first Cayman National Bank trial started in April 2013. During its course Dillon changed his account of what he saw — the guns he said Tamasa had provided for the robbery. His first account was that he had been shown guns in a white box in Tamasa's yard and had been coerced into taking part in the robbery when that shotgun was placed in his car. During the first trial, he made a statement radically changing this account. He had not seen any guns in Tamasa's yard before he went to the robbery, he said, and only saw them at the rendezvous point, Safehaven yard, in a car stolen for the purpose of the robbery; he did not know how the gun had got there, and he persisted in that story right through to the second Cayman National Bank trial.

At the first Cayman National Bank trial, which took place between the ninth of April and the ninth of May 2013, Cole, Mignott, Edwards and Burton were convicted on the ninth of May 2013. It is worth stressing that the key witness in that first trial, Dillon, was at that time still claiming not to have been involved in the Weststar robbery, save for handling some of its proceeds, and that the Weststar trial was due to start four days after the conclusion of the first Cayman National Bank trial. But the Weststar trial could not take place because it was discovered that Dillon had lied about his participation in the Weststar robbery. The CCTV showed that, far from being a mere handler, he was a participant in it. His false account of innocence had, he said, when called upon to explain it, been again the result of the police fabricating his statements, a patently untrue explanation in which he even persisted in the second Cayman National Bank trial.

Once it was shown that he had given an untrue account of being the mere handler, he admitted being the getaway driver at the Weststar robbery. The trial had to be delayed for five months and took place on the 23rd of September 2013.

During that Weststar trial, Dillon's evidence against others was demonstrated by both CCTV and cell site evidence to be untrue. It resulted in the judge directing the acquittal of Mignott, and his accusations against two others were false. The Crown discontinued the case against one of them and never even prosecuted another alleged by Dillon to be an inside man. Dillon persisted in his accusations against them even at the second Cayman National Bank trial, the subject of this appeal.

The Weststar trial resulted in convictions of Tamasa, Burton and Edwards and, as we have said, the acquittal of Mignott.

The appeals in both robberies — the Weststar robbery and the Cayman National Bank robbery — were heard by this court in November 2014, a different reconstituted Court of Appeal. In the Weststar case the conviction of Tamasa was overturned and no retrial was ordered. The appeals of Burton and Edwards in the Weststar robbery were dismissed. The appeals of Tamasa, Mignott, Cole and Burton in the Cayman National Bank trial were allowed and a retrial ordered. The retrial is the subject of this appeal. Edwards' appeal was dismissed and thus he remains convicted of the two robberies.

On the first of February 2015, the retrial, before Mrs. Justice Mangatal and a jury, in the Cayman National Bank robbery resulted in the convictions of Mignott, Burton, Cole, and of Tamasa — that conviction which is the subject of the instant appeal.

The course of that retrial showed that Dillon persisted in lying on oath. When challenged with inconsistencies and changes in his evidence, he, as Mr. Curtis QC puts it, resorted to a robotic and repeated incantation of his latest version of events. When confronted with previous statements, he again falsely accused the police of fabricating them despite the frequent opportunity Dillon had had of correcting them. We agree that in the period leading up to the trials, and during the trials, he lied casually, habitually and instinctively, whether on oath or not. He was prepared to accuse others who were indisputably innocent concerning both robberies.

Quite apart from this catalog of reasons for concluding that Dillon was an untruthful witness, there are other features of the case which seriously trenched upon his credibility.

He was an accomplice in one serious robbery shortly after having taken part in another at Weststar TV company. He had a powerful motive to accuse others. Indeed, he was told by officers, almost immediately from the time of his arrest for the Cayman National Bank, when he had been caught red-handed, that if he named names it would be better for him in court. As revealed in this first trial, he was threatened and promised favours by an interviewing officer. He was given special treatment thereafter, his wife relocated, and discussions had taken place suggesting he would be allowed to serve his sentence in the United Kingdom, for he feared deportation to places where he remained at great risk. He

remained fearful of this at the second trial and he had indeed sought an adjournment on a false basis, that he had only just learned of decision of the Immigration tribunal to reserve its decision whether to revoke his status in the light of the robberies. He had every reason to continue to hope for favours if he named others.

He received, as it turned out, very substantial reductions in the short sentences he obtained in respect of both robberies.

Thus, there was an abundance of reasons to reach the conclusion that Dillon was, in many respects, an untruthful witness. But was he incredible in every respect? That question lies at the heart of this appeal. It is trite to observe that a witness may lie in many, but not in all, matters of which he speaks. Was it possible to identify any respect in which he was telling the truth? The appellant says not. Dillon was blown or exploded, incapable of belief in any respect whatever, particularly in relation to his allegations against Tamasa. Neither judge, at the close of the prosecution, nor the jury, after no defendant had given evidence, agreed. But were they entitled to reach the conclusions they did?

The answer to those questions turns on an analysis of the events leading up to the robbery of the Cayman National Bank on the morning of the 28th of June 2012, and in the interrogation of a number of phones, particularly those of Dillon, Mignott, Cole, Edwards, Burton and the appellant Tamasa. It was agreed that Dillon had no opportunity to study that interrogation before making the statements he did or giving his evidence. Insofar as it supported what he said, he could not have known that that interrogation would support his evidence.

The car used in the robbery, a Toyota Windom, was said by Dillon in evidence to have been taken on the morning of Tuesday, the 26th of February 2012, by Edwards and Mignott. Early that very morning, Tamasa rang Mignott, then Dillon, then Burton. There were, that day, 30 calls between the subject phones.

The next day, the 27th of June, there were 24 between the subject phones, though the first -- not Tamasa's first call that day -- was not until 9:36 to Mignott.

The most significant sequence was on the day of the robbery, the 28th of June. There were 37 calls between 5:31 am and 9:34 in the morning within the circle of callers whom Dillon identified as being involved in the robbery. There was then an 18-minute silence within that circle at the time of the robbery, although Tamasa continued to ring other numbers, or was rung by others. Between 9:21 and 9:52 there was no contact between any subject of that circle during that period. After then, contacts between the subjects started up again following the Cayman National Bank robbery, and there were about 60 afterwards, excluding two other phones which the Crown contended may have been related to the robbery, but to which we must turn later.

Tamasa's phone showed 22 contacts with Dillon from 8:32 up to 9:32; 20 with Edwards and Burton, whom Dillon had named as being involved in the robbery; and just two with Tamasa's wife.

It is not just the number, but the timings, which to our mind are of significance. Mignott's last calls the night before were with Tamasa, Edwards and Burton. His first call that morning was to Tamasa's phone. Tamasa then responded to Mignott first thing in the morning at 5:31 and again at 6:47. His first call that morning to Dillon was on Dillon's phone at 7:27.

Dillon said he had received numerous calls from Tamasa that morning. As Mr. Curtis QC pointed out, the records contradict that assertion. But nonetheless, as we have said, the first call that Dillon received that morning was from Tamasa. After Tamasa had called Dillon and Dillon had returned Tamasa's call, Tamasa then called Burton, the third member of those Dillon said were involved in the robbery, who either contacted or were contacted by Tamasa early on the day of the robbery.

Dillon said he went to Tamasa's address after the phone call with Tamasa and there picked up Mignott. In interview, Tamasa, after the arrest, accepted that that visit had occurred. According to Dillon, Tamasa told him of a planned robbery at the Cayman National Bank. Dillon was instructed by Tamasa to drive Mignott, who was also at Tamasa's yard, pick up Burton in George Town, meet Edwards and go to the robbery. Consistent with that account, Mignott made only seven calls before the robbery took place — three to Tamasa, one to Burton at 7:08, and he received two at 8:41 from Edwards' phone.

Edwards then contacted Dillon one minute later at 8:42 and, after two voice mail contacts, one minute after that, at 8:43, rang Tamasa. Edwards then made four other contacts on the phone with Cole between 8:48 and 9:03, during which period he also received three calls from Dillon.

Dillon said he and Mignott went from Tamasa's home to Burton's work site in South Sound, and there were calls between them and between Edwards and Dillon.

Burton's phone, between the time of the first call from Mignott at 7:08, had nine other contacts between Mignott, Tamasa and Dillon up to the time of the robbery. He, Burton, according to a co-worker Wray, left the work site shortly after 9:00 and was absent for an hour. The siting of Burton's phone was consistent with Dillon's account of going to Safehaven yard with Mignott and then and there meeting Burton and also Edwards. Dillon left his vehicle there and all, save Cole, went to the Cayman National Bank in, as we have said, the Toyota Windom that had been stolen two days earlier. Cole went in his own vehicle. Again, the siting of a call by Cole at 9:34 is consistent with that account.

There was clear independent evidence, apart from Dillon, of Mignott and Burton and Cole being involved in the robbery.

Cole wore no mask and was face to face with the security guard he was distracting. He had images on his phone of bank notes from the bank. He is seen on the CCTV arriving at the bank shortly before the Toyota Windom draws up.

Edwards, whom we must recall had been convicted, was found with money from the robbery.

Mignott was absent from work both when the Windom car was taken and during the robbery.

In the light of the evidence of the journey Dillon, Mignott, Edwards and Cole made to the Cayman National Bank, and the timing of that journey, the telephone records involving Tamasa assume a particular significance. Quite apart from the history of the early or first calls involving three of the alleged robbers, the history of calls between Tamasa and the robbers on their journey, very shortly before the robbery took place, is remarkable. Between 8:28, when Dillon and Mignott must have left the yard, Dillon, Edwards and Burton all called Tamasa. Accordingly, Tamasa had the misfortune to be in contact with at least three of the robbers when they must have been, so the jury was entitled to conclude, on the way to the robbery, and not once during the course of the robbery.

This unfortunate set of coincidences does not stop there. After the ramshackle escape from the bank, Dillon described meeting Burton in Dillon's own, and traceable, Equinox, going to Burton's home where the other robbers got out, and driving to his own home. Thus, his own car had been used as a getaway vehicle once the Windom had been shut in.

He left the car at his home and hid in the bushes. The first call that Dillon made after the robbery was to Tamasa. The first call Burton made after the robbery was to Tamasa. We might suppose that the jury could think that one friend involved in the robbery calling Tamasa for help in the plight they were in was unfortunate. But two? Calls between Dillon and Burton and Tamasa continued after the robbery. Burton contacted Mignott and later in the evening Edwards contacted Burton.

There was contact between Tamasa and Edwards' girlfriend's friend — there being evidence that Edwards had gone to his girlfriend's house — and between Edwards, as we have said, and Burton.

There was however, as Mr. Curtis QC pointed out, evidence of others unknown being involved, or at least coming to hear of the robbery after it had taken place. An unknown Blackberry warned Dillon that the authorities were searching his house after 1:00 pm, and a Blackberry called "untouchable" sent messages over an hour later warning Dillon of the continuing search at his house almost up to the time he was arrested.

There is also evidence of contact between Dillon and a Digicel server phone in the hour or so following the robbery. Dillon said after he had been told by Tamasa to throw away the phone and destroy his SIM card that Digicel, which numbers began 547, was used. There is a Digicel 547 traced on Tamasa's phone under the name "DD". Dillon said Tamasa was using that number. It is striking, but by no means conclusive, that the 547 Digicel phone called less than a minute after Dillon had called Tamasa after the robbery at 10:24, and on six other occasions shortly after.

Mr. Curtis submits that, despite this evidence, Dillon's credibility was non-existent and could not therefore be revived. In those circumstances, he submits, the judge should have ruled that there was no case to answer after the Crown had closed their case.

Mangatal J reminded herself during her ruling that she would have to direct the jury of the need for extreme caution and that the jury would have to look to see if they could find supporting independent evidence before acting on Dillon's evidence. She recorded:

"When Mr. Dillon's evidence is examined closely, it is my view that although he has admitted to a catalog of lies, and may have lied many other times not admitted by him, although he may at times appear to be reciting a script ... Dillon has maintained and his evidence in this trial has been that these defendants all participated in the robbery in the roles described by him."

She then reminded herself of what she described as independent evidence supporting Dillon's accusations against others against Tamasa and said:

"... there is telephone evidence which is capable of providing some support for Mr. Dillon's assertion. This telephone evidence is also capable of providing circumstantial evidence based on the phone calls in the relevant period, both pre and post robbery."

And she concluded that the jury "should look for supporting material before acting on Dillon's evidence." She said that they should "look cautiously" at his evidence and see whether there is evidence supporting what Dillon said.

She concluded:

"... if I were to withdraw the case from the jury at this stage I would be usurping their role. It may be that this case has unusual features or is close to the border line because of the remarkable and unusual nature of Marlon Dillon as a witness. However, my view is that it is exclusively for the jury to make what they would of Mr. Dillon's evidence in light of the other evidence capable of supporting his evidence and the circumstances and evidence in the case as a whole."

In our judgment, the judge was correct to refuse to withdraw the case from the jury. Although by the close of the prosecution case Dillon's credibility was severely damaged, it was nonetheless, for the reasons we have given, significantly supported. His allegations against those, apart from Tamasa, who had committed the robbery were substantially supported by the independent evidence we have identified.

The interrogation of the cell phones provided evidence to support Dillon's allegation that Tamasa was the organiser. Their timing, frequency and location, both before and after the robbery, was supportive of Tamasa being at the centre of the circle of those who needed to coordinate their journeys to the Cayman National Bank.

In those circumstances, we reject the appellant's contention that the case should have been withdrawn from the jury at that stage.

The appellant then contends at grounds 4 and 5:

"In the special circumstances of this case, namely the [case] of the exceptionally damaged credibility of the accomplice Marlon Dillon, the judge erred in law in directing the jury that while it was dangerous to convict on the unsupported evidence of Dillon, and that they should exercise extreme caution with regard to his evidence, nevertheless they could convict David Tamasa upon his unsupported evidence alone".

At ground 5, he contends:

"Accordingly the judge erred in law in failing to direct the jury that ... there was no supporting evidence that David Tamasa had supplied the guns for the robbery, or masterminded it, as she told them was the case, they should acquit David Tamasa".

These grounds require some analysis of how it was that the judge left the case to the jury. The judge told the jury clearly during the course of her lengthy summing up that the main issue was whether Dillon was telling the truth.

Turning to his evidence, she said:

"... I must warn you that it is dangerous to convict any of these defendants upon the unsupported evidence of Marlon Dillon, and I warn you that you must approach his evidence with extreme caution and care. You should look to see whether there is evidence which supports Mr. Dillon's evidence before you can act on or accept his evidence as being true, and there are a number of principal reasons for this and I'm going to list them for you."

It seems that that was a direction to the jury that they should not convict Tamasa without evidence supporting Dillon's credibility. The judge set out the reasons for that direction. That summary is criticised as not going far enough, but it did set out reasons that went well beyond the fact that Dillon had been an accomplice in two violent robberies.

Later, on the same day of the summing up to the jury, a few pages later, she said:

"Where you find support for Mr. Dillon's evidence from other sources, you may be more disposed to accept what he says."

She then referred to the Crown's assertions of what was capable of supporting Mr. Dillon's evidence, and then went on:

"Now, you are entitled to act on Mr. Dillon's evidence whether it is independently supported or not provided that you have regard to the dangers that I have warned you

about and the need for caution and provided that you are satisfied so you feel sure that he is speaking the truth".

Later, during the course of the summing up, Mr. Curtis, on behalf of the defendant Tamasa, correctly asked her to indicate to the jury what evidence independent of Dillon was capable of supporting him, and he asked that question of the judge in these terms:

"I don't know what you're going to say tomorrow about the contra side to the inferences that are available to be drawn from either what Dillon says or what the independent evidence says or the opposite, that there is none at all.

"But what we were going to hopefully hear from my lady was whether there is any independent evidence that supports Dillon against David Tamasa other than the phone — 'telephone traffic' [Emphasis added], and in particular, whether there is any supporting evidence that he supplied the guns."

The judge then said, "As a specific -- as a specific direction to them, yes?"

"Yes," responded Mr. Curtis:

"Because it's, as you know, rightly or wrongly, been our contention that there is no supporting evidence that he supplied the guns. And while we don't ask of course for you to repeat our submissions, when you are identifying what is and isn't supporting evidence in the case for each defendant and when you come to Tamasa, as I've understood it, all you said to the jury is that against him the Crown place reliance on the phone records."

"Yes, yes," said the Court.

Mr. Curtis, "That's all I've heard."

"That's all I understood [sic]", said the Court, "them to be saying that supports and everything else is Mr. Dillon."

Mr. Curtis:

"And my friend kindly nods her head to that.

"But the implication to me was that meant the telephone traffic rather than any cell site evidence."

In that passage, it seems to us that Mr. Curtis was distinguishing between the telephone evidence capable at least of supporting the allegation that Tamasa organised the robbery, but was distinguishing that from the absence of any evidence to support the allegation about the provision of guns, and of course emphasising, which had been in some doubt on the prosecution case, that there was no inference to be drawn from the cell site

position of calls either made by Tamasa, because he was not at the robbery and was inevitably going to be moving about during the day perfectly lawfully.

The result of that exchange was the direction to [sic] the judge later on in her summing up the following morning. She said:

"Now, in relation to the defendant Mr. Tamasa, I also wish to point out to you that the Crown relies upon the phone evidence as supporting Mr. Dillon's evidence that the phone — the phone evidence pre and post robbery. [sic] And that is the only evidence that they are saying supports Mr. Dillon in relation to Mr. Tamasa."

"I wish to also point out to you, madam foreman and members of the jury, that there is no evidence independent of Mr. Dillon that is capable of supporting Mr. Dillon's specific allegations that Mr. Tamasa 'orchestrated the robbery' [Emphasis added] or that he supplied the guns."

She then went on:

"And further that Mr. Dillon -- when I spoke of the phone records and the cell site data, further that Mr. Dillon has not given evidence about Mr. Tamasa's movements on the day of the robbery, so the cell site data could not be said to be supportive of Mr. Dillon's evidence. So there's a distinction between what is supportive -- or being argued as being supportive of his evidence as opposed to all of the evidence that the Crown is relying on."

Mr. Curtis QC again then founds himself on that passage to say that there the judge was disclosing the fact that she had reached the conclusion that there was no supporting evidence either of the provision of guns by Tamasa or him orchestrating the robbery.

We say straight away that there was no independent evidence in relation to the provision and indeed Dillon's evidence as to his description of the guns had varied inadequately from time to time. But it did look to us, from the nature of the submissions, that the judge had misspoke when she spoke of the absence of supporting evidence in relation to orchestration.

Mr. Curtis QC, in explaining the passage when he was on his feet, to which we have already referred, in his submissions the day before made clear to this court that he had never resiled from his position that there was no supporting evidence in relation to either of those two limbs of Dillon's evidence — orchestration or the provision of guns — and he had certainly never conceded that there was. Whether it reads like that or not does not matter; of course we accept what he says. However, the real point is whether the judge did direct the jury, looking at the summing up as a whole, that there was no supporting evidence of orchestration in a way which may have resulted in the jury convicting on the basis of unsupported evidence of Dillon, and either rejecting the effect of the phone evidence or putting it to one side.

In our view, that could not have been the case. The whole focus of the trial in relation to Tamasa, and indeed the other defendants, was whether there was evidence which independently supported Dillon's allegations. The judge herself in relation to the Crown's case referred to telephone evidence and distinguished it from cell "site" data. The telephone evidence was, in our view out of such cogency and importance, for the reasons that we have given, that we cannot accept that there was any risk that in that one passage we have quoted, in a very lengthy summing up, the jury was misled into thinking there was no evidence to support the allegation that there had been orchestration of the robbery by Tamasa apart from the evidence of Dillon.

The Crown sought to argue that it was open to the jury to convict Tamasa on the evidence of Dillon alone and that whatever defects there had been in his credibility, he had been consistent in his accusation against Tamasa once he made it. Certainly the judge's warnings of the danger without any prohibition of acting on Dillon's evidence alone is consistent with the jurisprudence following the case of *Makanjuola* • 3 All E.R. 730. We prefer, however, to reach no concluded view as to whether the jury could have convicted without supporting evidence, because that was not the way the trial was run and was not the state of the evidence.

Our task is to look at the safety of the conviction in the light of that supporting evidence, bearing in mind there is no requirement for old-fashioned corroboration. The supporting evidence was of a weight and of a focus which did independently and substantially support Dillon's evidence.

Further, it supported the evidence of the truth of Dillon's account of the robbery, who was involved in it, and a sequence of events involved in the others which we have already described.

Whether the case was left to the jury on the basis that they could convict without any independent evidence or not, they were not only entitled to reach a verdict of guilty, but it was safe for them to do so.

There were further criticisms that were not pressed as to the failures of the judge to remind the jury of some of the defects and arguments as to the evidence, including the material that pointed the other way. But they were not pressed on appeal and they afford no separate ground of appeal. They were no more than arguments the defense had been entitled to deploy before the jury. For those reasons, whilst we have given leave to appeal, we would dismiss this appeal.

CICA 6/2015 (David Tamasa sentence appeal)

CICA 8/2015 (George Mignott sentence appeal)

THEIR LORDSHIPS' RULING

MOSES JA (Orally)

We then turn to the sentence applications.

Tamasa was sentenced to 14 years. He had no previous convictions. He was sentenced on the basis, as the judge said, that he had been the mastermind of this robbery. This was a serious armed robbery and it cannot, in our view, be contended, looking at the guidelines both on the island and in the United Kingdom, that it was manifestly excessive, but for one point.

Tamasa was sentenced to a totality of 14 years at a time when it was believed that he was also guilty of the Weststar television company robbery. Once his conviction on appeal in relation to that robbery had been overturned, Mr. Curtis contends that the sentence must be reduced to reflect his client's innocence of that earlier robbery. In short, if the totality for two serious robberies was 14 years, it cannot be correct to pass the same sentence for one. It amounts, in reality, if not technically, to a higher sentence being passed on a retrial which should not be passed, even absent any legislative provisions on the island that limit the ceiling of a sentence on a retrial.

We do not agree. We believe that, on any view, that sentence of 14 years, despite the mitigation of the absence of previous convictions, was entirely consistent with local and United Kingdom guidelines, and indeed with the decision of this court in MacLean and Ors on the 16th of November 2015 in relation to the starting point and in relation to an even more serious robbery. In those circumstances, we dismiss his application for leave.

Mignott has also appealed against his sentence. He was a younger man, with very limited previous offences, only 22. The judge took 12 years as the starting point and then, having considered mitigation and the gravity of the robbery, took the view that, notwithstanding his age, he played a substantial role in bearing the imitation firearm, and what appeared to be a shotgun, and ordered a 12-year prison sentence.

It was argued on his behalf that there had been double counting, that the 12-year starting point took into account the aggravating features of the nature of this robbery, armed as it was and carried out by a gang, and therefore should not, once mitigation taken into place, have returned to the starting point.

We disagree. There was no use of the circumstances of the robbery twice. The judge referred to his role to set off against the undoubtedly mitigating feature of his young age of 22.

Given the seriousness of the offence, to which we have already referred, carried out with imitation firearms and by a gang, the 12-year sentence was entirely appropriate and we dismiss his application.

For those reasons, the conviction appeal is dismissed and the leave to appeal in both the sentence appeals is refused.