IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA127/2023
[2024] NZCA 517

BETWEEN	PAULA AROHA TOLEAFOA Appellant
AND	THE KING Respondent

Hearing: 27 August 2024

Court: Palmer, Whata and Downs JJ

Counsel: H G de Groot and T W R Lynskey for Appellant
A J Gordon and P Patanasiri for Respondent

Judgment: 14 October 2024 at 4 pm

JUDGMENT OF THE COURT

The appeal is dismissed.

REASONS OF THE COURT

(Given by Whata J)

[1] Ms Paula Toleafoa appeals against her conviction having been found guilty of 59 charges of money laundering to the value of $431,328.35.[1]

[2] The issues on appeal are:

(a) whether the verdicts were unreasonable;

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[1] *R v Toleafoa* [2022] NZDC 7775 at [1].

(b) whether the Judge should have given tripartite and counter-intuitive directions; and

(c) whether some of the transactions qualify as money laundering.

Alleged offending

[3] Paula Toleafoa's husband, Mr Luther Toleafoa, was a drug dealer. He was found guilty on 51 charges of methamphetamine-related offending spanning the period 29 October 2018 to 5 December 2018.[2] He also pleaded guilty to the following charges:

(a) A representative charge that, between 1 April 2016 and 3 December 2018, he was party to offending involving 381 cash deposits totalling $390,009.20 into 14 different bank accounts in his name, the name of Paula Toleafoa,[3] or into various business accounts.

(b) A representative charge that, between 1 April 2016 and 3 December 2018, he spent $71,982 in cash, which were the proceeds of an offence, to purchase various goods and services (each of which was specified).

[4] Attached as Appendix A is a schedule, as provided by the Crown with minor alterations, detailing the transactions subject to the charges and the associated value of the transactions.

Crown case

[5] On the Crown case, Ms Toleafoa was directly involved in this money laundering. During the charge period, there was evidence showing that Ms Toleafoa made numerous large cash deposits into multiple ATMs across 14 bank accounts that were in her name or other names that she used, in the name of various companies, and in the name of Mr Toleafoa; Ms Toleafoa used cards issued both to

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2 *R v Toleafoa* [2021] NZDC 23902.

3 This included bank accounts in other names used by Ms Toleafoa.

herself and Mr Toleafoa; available CCTV footage showed cash deposits were made exclusively by Ms Toleafoa; and various receipts and invoices were in Ms Toleafoa's name, such as for spending on travel and hotel accommodation. The Crown also says that the value of cash deposits and cash expenses by Ms Toleafoa and Mr Toleafoa totalled $733,740.70, of which $537,739.41 had no known source. Of this, $197,912.41 worth of cash deposits were known to have been made by Ms Toleafoa. In the same period, she spent $73,000 on "lifestyle" expenses which included flights, travel packages, a property portfolio, hotel stays, jewellery, party expenses, furniture, handbags and Botox treatments.

[6] The Crown identified two potential sources of income — First Class Property Management Ltd (First Class), owned and managed by Ms Toleafoa and Mr Housewash & Paint Ltd (Mr Housewash), run by Mr Toleafoa. The former was identified as having only limited income in the key period, while forensic accounting evidence showed only limited earnings for Mr Housewash for which a legitimate source could be identified. In contrast, there were a vast number of unknown cash deposits identified for this business, yet there was no evidence of employees' wages paid or other operating costs incurred. There was also evidence showing that Ms Toleafoa was actively involved in Mr Housewash, including arranging contracts between Mr Housewash and a maintenance service company in 2017 and personally guaranteeing the purchase of a house wash contract.

[7] The Crown also responded to evidence led by the defence of family violence. It acknowledged the evidence of violence and accepted it is relevant to the effect it had on Ms Toleafoa's relationship with Mr Toleafoa. But the Crown highlighted Ms Toleafoa's ongoing interaction with Mr Toleafoa, including three international trips together in 2016 and another trip in 2018, her role in securing a sale and purchase contract for Mr Housewash with the maintenance service company and multiple stays together at hotels throughout the charge period. The Crown also referred to personal Facebook entries and over 50 photos of them together, both on Ms Toleafoa's personal and business pages.

[8] Further, the Crown highlighted to the jury that the issue before it was not the existence of family violence, but whether Ms Toleafoa was aware of the criminal

nature of the money she was depositing and spending. To that, the Crown pointed to evidence which demonstrated they were not living separate lives, as was Ms Toleafoa's account, such as a further 153 phone calls where they discussed financial matters, joint goals, and purchasing property together. The Crown also referred to three international trips and the fact that the travel packages for those trips were paid in cash.

[9] The Crown also referred to evidence showing that the Toleafoas' spending throughout the three-and-a-half year period was almost exclusively in cash, and well beyond their legitimate means.

Defence case

[10] Ms Toleafoa's defence was that she knew nothing of Mr Toleafoa's drug dealing and there was no direct evidence of her knowledge. She gave evidence she was the victim of family violence, had tried to extricate herself from the relationship, and that she and Mr Toleafoa lived apart at the time of his drug offending. Trial counsel emphasised that the jury was not dealing with a healthy and functioning relationship, referring to a protection order issued in February 2016 and Mr Toleafoa having moved out of the family home for much of that year. While he returned in late 2016, she then moved elsewhere in early 2017. The implication is that they were apart for two years of the charge period. Counsel also referred to evidence of highly abusive calls. This is said to reinforce not only that they were physically apart, but that Ms Toleafoa kept her distance from Mr Toleafoa and his affairs.

[11] Supporting an inference of lack of knowledge, trial counsel emphasised that, of the 156 calls between Ms Toleafoa and Mr Toleafoa during the charge period, there was not a single reference to drug dealing or any plan to launder money. Furthermore, the fact that she openly made so many payments and deposits, without any attempt to conceal her identity or wipe her card at ATMs, and on occasion signed her name to the relevant documentation, was inconsistent with her knowingly seeking to conceal the profits of Mr Toleafoa's drug dealing, as was the fact she kept receipts of her expenditure.

[12] The defence theory was that the money Ms Toleafoa spent and deposited came from Mr Housewash or was made in relation her business, First Class. The level of the deposits was also said to be consistent with evidence from a director of the maintenance service company to the effect that it was generating around $250,000 a year. Potential income for First Class was also noted. Trial counsel closed on the basis that Ms Toleafoa had access to over $400,000 in legitimate funds over the charge period. Conversely, there was no attempt by the Crown to reconstruct the income of Mr Housewash. In addition, there was evidence to show that some of the deposits were not made by Ms Toleafoa and, in some instances, there was no evidence to show that she in fact made the deposits. She also denied making some of the payments; for example, for travel.

Threshold

[13] We must allow the appeal if, having regard to the evidence, the jury's verdict was unreasonable or if a miscarriage of justice has occurred for any reason.[4] A miscarriage of justice means any error, irregularity, or occurrence in or in relation to or affecting the trial that created a real risk the outcome of the trial was affected, or has resulted in an unfair trial or a trial that was a nullity.[5]

[14] In this case, we are specifically invited to find that the verdicts were unreasonable. In this regard, the matters to be borne in mind when reviewing jury verdicts were set out by the Supreme Court in *Owen v R*:[6]

> (a) The appellate court is performing a review function, not one of substituting its own view of the evidence.
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> (b) Appellate review of the evidence must give appropriate weight to such advantages as the jury may have had over the appellate court. Assessment of the honesty and reliability of the witnesses is a classic example.
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> (c) The weight to be given to individual pieces of evidence is essentially a jury function.
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> (d) Reasonable minds may disagree on matters of fact.

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4 Criminal Procedure Act 2011, s 232(2)(a) and (c).

5 Section 232(4).

6 *Owen v R* [2007] NZSC 102, [2008] 2 NZLR 37 at [13], citing *R v Munro* [2007] NZCA 510, [2008] 2 NZLR 87. This discussion was in the context of s 385(1)(a) of the Crimes Act 1961 as the precursor provision to s 232(2)(a) of the Criminal Procedure Act.

(e) Under our judicial system the body charged with finding the facts is the jury. Appellate courts should not lightly interfere in this area.

(f) An appellant who invokes s 385(1)(a) must recognise that the appellate court is not conducting a retrial on the written record. The appellant must articulate clearly and precisely in what respect or respects the verdict is said to be unreasonable and why, after making proper allowance for the points made above, the verdict should nevertheless be set aside.

[15] Ultimately, the key issue is "whether a jury acting reasonably ought to have entertained a reasonable doubt as to the guilt of the appellant" having regard to the evidence at trial.[7]

Unreasonable verdicts

[16] Turning then to the reasonableness of the verdicts, Mr de Groot submits that no reasonable jury could have been satisfied beyond reasonable doubt that Ms Toleafoa actually knew about the drug dealing. This was not a challenge to credibility findings. Rather, he contends that the various strands of the Crown case could not logically support a finding of actual knowledge.

[17] On this, he says the Crown case was reduced to three strands:

(a) Ms Toleafoa's relationship with Mr Toleafoa;

(b) the sheer volume of cash that she was depositing or spending; and

(c) the apparent coincidence between the large cash deposits when Ms Toleafoa was staying Rotorua and Mr Toleafoa was dealing drugs there.

Relationship

[18] As to their relationship, Mr de Groot contends that the objective evidence did not support a finding that Ms Toleafoa was aware of Mr Toleafoa's drug dealing from connection or physical proximity alone. Most notably:

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7 *R v Munro*, above n 6, at [86], affirmed in *Owen v R*, above n 6, at [17].

(a) Ms Toleafoa was a victim of family violence and she had tried to extricate herself from the relationship with Mr Toleafoa.

(b) She lived in Auckland, while Mr Toleafoa lived and undertook his drug dealing activities in Rotorua.

(c) Only Mr Toleafoa was ever found with any drugs.

(d) They also operated separate bank accounts in their individual names.

Cash flow

[19] Mr de Groot also submits that the cash flow theory was equally flawed. The defence case was that Ms Toleafoa had handled the cash over a number of years, understanding that it derived from Mr Toleafoa's legitimate cash business. He highlights that the Crown had taken no steps to interrogate the scale of Mr Toleafoa's legitimate business interests and there was evidence from their landlord that Mr Toleafoa was paid between $400 and $450 for two hours' work. Ms Toleafoa also had access to legitimate business income from the First Class bank accounts and, under cross-examination, the Crown's forensic witnesses accepted certain payments had been overlooked.

[20] In those circumstances, the volume and frequency of Ms Toleafoa's cash dealings did not, by themselves, logically support an inference that Ms Toleafoa actually knew that it was sourced from methamphetamine dealing.

Deposits in Rotorua

[21] Finally, Mr de Groot argues the theory relating to the alleged coincidence of deposits while staying in Rotorua was weak in the absence of any evidence linking Ms Toleafoa to any drug dealing, notwithstanding 10 months of surveillance. Cross-examination of Crown witnesses also established doubt as to who made the majority of the deposits in Rotorua. The deposits in which Ms Toleafoa's bank card was used, but she was not seen on CCTV footage, outweighed those in which her involvement could (on the accounting evidence) be inferred. On that basis, the

evidence of the Rotorua deposits could only assume probative force if coupled with speculation.

Assessment

[22] In our view, there was ample evidence supporting an inference that Ms Toleafoa had knowledge of Mr Toleafoa's methamphetamine dealing.[8] Accordingly, we do not consider that the jury ought to have entertained reasonable doubt as to Ms Toleafoa's guilt.

[23] In this regard, we preface our analysis by referring to the trial Judge's findings in the context of Ms Toleafoa's s 147 application near the conclusion of the trial. The Judge most relevantly said:[9]

> [6] The evidence that the Crown relies on is:- the sheer volume of money that went into the accounts, the nature of the deposits which were all in cash, and particularly that in relation to deposits into the Housewash and Paint account where, Ms Toleafoa had possession of the bankcard in respect of that account (which was an account of Mr Toleafoa's company), and the coincidence of timing in relation to when she was depositing money into her own accounts and Mr Toleafoa's accounts at the same time.
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> [7] The Crown submits that there is sufficient evidence to enable a jury, if it chose, to draw the inference that there was a joint understanding that they would each launder the money of Mr Toleafoa's drug dealing offending.
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> [8] The pieces of evidence relied on by the Crown in this regard, in my view, are capable of supporting the inference sought to be drawn by the Crown. It is, essentially, a jury issue. The fact that there is that large amount of cash, the fact that Ms Toleafoa has access to Mr Toleafoa's bank account by virtue of her possession of his bankcard and the fact that she has possession of such large amounts of cash which could only have come from Mr Toleafoa himself at times, are all such as to lead me to conclude that that is a matter for the jury to decide.

[24] We now turn to each of Mr de Groot's claims. First, the relationship evidence. We accept that Ms Toleafoa was subject to family violence, that she lived separately to Mr Toleafoa for a significant part of the charge period, and that it was available to the jury to infer that she had tried to extricate herself from the relationship. But, given the evidence of her ongoing connection to him (including that of their continuing communication and trips overseas), and the scale and nature of her involvement in

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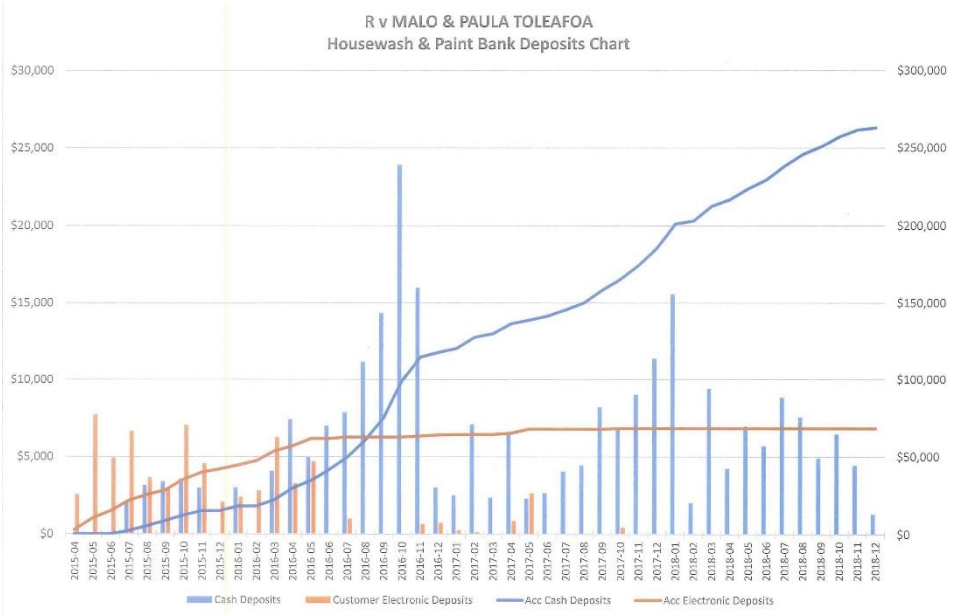
8 See above at [5]–[9].
9 *R v Toleafoa* [2021] NZDC 22378.

managing Mr Toleafoa's cash (as we will shortly describe), it was clearly available to the jury to find that she was aware of his drug dealing.

[25] Second, the cash flow evidence. We reject Mr de Groot's submission that the Crown cash flow theory did not support a finding of knowledge. On the contrary, the scale, timing and pattern of the cash deposits and spending by Ms Toleafoa of Mr Toleafoa's money through the charge period provided a very strong basis for inferring both knowledge and, ultimately, guilt.

[26] As the Crown notes, there was evidence connecting Ms Toleafoa to the movement of more than $431,328 within the charge period, including $197,912.41 worth of cash deposits known to have been made by her. Yet there is no independent evidence linking the movement of most of this cash to legitimate business interests. On the contrary, the forensic evidence showed that Ms Toleafoa's business, First Class, had only limited income in the charge period. The forensic evidence also showed, as illustrated by the graph below, that through the charge period, Mr Housewash transformed from a relatively modest business with income sourced from largely verifiable electronic sources to a business deriving markedly larger income from largely unverifiable cash sources.



[27] Added to this, the evidence showed that many of the cash deposits used Ms Toleafoa's credit card, with a clear linkage between the timing of cash deposits

into Ms Toleafoa's accounts and Mr Housewash's accounts throughout the charge period. That is, a payment into the accounts of Mr Housewash were often accompanied by a payment into Ms Toleafoa's accounts. Given the significant number of these coinciding cash payments to both of their accounts, it was entirely reasonable for the jury to find Ms Toleafoa was enmeshed in Mr Toleafoa's money laundering and had knowledge of the fact that the cash was derived from illegal activity.

[28] There was also the evidence that showed more than $140,000 in cash deposits were paid into Ms Toleafoa's bank accounts; Ms Toleafoa spent significant amounts, almost exclusively in cash; Ms Toleafoa used Mr Toleafoa's company card in June, July and August 2018; there were various receipts in Ms Toleafoa's name for spending such as on travel; there were various invoices in Ms Toleafoa's name, including from the Rydges and Regal Palms Resort hotels in Rotorua; on 12 different days, Ms Toleafoa banked $25,000 in cash across 30 separate transactions into three separate accounts; and, as mentioned, Ms Toleafoa and Mr Toleafoa travelled overseas to Fiji, then to Samoa, then to Fiji again in 2016, and to Bali in 2018.

[29] This same evidence also dispenses with Mr de Groot's last point. Any absence of direct evidence that Ms Toleafoa made the Rotorua deposits was filled by the overwhelming indirect evidence linking her to the cash deposits and spending throughout the charge period. In any event, there was ample evidence from which it could be reasonably inferred that Ms Toleafoa made various deposits: this included the use of her bank cards to make some of those deposits in Rotorua, as well as CCTV footage which showed her making deposits in Rotorua, using Mr Toleafoa's bank card in addition to her own.[10] Mr Baker, who gave forensic evidence for the Crown, summarised the effect of this evidence in this way:

> … The value of deposits where involvement was shown by CCTV footage these totalled $25,155. The value of deposits where the involvement was identified through signed bank vouchers the total was $3,900. The value of deposits where a bank card issued to Paula Toleafoa totalled $101,185.91 and the value of deposits where the timing of the deposits can be inferred to the above three categories the total of those was $67,671.50 providing a combined total across all four categories of $197,912.41.

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[10] There were fifteen Rotorua transactions corroborated by CCTV footage: six corresponding to a card in Mr Toleafoa's name; three corresponding to a card in Ms Toleafoa's name; two to another card in Ms Toleafoa's name; two to accounts in Ms Toleafoa's name; and two to Mr Housewash accounts.

[30] We acknowledge Mr Baker accepted under cross-examination that some of the cash deposits could have been made from legitimate earnings from First Class or Mr Housewash. However, he also noted in re-examination that he found no evidence for salaries or wages paid by the Housewash enterprise and that the only verifiable major contract work finished in May 2016. There was also evidence that First Class declared losses while Mr Housewash filed no income tax returns throughout the relevant period. It was therefore plainly available to the jury to prefer the Crown interpretation of the evidence as to Ms Toleafoa's dealings with Mr Toleafoa's cash.

[31] We also note the submissions of the Crown (not disputed by Mr de Groot) that Ms Toleafoa was acquitted on charges 22, 25, 31, 32 and 40, in respect of payments made at the Rydges and Regal Palms Resort Hotels in Rotorua, for which there was no independent corroborating evidence of her presence there at the time. This provides further surety that the jury properly turned its mind as to whether the evidence supported a finding of guilt or otherwise.

[32] Accordingly, we are satisfied that the verdicts were reasonable and that there is no proper basis for concluding that the jury ought to have entertained a reasonable doubt as to the guilt of Ms Toleafoa on the charges for which she was found guilty.

Tripartite direction

[33] We now turn to the contention that a full tripartite direction should have been given.

[34] Mr de Groot submits that as no full tripartite direction was given, space was created for the jury to reason that, if it did not accept Ms Toleafoa's evidence that she did not know of Mr Toleafoa's drug dealing, the inevitable corollary was that she did know. He says this was important because the Crown sought laboriously to dismantle her credibility through cross-examination which had occupied more than a day. He says this became the focus of the Crown's closing, thus emphasising the importance of the full tripartite direction. In particular, the Judge should have made clear that even if the jury rejected her evidence, they needed to go on to examine all of the evidence which it did accept and decide whether it established guilt beyond reasonable doubt.

[35] The orthodox tripartite direction is:[11]

> … if you accept the accused's evidence on the key issues, you should acquit; if you consider there is a reasonable possibility the accused's evidence on the key issues might be true, you should acquit; if you reject the accused's evidence on the key issues, you must not automatically conclude he is guilty, you must still examine all the evidence which you do accept and decide whether it establishes the accused's guilt beyond reasonable doubt.

[36] While the trial Judge did not literally give this direction, the direction he in fact gave was sufficient. He said:

> [57] The fact that Ms Toleafoa gave evidence and called a witness, I will just repeat what I said before, does not change that basic rule that the Crown has to prove the charges, and the defence evidence is simply added to the total pool of evidence that you have to consider in order to determine whether they have done that. The defendant does not assume any obligation to prove her innocence by calling and giving evidence.

[37] As Ms Gordon also highlighted to us, both the prosecutor and defence counsel emphasised to the jury that the Crown must prove the charges and there was no onus on Ms Toleafoa to prove anything.

[38] We therefore see no risk of inappropriate reasoning by the jury in the absence of the literal tripartite direction. The Judge and counsel clearly brought home to the jury that Ms Toleafoa carried no onus and that the Crown had to prove the charges.

Counter-intuitive direction

[39] As to the absence of the counter-intuitive direction, Mr de Groot submits that as the evidence put the dynamics of violent relationships directly in frame, the risk of misconception reasoning was also live. He submits that the jury should have been directed that they should not assume that a victim of family violence would leave a relationship, and that there was no typical or normal pattern of behaviour which is to be expected in response to family violence. This was important because the Crown invited the jury to draw inferences as to Ms Toleafoa's behaviour on the assumption she was a rational and willing participant in their relationship. This created a risk that

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11 *R v McI* [1998] 1 NZLR 696 (CA) at 708.

the jury would draw adverse inferences from Ms Toleafoa's failure to leave Mr Toleafoa, even when she discovered his methamphetamine offending.

[40] In this regard, Mr de Groot submitted that the following jury question exemplified the importance of a counter-intuitive direction:

> Was the intention of the [Crown] cross-examination to confuse the jury about how a victim of an abusive relationship can have seemingly normal conversations with the alleged abuser between episodes of abuse?

Given this, the jury were not clear about the significance of the family violence to Ms Toleafoa's evidence and the rationality of her behaviour.

Assessment

[41] We agree with Ms Gordon that a counter-intuitive direction was not necessary in this case. First, it is helpful to explain what is meant by, and the rationale underpinning, counter-intuitive evidence as it is commonly understood. As explained by the Supreme Court in *DH v R* in relation to sexual abuse cases, counter-intuitive evidence:[12]

> … is evidence admitted in case involving allegations of sexual abuse of young persons for the purpose of correcting erroneous beliefs or assumptions that a judge or jury may intuitively hold and which, if uncorrected, may lead to illegitimate reasoning. …

[42] As the Supreme Court also observed, the rationale for counter-intuitive evidence is to "restore a complainant's credibility from a debit balance because of jury misapprehension, back to a zero or neutral balance".[13]

[43] For present purposes, we are content to accept that it should not be assumed that a victim of family violence would leave a relationship and that there is no typical or normal behavioural response to such violence. However, we do not consider that there was any real risk that the jury may have been under any misapprehension about this. Both the Crown and the Judge told the jury that the evidence of abuse was

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12 *DH v R* [2015] NZSC 35, [2015] 1 NZLR 625 at [2].

13 Law Commission *Evidence: Evidence Code and Commentary* (NZLC R55, 1999) at [C111], as cited in *DH v R,* above n 12, at [2].

relevant to their assessment of the likelihood of Ms Toleafoa knowing about the drug dealing. The prosecutor said, in closing:

> Well, I'm not going to play down the issue of domestic violence. We've heard evidence of abuse from Luther Toleafoa to Paula Toleafoa, no-one's disputing that, no-one's saying in this trial that that's okay, far from it. On the contrary, it's one of the most serious issues in this country, it's one we see in the courts every week. No-one is saying that that's okay. But as his Honour said this isn't a trial about domestic violence, this is a trial about money laundering. The issue that you're considering is not whether or not Luther Toleafoa was violent towards Paula Toleafoa. We've heard evidence of abuse and you can determine what you make of that evidence and you can determine how that plays into the relationship because the issue before you is not the existence of domestic violence, it's whether or not Mrs Toleafoa knew that that extensive cash that she was depositing and spending were the proceeds of crime and so the purpose of the Crown playing a number of calls between the two of them, before and after the [16th] of November 2018, was that there wasn't evidence before or after that of a period of separation.

[44] The Judge also said, in summing up:

> [9] So that evidence of family violence was put before you for a particular reason and that is the Crown case here is that Mrs Toleafoa knew what her husband was up to. Knew about his methamphetamine dealing and one of the things that the Crown referred to in that context is the fact that they were in a relationship. So the call that was played to you, the very abusive and nasty call, was playing to you by the defence to indicate to you that this is one example that shows that this relationship was not a healthy relationship, not a functional relationship and what Mr Lack submits to you is that when you listen to the call, it is not just what was being said on that day but there is references to past behaviour and that shows that this type of relationship was dysfunctional over an earlier period of time, from an earlier period of time.
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> [10] Now the Crown response to that is to call other evidence, not to confuse you about family violence but to put that one call into context and the Crown says to you well look at all the other surrounding circumstances that there was an ongoing relationship between them, that there was exchanges of affection, that they went on holidays together, that she continued to associate with Mr Toleafoa in spite of the violence and in spite of being separated even and that association was one that included going away on holidays, staying in hotels, going shopping together and so on and the Crown played the other communications to illustrate that there were expressions of endearment in those. Similarly with the Facebook exchanges and so on. So that is why that was put in by the Crown to give a context and balance to what Mr Lack was submitting. Now it is up to you to assess what you make of all of that but there is no doubt in this case that there was family violence and there was a relationship that was at times dysfunctional. To what extent that impacts on what Mrs Toleafoa knew of Luther Toleafoa's doings is a matter for you to assess in your role as judges of the facts.

[45] Accordingly, there was no need for a counter-intuitive direction. The jury was clearly told to take into account the abuse and nothing needed to be done to correct any misapprehension about this or to return Ms Toleafoa's credibility back to zero.

Concealment

[46] Section 243(4) and (4A) of the Crimes Act 1961 states:

> (4) For the purposes of this section, a person engages in a money laundering transaction if, in concealing any property or by enabling any person to conceal any property, that person—
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> (a) deals with that property; or
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> (b) assists any other person, whether directly or indirectly, to deal with that property.
>
> (4A) Despite anything in subsection (4), the prosecution is not required to prove that the defendant had an intent to—
>
> (a) conceal any property; or
>
> (b) enable any person to conceal any property.

[47] Conceal, in relation to property, means:[14]

> … to conceal or disguise the property; and includes without limitation,—
>
> (a) to convert the property from one form to another:
>
> (b) to conceal or disguise the nature, source, location, disposition, or ownership of the property or of any interest in the property

[48] Deal with, in relation to property, means:[15]

> … to deal with the property in any manner and by any means; and includes, without limitation,—
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> (a) to dispose of the property, whether by way of sale, purchase, gift, or otherwise:
>
> (b) to transfer possession of the property:
>
> (c) to bring the property into New Zealand:

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14 Crimes Act, s 243(1).
15 Section 243(1).

(d) to remove the property from New Zealand

[49] Mr de Groot contends that the charges relating to cash payments for travel packages, accommodation, and goods or services purchased at hotels and goods or services purchased at various retailers were not caught by s 234(4). He says that the simple spending of money that has derived from criminal offending in this manner does not amount to "concealment" within the meaning of the relevant provisions. In this regard, Mr de Groot relies on the following observations of Lang J in *R v Tritar*:[16]

> [24] Typically, although not always, concealment in this context occurs when cash is used to acquire physical assets. It may also, however, occur when funds are converted from cash to an intangible but identifiable asset such as funds held in a bank account. However, I do not consider it occurs when a person spends the funds acquired from criminal activity on living expenses. The profits are dissipated at that point and no longer exist. There is nothing left to conceal. The receipt of cash that is subsequently spent on living expenses may enable the Crown to obtain a profit forfeiture order under the Criminal Proceeds (Recovery) Act 2009. I am satisfied, however, that it does not support a charge of money laundering.

[50] He says it follows on this reasoning that the dissipation of funds by Ms Toleafoa on non-transferable airline tickets, holiday packages, hotel accommodation, household items and personal services was not an act of concealment.

Assessment

[51] We disagree. As s 243(4A) makes plain, the Crown was not required to prove intent to conceal. Rather, the Crown had to prove that Ms Toleafoa, in "concealing" Mr Toleafoa's drug money, "deal[t] with" that money. Conceal includes "to convert the property from one form to another".[17] Deal with includes "to dispose of the property … by way of sale, purchase, gift, or otherwise".[18] Here, Ms Toleafoa converted Mr Toleafoa's cash into another form of property when she disposed of it by way of purchase of identifiable goods and services. It was plainly money laundering.

[52] It is not necessary for us to comment on the scope of any "living expenses" exception (if any) to the money laundering provisions described by Lang J in *Tritar*.

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16 *R v Tritar* [2021] NZHC 1591.
17 Crimes Act, s 243(1).
18 Section 243(1).

The Judge appeared to be referring to everyday spending of ill-gotten profits. As Ms Gordon highlighted to us, Lang J would, in the latter case of *Wilson,* find that "the use of illegally derived cash to purchase items such as clothing, footwear and [a] motor vehicle plainly constituted money [laundering].[19] We make the same finding in relation to the payments under scrutiny here. The relevant purchases included luxury items such as overseas travel packages and hotel expenditure, as well as substantial outlays ranging from $185 for an optometry consultation to $2,898 spent at an appliance store. They were all qualifying acts of concealment.

[53] We are therefore satisfied that this ground must fail.

[54] Overall, we have found that that the verdicts were not unreasonable, there was no need for a full tripartite or counter-intuitive direction and that all of the charges of money laundering involved acts of qualifying concealment.

Result

[55] The appeal is therefore dismissed.

Solicitors:
Izard Weston, Wellington for Appellant
Crown Solicitor, Rotorua for Respondent

[19] *R v Wilson* [2022] NZHC 1901 at [15].

Appendix A: Quantification of charges

Charge	Date range	Detail	Transactions	Value
1	Between 13 April 2015 and 6 November 2015	Bank deposits: Rotorua, Te Puke or Auckland	23	$8,981.60
4	Between 13 April 2015 and 6 November 2015 and 3 December 2018	Bank deposit: Manukau	10	$2,200
6	Between 6 November 2015 and 3 December 2018	Bank deposits: Rotorua, Queenstown, Christchurch or Auckland (amount amended at trial)	199	$202,654.50
8	Between 6 November 2015 and 3 December 2018	Bank deposits: Rotorua or Auckland	153	$107,952.40
9	Between 6 November 2015 and 3 December 2018	Bank deposits: Rotorua or Auckland	34	$16,320
10	3 July 2017	Bank deposit: Auckland	1	$2,300
11	Between 6 November 2015 and 3 December 2018	Bank deposit: Rotorua	28	$22,109.40
12	19 July 2018	Bank deposit: Rotorua	1	$3,000
14	19 July 2018	Bank deposit: Rotorua	1	$900
15	5 June 2018	Purchase of property portfolio	1	$10,000
16	23 May 2018	Flight Centre: Holiday package to Fiji	1	$3,075
17	11 June 2016	Flight Centre: Holiday package to Samoa	1	$3,415
18	23 June 2016	Flight Centre: Holiday package to Fiji	1	$11,965
19	22 September 2017	Flight Centre: Holiday package to Fiji	1	$2,376

Charge	Date range	Detail	Transactions	Value
20	29 June 2018	Flight Centre: airfares	1	$500
21	27 September 2018	Flight Centre: Holiday package to Thailand	1	$2,460
23	1 November 2015	Regal Palms Hotel	1	$275.50
24	8 November 2015	Regal Palms Hotel	1	$415.50
26	20 March 2016	Regal Palms Hotel	1	$540.50
27	6 June 2016	Regal Palms Hotel	1	$1,195
28	7 August 2016	Regal Palms Hotel	1	$668
29	14 August 2016	Regal Palms Hotel	1	$803.50
30	4 September 2016	Regal Palms Hotel	1	$363.50
33	24 October 2016	Regal Palms Hotel	1	$689
34	6 November 2016	Regal Palms Hotel	1	$791
35	21 November 2016	Regal Palms Hotel	1	$174
36	11 January 2017	Regal Palms Hotel	1	$185
38	26 March 2018	Regal Palms Hotel	1	$870
39	17 June 2018	Regal Palms Hotel	1	$695
41	30 September 2018	Regal Palms Hotel	1	$393.50
42	28 February 2016	Rydges Hotel	1	$519
43	6 March 2016	Rydges Hotel	1	$529.40
44	8 July 2016	Rydges Hotel	1	$100
45	10 July 2016	Rydges Hotel	1	$340.40
46	28 October 2016	Rydges Hotel	1	$561

Charge	Date range	Detail	Transactions	Value
47	28 October 2016	Rydges Hotel	1	$200
48	11 November 2016	Rydges Hotel	1	$100
49	25 November 2016	Rydges Hotel	1	$100
so	20 January 2017	Rydges Hotel	1	$741
51	28 February 2017	Rydges Hotel	1	$700
52	8 August 2018	Rydges Hotel	1	$1,000
53	5 November 2018	Rydges Hotel	1	$5,000
57	4 December 2015	Pascoes jewellers	1	$1,999
58	5 January 2016	Harvey Norman	1	$888
59	9 April 2016	Versace sunglasses	1	$419.90
60	11 April 2016	Appliance Shed	1	$2,898
61	23 April 2016	Michael Hill jeweller	1	$534.90
63	27 June 2016	Strandbags	1	$743
64	21 July 2016	Strandbags	1	$355.75
65	16 August 2016	Optometry Consultation	1	$185
66	4 February 2017	BigSave Furniture	1	$396
67	6 March 2018	Caci Clinic	1	$661.30
68	7 April 2018	BigSave furniture	1	$798
69	9 April 2018	Auckland Mobile Homes	1	$1,500
70	17 April 2018	BigSave furniture	1	$299
71	19 April 2018	BigSave furniture	1	$200

Charge	Date range	Detail	Transactions	Value
72	8 May 2018	Target	1	$300
73	27 August 2018	Strandbags	1	$541.80
76	7 July 2018	Lucy Loves Cakes	1	$450
Total charges: 59		**Total amount laundered:**	**500**	**$431,328.35**