

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

3
4 **INDICTMENT NOs: 8/16 – 13/16 & INDICTMENT NO: 15/16**
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7
8 **THE QUEEN**
9

10 **V**

11
12 **AYOUB CHEAAIBI**
13 **OVIDIU-GIULIAN DOBREA**
14 **IONUT-CATALIN PETCU**
15 **MARIUS-IOAN BUD-POPA**
16 **NYTIA TYNEA BRADLEY**
17
18
19



20 **Appearances:**

Ms. Toyin Salako for the Crown

21
22 **Mr. John Furniss for the Defendants**
23 **CHEAAIBI and BRADLEY**
24

25 **Mr. James Stenning of Stenning & Associates**
26 **for DOBREA**
27

28 **Ms. Lee Halliday-Davis of Stenning &**
29 **Associates for PETCU**
30

31 **Mr. Len De Vries of Stenning & Associates for**
32 **BUD-POPA**

33 **Before:**

Mr. Justice Alastair Malcolm (Actg.)

34 **Submissions heard:**

15th March 2016
35

36 **SENTENCE RULING**
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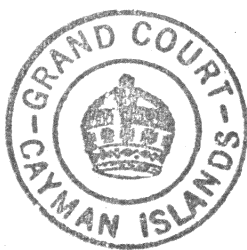
THE INDICTMENT

1. The Indictment laid against the defendants contains 12 Counts as follows:

i. COUNT 1 – Conspiracy to Defraud - contrary to the Common Law:

(a) All 5 defendants are charged on this count.

(b) The particulars of this Count are that the defendants, on the 24th day of October 2015, and the 3rd day of November 2015, within the jurisdiction of the Cayman Islands, conspired together with persons unknown to defraud local retail banks by dishonestly agreeing to use cloned credit cards to withdraw cash from ATM machines.



ii. COUNT 2 – Attempting to Obtain services by Deception – contrary to s.250 of the Penal Code (2013 Revision):

(a) Only Nytia Bradley is charged on this Count and the Crown accepted her Not Guilty plea which she entered when arraigned on the 11th March 2016 and, therefore, the particulars of this Count are not relevant for this Ruling.

iii. COUNT 3 – Converting Criminal Property – contrary to s.133(1)(c) of the Proceeds of Crime Law (2014 Revision):

(a) Only Ayoub Cheaaibi is charged on this Count.

(b) The particulars of this Count are that the defendant, on the 30th day of October 2015, within the jurisdiction of the Cayman Islands, converted criminal property namely cash paid to Office Supply for the purchase of a laptop computer KYD\$555.00.

1 iv. COUNT 4 – Converting Criminal Property – contrary to s.133(1)(c) of the
2 Proceeds of Crime Law (2014 Revision):

3 (a) Only Ionut Petcu is charged on this Count.

4 (b) The particulars of this Count are that the defendant, between the 31st day
5 of October 2015 and the 3rd day of December 2015, within the jurisdiction
6 of the Cayman Islands, converted criminal property namely cash paid to
7 Treasure Island Resort for resort stay valued at KYD\$465.00.

8 v. COUNT 5 – Converting Criminal Property – contrary to s.133(1)(c) of the
9 Proceeds of Crime Law (2014 Revision):

10 (a) Ayoub Cheaaibi and Nytia Bradley are charged on this Count.



11 (b) The particulars of this Count are that the defendants, on the 31st day of
12 October 2015, within the jurisdiction of the Cayman Islands, converted
13 criminal property namely cash paid to Crave Store for clothing valued at
14 KYD\$188.87.

15 vi. COUNT 6 – Converting Criminal Property – contrary to s.133(1)(c) of the
16 Proceeds of Crime Law (2014 Revision):

17 (a) Ayoub Cheaaibi and Nytia Bradley are charged on this Count.

18 (b) The particulars of this Count are that the defendants, on the 31st day of
19 October 2015, within the jurisdiction of the Cayman Islands, converted
20 criminal property namely cash paid to Cayman Penha Image for the
21 purchase of perfume valued at KYD\$75.00.

1 vii. COUNT 7 – Transferring Criminal Property – contrary to s.133(1)(d) of the
2 Proceeds of Crime Law (2014 Revision):

3 (a) Only Marius Bud-Popa is charged on this Count.

4 (b) The particulars of this Count are that the defendant, on the 2nd day of
5 November 2015, within the jurisdiction of the Cayman Islands, transferred
6 criminal property out of the Cayman Islands namely USD\$182.00 in cash
7 by money transfer.

8 viii. COUNT 8 – Converting Criminal Property – contrary to s.133(1)(c) of the
9 Proceeds of Crime Law (2014 Revision):

10 (a) Three (3) defendants – Ovidui Dobrea, Ionut Petcu and Marius Bud-Popa
11 are charged on this Count.

12 (b) The particulars of this Count are that the defendants, on the 3rd day of
13 November 2015 within the jurisdiction of the Cayman Islands, converted
14 criminal property namely cash paid to Cayman Travel Service Ltd. For the
15 purchase of air tickets valued at KYD\$1,441.54.

16 ix. COUNT 9 – Converting Criminal Property – contrary to s.133(1)(c) of the
17 Proceeds of Crime Law (2014 Revision):

18 (a) Ayoub Cheaaibi and Nytia Bradley are charged on this Count.

19 (b) The particulars of this Count are that the defendants, on the 3rd day of
20 November 2015, within the jurisdiction of the Cayman Islands, converted
21 criminal property namely cash paid to Kirk Freeport for the purchase of
22 aftershave valued at KYD\$59.00.

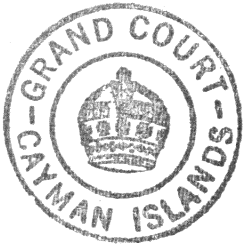
1 x. COUNT 10 – Converting Criminal Property – contrary to s.133(1)(c) of the
2 Proceeds of Crime Law (2014 Revision):

3 (a) Three (3) defendants – Ovidui Dobrea, Ionut Petcu and Marius Bud-Popa
4 are charged on this Count.

5 (b) The particulars of this Count are that the defendants, on the 3rd day of
6 November 2015, within the jurisdiction of the Cayman Islands, converted
7 criminal property namely cash paid to Kirk Freeport for the purchase of
8 perfume valued at KYD\$99.00.

9 xi. COUNT 11 – Converting Criminal Property – contrary to s.133(1)(c) of the
10 Proceeds of Crime Law (2014 Revision):

11 (a) Ayoub Cheaabi and Nytia Bradley are charged on this Count.

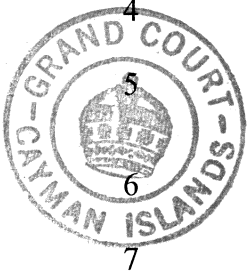


12 (b) The particulars of this Count are that the defendants, on the 3rd day of
13 November 2015, within the jurisdiction of the Cayman Islands, converted
14 criminal property namely cash paid to Rocky's Diamond Gallery for the
15 purchase of jewellery valued at KYD\$1,300.00.

16 xii. COUNT 12 – Possession of Criminal Property – contrary to s.135(1)(c) of the
17 Proceeds of Crime Law (2014 Revision):

18 (a) All 5 defendants are charged on this Count.

19 (b) The particulars of this Count are that the defendants, on the 3rd day of
20 November 2015, within the jurisdiction of the Cayman Islands, had in their
21 joint possession criminal property namely approximately KYD\$13,307.64.



1 2. On the 11th March 2016, the defendants pleaded guilty to the following
2 offences:

- 3 i. All five defendants pleaded guilty to conspiracy to defraud (count 1);
- 4 i. Mr. Ayoub Cheaabi pleaded guilty to five counts of converting criminal
5 property (counts 3, 5, 6, 9 and 11);
- 6 ii. Mr. Ovidiu-Guilian Dobrea, Mr. Ionut-Catalin Petcu and Mr. Marius-Ioan
7 Bud-Popa pleaded guilty to converting criminal property (counts 8 and 10);
- 8 iii. Mr. Ovidiu-Guilian Dobrea, Mr. Ionut-Catalin Petcu and Mr. Marius-Ioan
9 Bud-Popa pleaded guilty to possession of criminal property (count 12);
- 10 iv. Mr. Ionut-Catalin Petcu pleaded guilty to converting criminal property
11 (count 4);
- 12 v. Mr. Marius-Ioan Bud-Popa pleaded guilty to transferring criminal property
13 (count 7); and
- 14 vi. Ms. Nytia Bradley, pleaded guilty to converting criminal property (counts 5
15 and 11).

16 3. Count 1 in the indictment represents the criminality in this case; the remaining
17 substantive counts represent examples of the overt acts carried out during the
18 course of the conspiracy. The purpose of the conspiracy was obtain primarily
19 money but also goods by using cards that had been cloned with details of
20 genuine bank and credit cards of people not resident in the Cayman Islands.

1 I have been supplied with details on a number of similar cases which only go to
2 show the prevalence of these types of cases. The Crown asserts that the
3 Cayman Islands are targeted because the security in the ATM machines here is
4 not as good as in other parts of the world.

5 4. Bradley arrived in the Cayman Islands on the 25th October 2015 from New
6 York. Upon her arrival her bags were randomly searched and nothing was
7 seized. Cheaaibi arrived in the Cayman Islands on the 30 October 2015 and
8 shared a room with Bradley at Treasure Island.

9 5. Dobrea, Petcu and Bud-Popa arrived in the Cayman Islands on the 30 October
10 2015 on the same flight from Jamaica. They were flagged for a luggage search
11 due to the recent credit card scams perpetrated by Romanians in the Cayman
12 Islands. The search was for any criminal items in particular any item that may
13 be used to commit credit card frauds including the search for skimming
14 machines. Nothing was found. They also went to Treasure Island staying in the
15 room next door to Cheaaibi and Bradley.

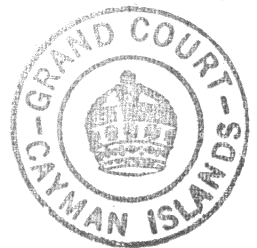
16 6. No attempt was made to use a cloned card until all the defendants arrived but
17 there is evidence from WhatsApp messaging on Ms. Bradley's phone that she
18 and or Mr. Cheaaibi were receiving instructions on the use and cloning of the
19 cards at a time when the other 3 defendants were still on the flight from
20 Jamaica.



1 Cheaaibi purchased a laptop having arrived and after it was seized it was
2 discovered to have files which had been created and accessed whilst he was in
3 the Cayman Islands. Those files contained credit card data to be cloned along
4 with their PIN to access ATMs.

5 7. On the 2nd November 2015 Cayman National Bank (CNB) reported that two
6 UK store cards had been retained by the ATM. Two further gift cards were
7 found on the 3rd November 2015. The IT department of CNB confirmed that
8 these gift cards contained the genuine card details of credit cards. CNB checked
9 the CCTV and Mr. Cheaaibi and Ms. Bradley are seen withdrawing cash. On
10 the afternoon of the 3rd November 2015 one of the CNB employees who had
11 viewed the CCTV recognized Cheaaibi in the street with Bradley. The
12 employee followed them to a shop where they placed cash deposits on
13 jewellery.

14 8. The defendants were subsequently arrested and the two rooms in Treasure
15 Island were searched. The police seized laptops, cell phones, two small remote
16 cameras attached to a cell phone which could be used to record customer
17 transactions at ATMs, 64 cards many with their four digit PIN on the reverse, a
18 Card reading device and cash comprising KY\$12,322 and US\$1,202.





1 9. CNB reports that there were fifty-one (51) fraudulent withdrawals totaling
2 KY\$16,675. In addition there were 340 attempted fraudulent withdrawals
3 totaling KY\$96,765. The figure for attempted withdrawals is said by the
4 defence to be misleading. First there appears to be duplication in the schedule
5 and if that is taken into account the potential sum of money reduces to just over
6 KY\$75,000. Secondly the figures do not take into account the fact that when
7 cards were successful their use would be limited to KY\$300 per day to avoid
8 going over the true card's limit. I am prepared to accept both submissions.

9 10. The defendants also used the cards in Butterfield Bank's ATMs. They report
10 that 59 fraudulent transactions were made the majority of which were
11 unsuccessful but KY\$1,800 was successfully withdrawn.

12 11. The cards were also used to purchase goods and airline tickets.

13 12. The defendants were arrested and in their interviews each denies playing the
14 leading part in the Cayman Islands putting the blame on one or more of their
15 co-defendants. That was also the position during mitigation.

16 13. I have been provided with an album of photographs (SH-1) which depict items
17 and documents seized from the defendants. It is clear that Mr. Cheaaibi
18 travelled from Dublin to Grand Cayman via New York on 29th October 2015.
19 Bud-Popa & Dobrea travelled together from Budapest to Paris on the 2nd
20 October 2015, from Paris to Pointe-à-Pitre (Guadeloupe), on the 4th October
21 2015 and, from Pointe-à-Pitre to Santo Domingo (Dominican Republic) on the
22 5th October 2015.

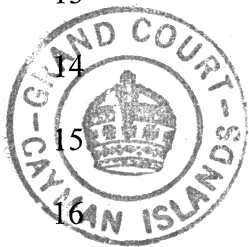
1 Petcu travelled from Madrid to Santo Domingo on the 22nd September 2015.
2 Petcu, Bud-Popa & Dobrea then travelled together via Kingston on the 30th
3 October. The way the three Romanian defendants travelled gives the lie to any
4 suggestion that any of them thought they were coming to the Cayman Islands to
5 do legitimate work. Further none had work permits and they did not declare, at
6 Immigration, that their purpose-of-visit was work.

7 14. Mr. Cheaaibi is 22 years of age and has one court appearance as a juvenile for
8 burglary. However he faces charges for possession of Class A drugs with intent
9 to supply and has breached his bail in the UK.

10 15. Mr. Dobrea has no previous convictions.

11 16. Mr. Petcu is 27 years of age and has a conviction in the UK for Possessing
12 articles for use in fraud for which he was sentenced to 12 months'
13 imprisonment in 2010. In 2013 he was convicted in Italy for Theft as an aider
14 and abettor or instigator/organizer or conspirator for which he received a
15 suspended sentence and fine. In France ten days after the Italian conviction he
16 was convicted of Theft committed in a group and received a 5-month prison
17 sentence. The Italian and French offences were committed in August and
18 September 2013.

19 17. Mr. Bud-Popa is 42 years of age. He had convictions in Romania in the 1990s
20 for Robbery and Aggravated Larceny committed by 2 or more people but more
21 recently in Austria he was convicted in 2011 and 2012 for offences of the
22 category of Business-like Theft and Theft committed by a criminal association.

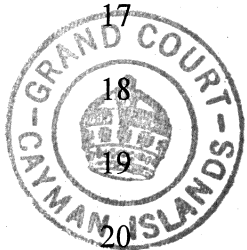


1 Further in 2013 he was convicted of Fraudulent Abuse of Data Processing by an
2 Austrian court. The sentences were partly suspended but appear to have been
3 activated by a Romanian court in 2013 when he was convicted for an offence of
4 larceny.

5 18. Ms. Bradley is 26 years of age and has no previous convictions.

6 19. In the course of submissions I have been referred to the Chief Justice's 2002
7 statement on Tariffs, the Sentencing Council's Definitive Guideline on Fraud,
8 Bribery and Money laundering Offences (the SCG), various decisions of the
9 Grand Court including the case of *R v Pop and others*¹. The various
10 submissions have mainly concentrated on the Sentencing Council Guidelines
11 and *R v Pop and others*.

12 20. This conspiracy was well organized and sophisticated. The conspirators had
13 with them details of a large number of bank and credit cards and the facility to
14 clone other cards with that data. The 5 defendants were brought by circuitous
15 routes to the Cayman Islands. It is inconceivable that those directing this
16 conspiracy would include people who had no idea what was going to happen
17 until after they had arrived which is what was claimed by some of the
18 defendants. There is insufficient evidence as to who was directing the
19 defendants here in Cayman but I am satisfied that each defendant arrived
20 knowing what the purpose of the conspiracy was and paid a full part in carrying
21 it out.



¹ Sentence of Mettyear J (Actg.) – Ind. 114 of 2014

1 21. In judging the seriousness of any Conspiracy to Defraud one must have regard
2 to what a conspiracy is. A conspiracy is an agreement to commit an offence and
3 is committed as soon as that agreement is made. It is not necessary for any act
4 in the furtherance of the conspiracy to have been performed. It follows
5 therefore the starting point in considering the seriousness of any conspiracy is
6 what was it that the conspirators agreed to do and not what was actually
7 obtained.

8 22. In reaching the sentences in this case my calculation is primarily based on the
9 SCG but I have to take into account the fact that the maximum sentence in
10 England and Wales is 10 years' imprisonment whilst in the Cayman Islands
11 there is no such limit.

12 23. In my judgment when considering page 6 of the SCG this is a case of a
13 sophisticated nature and there was significant planning so the level of
14 culpability is "High".

15 24. I turn to Harm A: In view of the number of cards the conspirators had with
16 them, the attempts that were made to obtain cash which failed, even bearing in
17 mind the criticism of the figures by the defence I am satisfied that the
18 conspirators intended to obtain well in excess of £20,000 taking the conversion
19 rate for the KYD into account. It therefore follows this is a Category 3 case.

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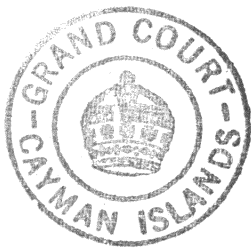


1 25. In considering Harm B: I do not consider that the Cayman Islands Banks can
2 come under the definition of “vulnerable” due to a failure in their ATM
3 security. However this type of crime does have a considerable detrimental
4 effect on the banks themselves and those whose cards have been cloned so I
5 consider there is “medium impact”.

6 26. That produces the starting point of 3 years – with a category range of 18 months
7 to 4 years’ custody. I bear in mind that the starting point is based on a loss or
8 intended loss of £50,000 or approximately KY\$60,000 but also have to move
9 upwards in the range in the light of my finding of medium impact.

10 27. Therefore in my judgment the appropriate sentence for the conspiracy is 3 years
11 6 months before considering any aggravating or mitigating factors in the SCG
12 applicable to an individual defendant, any personal mitigation and any
13 reduction for early plea.





SENTENCES

1
2 28. Mr. Cheaabi: He is 22 years of age with no previous convictions although,
3 clearly, by absconding when facing a drugs charge, he has committed a bail
4 offence. In my judgment he played a full part in the acts here in the Cayman
5 Islands – including purchasing the laptop. In his case I reduce my starting point
6 to 3 years and give him the full one-third discount for his plea, which results in
7 a sentence of 2 years' imprisonment on Count 1.

8 29. Mr. Dobrea: He also has no previous convictions. I do not accept that he
9 thought he was coming to the Cayman Islands for legitimate work. He travelled
10 with BudPopa on the route and over the period of time that I have already set
11 out and had tickets to fly away in five (5) days. He failed to mention on arrival
12 that he was here to work. Those patent untruths cast a long shadow over the
13 veracity of everything he said in his statement to the police. He like the others
14 played his full part and I don't distinguish between the defendants as to their
15 roles. In view of the fact there is no evidence of bad character of any type I start
16 in his case at 2 years 9 months and give him also the one-third discount. This
17 results in a sentence of 22 months' imprisonment on Count 1.

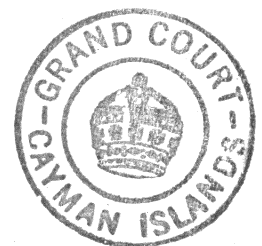
18 30. Mr. Petcu: He is 27 year of age and has convictions in 2010 and 2013 in the
19 UK, France and Italy for identical or similar offences. The convictions are an
20 aggravating factor. With the aggravating factor I start in his case at 3 years 9
21 months. Having deducted the one-third for his plea, the sentence is 30 months'
22 imprisonment on Count 1.

1 31. Mr. Bud-Popa: He is 42 and has convictions which are relevant to this offence
2 and are an aggravating factor. He starts his statement to the police with the
3 assertion that he has no previous convictions which was a lie. I also reject his
4 assertion that he was expecting to earn CI\$10,000 legitimately in the
5 construction field. That being the case, as with Dobrea, I do not accept that
6 there is truth in the rest of his statement as to his background in Romania. With
7 this aggravating feature I start in his case at 3 years 9 months. Having deducted
8 the one-third for his plea, the sentence is 30 months' imprisonment on Count 1.

9 32. Ms. Bradley: She is 26 years of age and has no previous convictions. As with
10 the others I reject her suggestion to the police that she came to the Cayman
11 Islands for an innocent purpose. It was her phone that was used to receive
12 directions and advice whilst the conspiracy continued. As with Dobrea, there is
13 no evidence of bad character of any type and I start in her case at 2 years 9
14 months and give her also the one-third discount. This results in a sentence of 22
15 months' imprisonment on Count 1.

16 33. The remaining counts on the Indictment are examples of the overt acts
17 performed in the course of the conspiracy therefore, on each count to which a
18 defendant has pleaded guilty, there will be concurrent sentences of 9 months'
19 imprisonment.

20 34. Time spent in custody is to be deducted from the sentences herein imposed.
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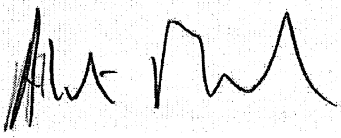
1 35. I order the forfeiture and destruction of all the items which the police have
2 seized and which were used in the course of these offences.

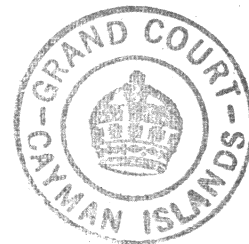
3 36. I order the forfeiture of the KY\$12,322 and US\$1,202. Those sums can be used
4 as compensation of KY\$12,322 to CNB and US\$1,202 to Butterfield Bank.

5 37. Finally, I recommend that each defendant be deported once they have served
6 their sentences.

7

8 **Dated this the 15th day of March 2016**

9 



10 **Mr. Justice Alastair Malcolm Q.C.**
11 **Acting Judge of the Grand Court**