



Neutral Citation Number: [2023] EWCA Crim 1485

Case Nos: 202200377 B3
202200398 B3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT SOUTHWARK
HIS HONOUR JUDGE BARTLE KC
T20200387

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14 December 2023

Before:

LORD JUSTICE STUART-SMITH
MR JUSTICE HILLIARD
and
HIS HONOUR JUDGE FORSTER KC

Between:

REX

Respondent

- and -

(1) JONATHAN PORTER
(2) PETER STANLEY

Applicants

Simon Farrell KC and Nicholas Yeo (instructed by **DPP Law**) for the **Appellant Jonathan Porter**
Aneurin Brewer (instructed by **Murray Hughman**) for the **Appellant Peter Stanley**
Jane Osborne KC and Jennifer Burgess (instructed by **CPS Specialist Fraud Division**) for the **Crown**

Hearing date: 23 November 2023

Approved Judgment

This judgment was handed down remotely at 10.30am on 14 December 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Lord Justice Stuart-Smith:

1. On 10 January 2022, in the Crown Court at Southwark before His Honour Judge Bartle QC and a jury, the applicants Jonathan Porter and Peter Stanley were convicted of entering into or becoming concerned in a money laundering arrangement, contrary to section 328(1) of the Proceeds of Crime Act 2002 (“POCA”). In briefest outline, the arrangement was said to involve the laundering of money that emanated from the large scale evasion of duty payable on alcohol, as we shall explain in greater detail below.
2. On 11 February 2022, before the same court, Mr Porter was sentenced to 7 years imprisonment and Mr Stanley was sentenced to 5 years and 9 months imprisonment.
3. The applicants now renew their applications for leave to appeal against their convictions, leave having been refused by the Single Judge. In order to understand the basis for their proposed appeals, it is necessary to set out the factual background to explain how the alleged money laundering arrangement was said to have worked.

The Factual Background

4. At all material times Mr Porter was the sole director of a company known as Europlus Trading Limited (“ETL”), which began trading as an under bond alcohol trader in 2008. ETL ran a legitimate business dealing wholesale in alcohol. In addition, it was the prosecution’s case that ETL was used as part of an arrangement for the laundering of criminal money, which involved receiving large amounts of cash that were alleged to be the proceeds of (and benefit flowing from) the evasion of the duty on smuggled alcohol. Mr Porter was said to be responsible for the laundering of the money through ETL. Mr Stanley was said to be in charge of shifting money and acting as a cash courier. Precisely who ran the duty evasion scheme was not known, though they were often referred to as an Organised Crime Group (“OCG”). It was not alleged that Mr Porter or Mr Stanley was directly involved in the OCG or the criminal acts of evading duty. The case was all about money laundering.

5. The prosecution’s case was opened as follows:

“Duty evasion fraud, in this case taking the form of “inward diversion” can be very complex and difficult to detect, but essentially involves goods being smuggled into the UK under the cover of a legitimate movement reference number. In short, duty suspended goods in a warehouse in France will be “sold” to a French business who will claim that the goods are to be sold to the domestic French market. At this point, the business will need to pay the French levied duty on those goods.

12. Quite separately arrangements will be made for a consignment of goods to be transported from France to the UK. This consignment will mirror the goods that were “sold” to the French business. This is called, by those who investigate such things, a “cover load” as it will provide cover for the other smuggled goods. The cover load will leave the French bonded warehouse for the UK under an “ARC”. Assuming the cover load is not checked by Border Force officials, the cover load having crossed the channel will go to a lorry park and wait.

This load will be followed by mirror loads, that contain exact replicas of the goods on the ARC. One at a time will cross the channel and this will continue until Border Force officials check a lorry (thereby checking the ARC), or until the ARC is due to expire. Prior to the expiry date and time of the ARC, one of the loads will continue to the bonded warehouse, thus discharging the ARC. The mirror loads that have entered the UK under cover of the ARC and escaped detection will then be sold by the organised crime group orchestrating the scheme to cash and carries who are willing to buy the goods cheap. The profit is the difference in duty between that charged [in] France and that in the UK, and this is significant when an average of 5 loads could get through on one ARC evading tens of thousands of pounds in UK duty per load and creating a profit of about £20,000 per successful mirror load.

...

14. The stages in this arrangement can be described as follows:

Stage 1: Duty suspended alcohol is within an ETL account inside a bonded warehouse, in this case, ordinarily in France.

Stage 2: The duty suspended alcohol is transferred, upon instructions given by ETL, from their account to that of the “purchaser” of the goods, ordinarily a cash and carry business purportedly based in Calais. The goods could then potentially change hands many times, between various companies, always sold in bond, and often mixed with other goods, to disguise their origin (and ultimate destination), but will end up in the possession (in bond) of a purported cash and carry business.

Stage 3: The duty suspended alcohol is released from the bonded warehouse, with the cash and carry saying that it is for sale on the French market and therefore with French duty being paid. The goods are released to the warehouse of the French cash and carry.

Those goods are then smuggled back into the UK as mirror loads under cover of a legitimate ARC.

Stage 4: The UK cash and carry businesses will pay for the duty evaded goods in cash and this cash needs to be distributed in three ways:

- a) Much of the cash paid by the cash and carries will not be profit as such but will be used to buy more duty suspended alcohol which can be transferred to the continent in bond so starting the process again and furthering the smuggling operation;

b) Those involved in assisting to launder the cash paid by the UK cash and carries will receive payment for their part in the operation;

c) The profits need to filter back to those in charge of the illegal operation (in this case most likely to be based on the continent).

The UK cash and carry premises will obtain their enhanced profit having sold the goods onto customer. These predominantly cash payments can then be used to purchase further duty evaded goods;

Stage 5: Once the cash couriers have delivered the cash destined for ETL, this cash is split in two ways. Firstly funds are paid into ETL's bank account through Loomis in order to pay for another batch of duty suspended alcohol. And secondly, a proportion of the cash is retained by those at ETL (Porter and Howard), as payment for their involvement in this criminal enterprise.

15. The defendants are charged, not with involvement in the duty evasion (which occurs at Stage 3 described above), the exact mechanics of which are not certain, but the defendants are said by the prosecution to have played their part in the laundering of the proceeds of this crime, knowing or suspecting that the cash they were dealing with was the proceeds of crime."

6. The workings of the alleged fraud were shown in a graphic which is annexed to this judgment as Annex 1.

The indictment

7. The particulars of the offence as alleged in the Indictment were:

"JONATHAN PORTER, MICHAEL HOWARD, PETER STANLEY, TERENCE OVERLEY, ERIKUS TRISKUS, GARY HENDERSON and RAGBIR SINGH on a date prior to the 11th June 2015, entered into or became concerned in an arrangement, namely facilitating and allowing the transfer of sterling cash from London based cash and carry businesses to the premises of Europlus Trading Limited, knowing or suspecting that this arrangement would facilitate the acquisition, retention, use or control of criminal property by, or on behalf of, Jonathan Porter, Michael Howard or others unknown."

The proceedings and rulings

8. On 15 November 2021, the prosecution submitted a note entitled "Re Couriers and seizures". In the course of that note the prosecution stated:

"3. The prosecution must prove the following in relation to the charge:

a) That the cash conveyed is criminal property (the prosecution case being that the cash is payment for duty evaded alcohol).

b) That each of the defendants became involved or concerned in an arrangement concerning the above criminal property.

c) That they did so knowing or suspecting that the money was criminal property.

...

6. The cash seizures are admissible because they are relevant to whether the cash is the proceeds of alcohol duty evasion, and therefore criminal property.

...

11. The Prosecution case is that the role of these four cash courier defendants is to convey money as part of this arrangement, and that the money is from alcohol duty evasion.

... ”

9. Shortly after that, various defendants (including Mr Porter and Mr Stanley) made applications, the precise nature of which do not matter for present purposes. In his ruling on those applications on 17 November 2021, the Judge included the following passage:

“I turn to my conclusions –

(1) As the Court of Appeal held in *Anwoir* [2009] WLR, 980 at paragraph 21: 'There are two ways in which the Crown can prove the property is criminal property – (a) by showing that [it] derived from conduct of a specific kind or kinds and that conduct of that kind or those kinds is unlawful; or (b) by evidence of the circumstances in which the properties handled are such as to give rise to the irresistible inference that it can only be derived from crime – see Archbold 2021 Edition, paragraph 26-12.'

(2) In this case the Prosecution case is that the cash was derived from alcohol smuggling.

(3) Therefore – (a) in order for the jury to convict any defendant they must be sure that the cash was criminal property; (b) the defendant entered into or became concerned in an arrangement relative to that criminal property; and (c) that that defendant did so knowing or suspecting that the property was criminal property.

(4) As the Prosecution case is that the case is criminal property because it derived from alcohol smuggling in relation to the first element, the jury will have to be sure that the cash was criminal property for the reason alleged by the Prosecution. ...”

10. At the close of the prosecution case, the defence made submissions of no case to answer. Mr Porter’s submission commenced:

“1. The defence make application that the case against Jonathan Porter ... be dismissed on the following grounds;

a) there is insufficient evidence from which the jury can infer to the criminal standard that the cash delivered to ETL (and said to be part of the alleged arrangement) was criminal property

...

c) the criminal conduct alleged against JP amounts to a predicate and not a money laundering offence

... .”

11. In developing Mr Porter’s submission under (a) above, Mr Farrell outlined what was understood to be the prosecution case on “criminal property”:

“29. The predicate offence is *now* claimed to be the smuggling of alcohol into the UK, evading the duty owed and then the selling of that alcohol within the jurisdiction generating sterling cash by Kamros, Al Pacino and Middlesex Wines Ltd (hereafter the UK Cash and Carries).

30. The prosecution case is that the jury can be sure that a substantial part of the sterling cash delivered to ETL is criminal property as it represents the UK Cash and Carries benefit from criminal conduct, namely their sale proceeds of alcohol which has been smuggled into the UK.”

12. The prosecution response included its clarification of the basis on which it asserted that the cash carried by the couriers from the cash and carries to ETL was criminal property:

“The prosecution case is that alcohol has been smuggled into the country (by others unknown) and has thereafter been sold (by those others unknown) to, in particular, the three cash and carry entities (Kamros, Al Pacino and Middlesex Wines). The cash and carries must pay the “others unknown” for the alcohol that they have received, but this cannot, because of the origin of the goods, be done through the traditional banking system. The monies are therefore paid in cash. Thus the cash which pays for the duty evaded alcohol is criminal property because:

a) Duty evasion (in this case alcohol smuggling) is criminal conduct [s.340(2)(a) POCA 2002]

b) If a person benefits from criminal conduct, then that benefit is the property obtained as a result of, or in connection with, the conduct. The benefit in this case is thus the cash used by the cash and carries to pay for the duty evaded goods [s.340(5) POCA 2002]

c) The cash directly constitutes a person's (the smugglers) benefit (in whole or in part, directly or indirectly) from criminal conduct [s.340(3)(a) POCA 2002].

d) Because it is immaterial who carried out the criminal conduct [s.340(4)(a) POCA 2002] the Crown need not prove the criminal complicity of any specific person, or indeed entity in the arrangement, just that the cash is criminal property when it leaves the cash and carries."

13. Footnote 2 stated:

"Insofar as the defence submissions seem to suggest that the cash is the "cash and carry sale proceeds of alcohol which has been smuggled into the UK", that is to mis state the Crown's case. The cash paid to the couriers may have come from the sale of either legitimate or illegitimate goods (or indeed any other source), but its status as criminal property arises when it is handed to the cash courier as payment for duty evaded goods. See paragraph 30 of defence submissions."

14. The Judge handed down his ruling orally and in writing. The oral delivery was, for present purposes, identical to the written version. We refer below to paragraphs in the written version. In ruling against the defence submissions, the Judge identified that the prosecution case included:

"Third, the cash represented the proceeds of the sale of duty evaded on alcohol resulting in significant illegal profit to those trading in the duty-evaded alcohol."

15. He summarised the applicable law concisely at [25]-[29]:

"25. Despite this large number of authorities, the relevant law is clear and has been so for many years.

26. Criminal property is defined at S. 340 POCA 2002 which provides that:

(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.

27. "Criminal property" in s.328 means property that already has the quality of being criminal property by reason of criminal conduct distinct from the conduct alleged to constitute the actus reus of the money laundering offence itself so that the offences in ss.327 to 329 are predicated on the commission of another offence that has yielded proceeds that then become the subject of a money laundering offence: see *GH* following *Montilla*. Archbold 2021 26-12.

28. It does not matter whether the criminal property existed when the arrangement was first hatched what matters is that the property is criminal at a time when the arrangement operated on it: *Re GH*; Archbold 2021 26-16.

29. There are two ways in which the Prosecution can prove that property is criminal property (a) by showing that it derived from conduct of a specific kind or kinds and that conduct of that kind or those kinds is unlawful, or (b) by evidence of the circumstances in which the property is handled which are such as to give rise to the irresistible inference that it can only be derived from crime: see *Anwoir* (at paragraph 21) and Archbold 2021 Ed para 26-12. In this case, the prosecution relies on the first limb namely that the cash represented the proceeds of the sale of duty evaded on alcohol resulting in significant illegal profit to those trading in the duty-evaded alcohol."

16. Later, in outlining what the prosecution had to prove, he said at [31]:

"31. In order for the jury to convict any defendant in this, they must be sure that:

- a) The cash being conveyed by the cash couriers to ETL was criminal property
- b) The cash represented the proceeds of alcohol duty evasion.
- c) the defendant whose case they are considering handled that cash either knowing or suspecting that the cash was the proceeds of crime (criminal property)."

17. Having accurately summarised Mr Farrell's submissions on the need for a predicate offence, which included the submission that there was no evidence that the cash transferred from the cash and carries to ETL was the immediate proceeds of sale of duty-evaded alcohol by the cash and carries, the Judge's rejection of them included, at [77]-[78]:

"77. I accept that a reasonable jury properly directed could conclude that the cash delivered to ETL was criminal property for the following reasons submitted by the prosecution.

78. First, that alcohol has been smuggled into the country (by others unknown) and has thereafter been sold (by those others unknown) to, in particular, the three cash and carry entities (Kamros, Al Pacino and Middlesex Wines). Although the cash and carries must pay the "others unknown" for the alcohol that they have received, this cannot, because of the origin of the goods, be done through the traditional banking system. The monies are therefore paid in cash. Thus the cash which pays for the duty evaded alcohol is criminal property because:

a) Duty evasion (in this case alcohol smuggling) is criminal conduct [s.340(2)(a) POCA 2002].

b) If a person benefits from criminal conduct, then that benefit is the property obtained as a result of, or in connection with, the conduct. The benefit in this case is thus the cash used by the cash and carries to pay for the duty evaded goods [s.340(5) POCA 2002]

c) The cash directly constitutes a person's (the smugglers) benefit (in whole or in part, directly or indirectly) from criminal conduct [s.340(3)(a) POCA 2002].

d) Because it is immaterial who carried out the criminal conduct [s.340(4)(a) POCA 2002] the Prosecution need not prove the criminal complicity of any specific person, or indeed entity in the arrangement, just that the cash is criminal property when it leaves the cash and carries."

18. Lastly, for present purposes, at [85] the Judge said:

"The prosecution need not prove that any particular individual or entity was, to the relevant criminal standard, involved in offending in order to prove that the cash is criminal property. Nor are they required to prove the complicity of any individual at the named cash and carries or that any criminal offence has been committed by an individual, or the entity."

19. When the Judge came to sum up the case, he did so with extreme thoroughness and conspicuous fairness. His legal directions were delivered orally and in writing. We refer below to the written version which was materially identical to what he said when summing up to the jury. He provided his draft legal directions to the parties for their observations before giving them to the jury. Mr Farrell raised the question whether cash provided to ETL would be criminal property within the meaning of POCA if and to the extent that the actual monies handed over were the immediate proceeds of sale of legitimate goods (i.e. goods other than duty-evaded alcohol) or money from a different source (e.g. from an existing and legitimately funded bank account).

20. The Judge ruled against Mr Farrell's submission succinctly:

"I do not accept that if in providing that money the cash and carries provide to the couriers either money from another sale or something

they have got out of the bank that means that money is not criminal property. I am satisfied that it is because on the facts on which the Prosecution rely, it is within the definition in the Proceeds of Crime Act”

21. The reference to “the facts on which the Prosecution rely” was self-evidently a reference to the facts as outlined in the legal directions that the Judge had provided in draft and was about to deliver to the jury. Those directions included the following:

“16. As to the law:

- a) S.328 creates a money laundering offence.
- b) "Criminal conduct" is conduct which constitutes an offence in any part of the United Kingdom.
- c) Property is "criminal property" if it constitutes a person's benefit from criminal conduct or it represents such a benefit in whole or part and whether directly or indirectly.
- d) The underlying crime must be complete before any money laundering offence can occur.
- ...
- g) In this case, the prosecution allege that the criminal property referred to in the indictment is cash which represented the proceeds of the sale by the UK Cash and Carries of alcohol that had been imported into the country without duty being paid.
- h) The cash delivered to ETL would not be criminal property just because alcohol had been imported into the country without duty being paid if there was no connection between that conduct and the cash being delivered.
- i) Where it is alleged that an arrangement was made in respect of criminal property, the relevant property must be criminal at the time when the arrangement operated on it. The criminal property relevant to the alleged arrangement is that which was delivered to ETL and not cash seized on other occasions.

...

17. The prosecution case is that, on a date prior to 11th June 2015:

- a) Alcohol was smuggled into the UK so that duty on the alcohol was evaded.
- b) Duty evasion is an offence and so is criminal conduct.
- c) The cash delivered to ETL represented the proceeds of the sale by the UK Cash and Carries of alcohol that had been imported into the country without duty being paid and was

criminal property because it was the benefit from the criminal conduct of duty evasion.

d) The arrangement with which the defendants were concerned involved moving large amounts of cash by the UK cash and carry businesses to ETL.

e) The defendants knew or suspected that the arrangement would facilitate the acquisition, retention, use or control by or on behalf of Jonathan Porter, Michael Howard or others unknown of criminal property namely the cash which was the benefit from the criminal conduct of duty evasion.

...

19. In order to find any of the defendants guilty, you must be sure that, prior to 11th June 2015:

a) The cash delivered to ETL by the UK Cash and Carries represented the proceeds of the sale by the UK Cash and Carries of alcohol that had been imported into the country without duty being paid and was criminal property because it was the benefit from the criminal conduct of duty evasion

b) The defendant whose case you are considering entered into or became concerned in an arrangement namely facilitating the transfer of sterling cash from the UK Cash and Carries to ETL.
... .”

22. The Judge returned to the question of “criminal property” when summarising the potential evidential impact of other seizures, referring to the prosecution’s case in relation to those seizures as including that “you can be sure that: ... (b) the cash is criminal property because it was the benefit from the criminal conduct of duty evasion.” Consistently with the directions he had given, when he came to provide a Route to Verdict, he identified the first question as:

“Are we sure that the cash delivered to ETL represented the proceeds of the sale by the UK Cash and Carries of alcohol that had been imported into the county without duty being paid and was criminal property because it was the benefit from the criminal conduct of duty evasion.”

The proposed appeal: ground 1

23. The applicants submit that the Judge was wrong to reject the half-time submission that there was no case to answer because there was insufficient evidence that the cash delivered to ETL was criminal property. Relying on the authorities that we shall mention below, they submit that (a) the fact that the cash was immediately generated by the sale of duty-evaded-alcohol by the cash and carries does not render those proceeds criminal property for the purposes of section 328; and (b) in any event, a properly directed jury could not be satisfied that the cash was not “clean” money in the sense of

being either generated by the sale of goods other than duty-evaded-alcohol or coming immediately from some other legitimate source.

24. Rejecting this ground of appeal, the Single Judge said:

“Criminal property – The cash was capable of being criminal property as the proceeds of alcohol that had been paid for in cash on which no UK duty had been paid and, once handed over, was criminal property and it was that property that was relevant to the alleged offence (cf. Afolabi [2009] EWCA Crim 2829 and Loizou [2005] EWCA Crim 1579)). The judge was right to rule as he did....”

25. The applicants renew their application on the basis that the Single Judge was wrong to refuse permission because there was no sufficient evidence that the cash was criminal property. In summary, they submit that, in the absence of evidence tracing the cash to prior sale, the prosecution evidence could do no more than establish that the cash was cash to pay for contraband and that the prosecution acknowledged this (a) in pre-trial documents in which the prosecution referred to the “likelihood” or “probability” that the cash was the benefit of sale of illegitimate goods; and (b) in accepting at the time of the half-time submission that the cash paid to the couriers “may have come from the sale of either legitimate or illegitimate goods, or indeed any other source.” Second, they submit that the Judge was wrong to accept that it would be sufficient to satisfy the jury that the cash was to be used to pay for the duty evaded alcohol: this approach is said to be contrary to the authority of *GH* and other authorities to which we refer below.
26. The prosecution response, in summary, is that (a) its case was clear and was that the cash delivered from the cash and carries to ETL was criminal property because it represented a benefit from the criminal conduct of alcohol evasion; and (b) there was ample evidence upon the basis of which the jury could be satisfied that, whatever the immediate source of the actual cash that was delivered to ETL, it represented a benefit to the OCG from the criminal conduct of alcohol evasion.

Discussion: ground 1

27. There is no substantial dispute about the principles to be applied. The combined effect of sections 328 and 340 of POCA were accurately summarised by the Judge at [16(a)-(c)] of his summing up, which we have set out at [21] above.
28. The Judge was also correct to direct the jury as he did at [16(d)] of his summing up that “the underlying crime must be complete before any money laundering offence can occur.” He had expressed that requirement slightly more fully (and equally correctly) at [27]-[28] of his ruling on the half-time submission, which we have set out at [16] above. His formulation in both cases was soundly based on the authority of *R v GH* [2015] UKSC 24, [2015] 1 WLR 2126: see, in particular [20] and [40] and the authorities reviewed and approved between [20] and [28]. Those authorities do not need to be set out again here. They fully explain the correctness of the dictum of Elias LJ in *R v Akhtar* [2011] EWCA Crim 146 that:

“On [prosecution counsel’s] analysis an offence is committed where a defendant becomes concerned in an arrangement which facilitates the criminal acquisition of property. The statute requires an arrangement

facilitating the acquisition of criminal property. There is a material distinction.”

29. The requirement that the property in question must already have the quality of being criminal property *by reason of conduct distinct from the conduct alleged to constitute the actus reus of the money laundering offence itself* necessarily means that the prosecution in the present case should fail if the prosecution had been submitting that the cash delivered to ETL was criminal property because it was the proceeds of the sale of the duty-evaded-alcohol by the cash and carries. Had that been the case, it would have been on all fours with the facts in *Loizou* [2005] 2 Cr App R 618, where the paying of cash for the purchase of smuggled cigarettes did not constitute the cash as criminal property: see *GH* at [22]. Mr Farrell argued that the present case was a case such as *Loizou*. He went further in submitting that the prosecution could not prove that the cash that made its way to ETL was not “clean” in the way we have explained before.
30. These submissions would have had relevance and force if the prosecution case had been that the cash delivered to ETL was criminal property because it was generated by the transaction of sale of duty-evaded-alcohol by the cash and carries. But that was not the prosecution case and it was not the basis on which the applicants’ half time submissions were rejected. The prosecution case was that the cash delivered to ETL was criminal property because it represented a benefit flowing from the earlier criminal evasion of duty. The provision of cash by the cash and carries was merely the mechanism by which that benefit was routed (or laundered) to the smugglers’ advantage.
31. Mr Farrell submitted that the prosecution’s case had developed and was equivocal. While it is possible to see adjustments to the way in which the prosecution put their case, we consider that [15] of the note of opening (set out at [5] above) made clear that the essential, or predicate, crime was the duty evasion and that what happened afterwards was the creation of the arrangement by which the benefit from that duty evasion was monetised and returned to the smugglers.
32. By 21 November 2021, the position was clear and was clearly set out by the Judge at sub-paragraphs 2 and 3 of his ruling: see [9] above. The defence and prosecution submissions and the Judge’s ruling on the half-time submissions left no room for doubt about the basis upon which the case was put and (in the light of the Judge’s ruling) would be left to the jury:
 - i) In response to Mr Porter’s submissions about what was the predicate offence, the prosecution clarified that the cash was alleged to be the smugglers’ benefit from their criminal act, namely the duty evasion: see [12] above. This was consistent with footnote 2: see [13] above;
 - ii) The Judge correctly identified the applicable principles, the most important for present purposes being at [27] and [28] of his ruling, which we have set out at [15] above. At [31] of his ruling he then correctly identified that what the prosecution had to prove was that “the cash represented the proceeds of alcohol duty evasion”: see [16] above. He then adopted verbatim the prosecution’s explanation of how and why the smuggler’s evasion of duty was the predicate offence and the cash the benefit flowing from that offence, so as to render it criminal property: see [17] above.

33. Although this is a challenge to the Judge's refusal to withdraw the case from the jury at half time, we note in passing that, when he came to sum up the case to the jury, the Judge adopted the same approach including, in particular, that the jury had to be sure that the cash was criminal property "because it was the benefit from the criminal conduct of duty evasion.": see [19(a)] of the written directions, which we have set out at [21] above; and see the Route to Verdict, which was expressed in identical terms: see [22] above.
34. In these circumstances, it is simply not arguable that the case was indistinguishable from *Loizou* and the other authorities that provide factual examples of circumstances where there was no prior predicate offence. Furthermore, once the true nature of the prosecution case is identified, it becomes clear that it does not matter whether the contents of a particular bag of cash was immediately generated from the sale of duty-evaded-alcohol or other goods. What matters is whether the contents of the bag of cash was being conveyed as part of the arrangement for the laundering of the proceeds of the duty evasion and for the benefit of the smugglers. That is how the case was (correctly) left to the jury.
35. We conclude that, provided that there was evidence upon which the jury could be satisfied that the cash being conveyed to ETL represented a benefit that derived from the criminal offence of duty evasion, the case as framed by the prosecution and the Judge both at half time and when the case was ultimately left to the jury was a sound case in law.
36. We shall not attempt to set out all of the evidence upon which the prosecution relied as proving that the cash that passed from the cash and carries to ETL was criminal property because it represented the proceeds of and benefit from alcohol duty evasion. In briefest outline, it included a complex web of circumstantial evidence that justified the description at [14] of the prosecution opening, which we have set out at [5] above. It included (a) evidence about the ways in which alcohol could be smuggled so as to evade the payment of UK levels of duty; (b) evidence of seizures of alcohol on which no duty had been paid and other journeys by implicated vehicles which supported an inference of further occasions of smuggling; (c) seizures of cash from persons who were not defendants in circumstances that supported the inference that they were transmitting the proceeds of the money laundering arrangement to the smugglers; (d) documentary evidence and other evidence that supported the view that the explanation given by Mr Porter about the source and destination of the cash was untrue; (e) the sheer scale of the amounts of cash for which no sensible legitimate explanation was forthcoming; (f) the fact that tens of thousands of pounds were routinely being transported in plastic bags and were not documented adequately or at all; (g) surveillance evidence gathered over the course of about a year; (h) evidence derived from the use of codes which, when unravelled, were demonstrably related to cash deliveries and inconsistent with other documentation at ETL; and (i) evidence that Mr Porter had been paid a cut, which was attributed to his agreement to participate and participation in the money laundering arrangements.
37. We therefore reject the submission that there was inadequate evidence to prove the applicants' guilt. It is unarguable.

The proposed appeal: ground 2

38. Ground 2 is acknowledged to be an afterthought. It is available only to Mr Porter, for reasons that will become plain. It was not the subject of the application to the Single Judge because, as Mr Farrell frankly accepted, it had not been thought of by then. For that reason also, it was not a point raised with the trial judge.
39. This ground raises a technical point on the terms of particulars of the offence in the indictment, which we have set out at [7] above. It is said that the indictment disclosed no offence known to law because (a) it is an essential element of the offence under section 328 that the arrangement would facilitate the acquisition, retention, use or control of criminal property by, or on behalf of another; and (b) the particulars of the offence as set out in this indictment, as well as referring to the facilitation of the acquisition, retention use or control of criminal property by or on behalf of “others unknown”, also mentioned Mr Porter and another defendant (who in the event was acquitted), Mr Howard.

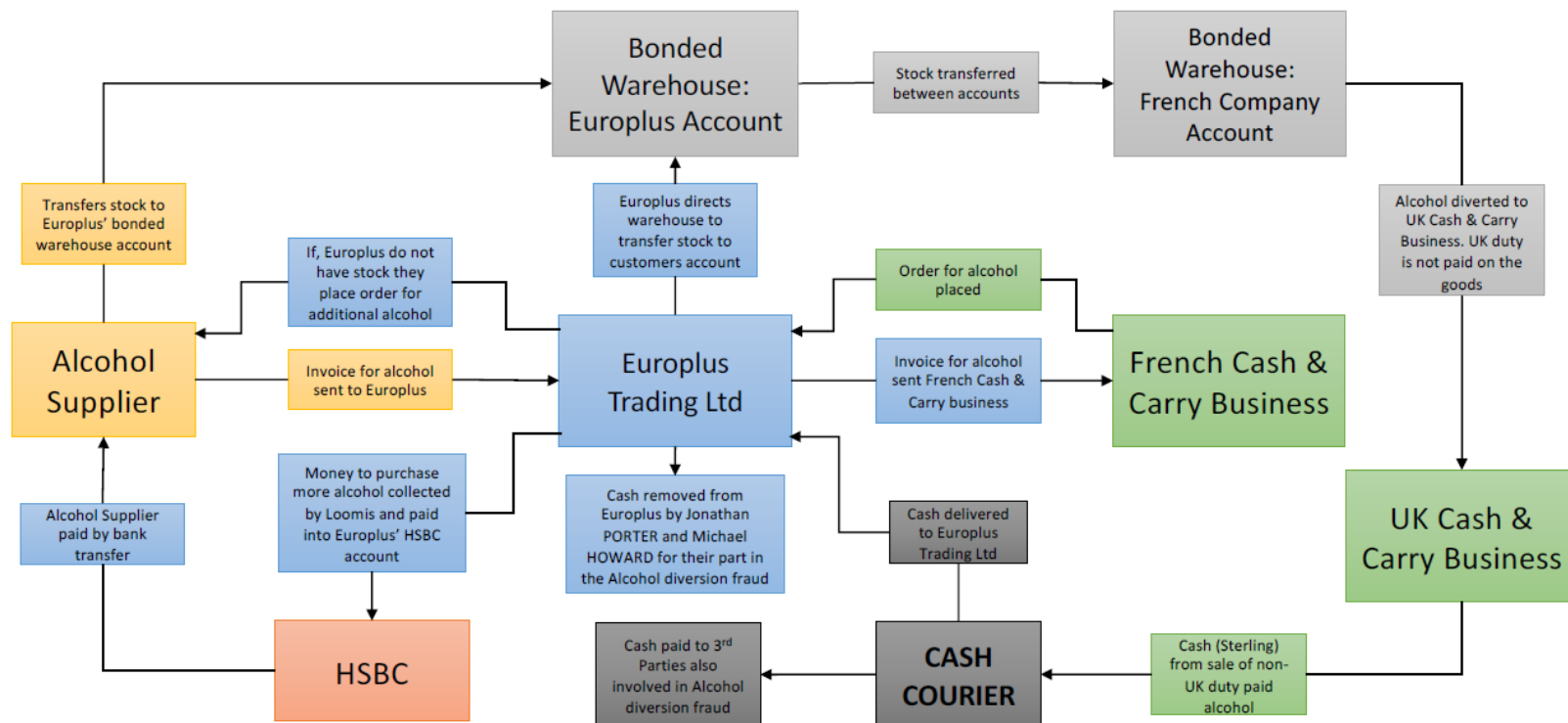
Discussion: ground 2

40. It is a bizarre consequence of this submission, if it is correct, that the indictment would have been good in relation to all the defendants other than Mr Porter and Mr Howard. Furthermore, it is a submission that, if it was going to be made, should have been made at trial. As Mr Farrell accepted, if the point had been taken at any stage before the jury gave their verdict, the “problem” would without doubt have been solved by deleting the words “Jonathan Porter, Michael Howard”. The reason why that course could and would have been adopted at any stage is because there was no doubt about the substance of the case. It was never suggested that Mr Porter (or Mr Howard) were members of the smuggling OCG. The only benefit obtained by Mr Porter was his “cut” or payment for allowing ETL to be used as a vehicle for the money laundering for the benefit of the smugglers. The case and the indictment were about the money laundering, not Mr Porter’s cut: hence the charge being brought under section 328. We are quite unable to accept that anyone having any involvement with the case was in any doubt that, so far as Mr Porter was concerned, the criminality alleged by the indictment against him was involvement in money laundering very substantial funds for the benefit of the smugglers. The words “Jonathan Porter, Michael Howard” were mere surplusage and of no consequence.
41. For these reasons we are certain that the submission is not correct. In our judgment it has no merit (technical or otherwise) and is unarguable.

Conclusion

42. These renewed applications are unarguable and are dismissed.
43. Before leaving the case we would wish to pay tribute to the trial judge. Each of the rulings that we have seen, and his legal directions when summing up to the jury, were clear, concise, correct and models of their kind.

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