IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE

INDICTMENT NOs: 8/16 – 13/16 & INDICTMENT NO: 15/16

THE QUEEN

V

AYOUB CHEAAIBI
OVIDIU-GIULIAN DOBREA
IONUT-CATALIN PETCU
MARIUS-IOAN BUD-POPA
NYTIA TYNEA BRADLEY

Appearances:	**Ms. Toyin Salako for the Crown**
	Mr. John Furniss for the Defendants CHEAAIBI and BRADLEY
	Mr. James Stenning of Stenning & Associates for DOBREA
	Ms.Lee Halliday-Davis of Stenning & Associates for PETCU
	Mr. Len De Vries of Stenning & Associates for BUD-POPA
Before:	**Mr. Justice Alastair Malcolm (Actg.)**
Submissions heard:	**15th March 2016**

SENTENCE RULING

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. All five defendants pleaded guilty to conspiracy to defraud (count 1);

i. Mr. Ayoub Cheaabi pleaded guilty to five counts of converting criminal property (counts 3, 5, 6, 9 and 11);

ii. Mr. Ovidiu-Guilian Dobrea, Mr. Ionut-Catalin Petcu and Mr. Marius-Ioan Bud-Popa pleaded guilty to converting criminal property (counts 8 and 10);

iii. Mr. Ovidiu-Guilian Dobrea, Mr. Ionut-Catalin Petcu and Mr. Marius-Ioan Bud-Popa pleaded guilty to possession of criminal property (count 12);

iv. Mr. Ionut-Catalin Petcu pleaded guilty to converting criminal property (count 4);

v. Mr. Marius-Ioan Bud-Popa pleaded guilty to transferring criminal property (count 7); and

vi. Ms. Nytia Bradley, pleaded guilty to converting criminal property (counts 5 and 11).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. Mr. Dobrea has no previous convictions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SENTENCES

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

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

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

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

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

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

34. Time spent in custody is to be deducted from the sentences herein imposed.

35. I order the forfeiture and destruction of all the items which the police have seized and which were used in the course of these offences.

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

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

Dated this the 15th day of March 2016

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