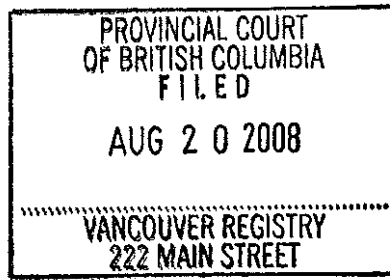


Citation:



Date:

File No: 163480-1-D
Registry: Vancouver

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
(Criminal Division)

REGINA

v.

KOUAMI A. AYIVON and MICHAEL W. ONESMUS

**REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE J. WATCHUK**

Counsel for the Crown:	K. Gillett; J. Bird
Counsel for the Defendant K.A. Ayivon:	M. Foster
Counsel for the Defendant M.W. Onesmus:	A. Bonfield
Place of Hearing:	Vancouver, B.C.
Dates of Hearing:	Apr. 2-17, 19-20; Apr. 24-May 1, 3, 9; June 4-5; June 27, 2007; Jan. 2-4; Apr. 14-17; Apr. 22-May 6; May 13-14; May 16, 20, 22, 26-28; June 16; Aug. 20, 2008
Date of Judgment:	August 20, 2008

A. THE CHARGES

[1] Kouami Anthony Ayivon and Michael Worry Onesmus stand charged on a 41 Count Information. They are Accused of operating a counterfeit cheque driven lottery scam and of obtaining various computers and other office equipment by fraud. The 41 Counts are broken down into 14 transactions involving 14 separate groups of victims as follows:

<u>Victims</u>	<u>Counts</u>
Bonniface Wittenbrink, Illinois	1, 2
Zelda Walker, San Antonio, TX	3, 4, 5
Mogens Olesen, Los Gatos, CA	6, 7, 8
Peter Veal (Deceased), Farwell, MI	9, 10, 11
Pearl Melandish, Kauai, Hawaii,	12, 13, 14
Craig & Cheryl Hainsworth, Rialto, CA	15, 16, 17
Bruce Love, Gary, Indiana	18, 19
CashRegisterStore, Ken Kenniker, Jagmohan Kalar	20, 21, 22
Dell Canada, Herman Timber	23,24,25,26
Hewlett-Packard/Compaq, Houston Forest Products	27, 28, 29
Davco Weight Scales, TD Bank, Edward & Rose Stachiw	30, 31, 32
IBM, Royal Bank, Wolfe Chevrolet Oldsmobile, Stelter	33, 34, 35
Canadian Business Machines, Visa Desjardins, Mario Landry	36, 37, 38
Leo Norgaard, Sioux Falls, SD	39, 40, 41

[2] For each of the 14 transactions, fraud and theft (or attempted fraud and theft) have been charged in the alternative. The Crown's position is that only one conviction should be registered for each pair of fraud and theft charges and that, on the evidence in this trial, convictions for fraud would be the most appropriate. Convictions for forging should be entered where a counterfeit cheque was used in that fraud.

[3] Defence counsel submit that all charges should be dismissed.

B. THE FRAUDS

[4] The 14 frauds are in two categories: 8 lottery frauds against individuals, and 6 frauds committed to obtain office equipment.

[5] The following individuals were victims of the lottery frauds: Bonniface Wittenbrink, Zelda Walker, Mogens Olesen, Peter Veal, Pearl Melandish, Craig & Cheryl Hainsworth, Bruce Love, and Leo Norgaard. The remaining victims were defrauded to obtain office equipment.

C. THE ISSUES

[6] At the conclusion of the evidence defence counsel agreed that the Crown had proven that each of the 14 frauds was committed. The characterization of "victim" rather than "complainant" is therefore used throughout these Reasons.

[7] The issue for the court is identity. Did these two men or either of them commit these frauds? Has the Crown proven beyond a reasonable doubt that all or any of the frauds and related offences were committed by Anthony Ayivon and Michael Onesmus. The law regarding parties to offences must be considered.

[8] As Mr. Ayivon and Mr. Onesmus both testified and denied their involvement in the frauds, this case raises issues of credibility.

D. THE EVIDENCE

[9] This was a lengthy trial. Seventy witnesses were heard over 46 days of trial. Thousands of documents were filed. Evidence of 19 days of surveillance was heard. The court heard shredded documents, forensic accounting with regard to transactions in Latvian banks, and computer hardware and software. I have reviewed and considered all of the evidence.

[10] I will not repeat the evidence. As the frauds have been admitted, they will be described only briefly. The relevant evidence is that regarding the involvement of the Accuseds. In a number of areas where lengthy detail is required, it will be included as an Appendix transposed from the Crown submission with some editing of the narrative.

1. Summary Of Evidence Of The Crown

[11] The Crown has led evidence for the purpose of showing that the Accuseds, Ayivon and Onesmus, acted together with the absent Accused, Iddi Yussuf, in setting up a business called "Smart Bizz" in a building at 7805 – 6th Street in Burnaby, BC. From that allegation arises the identity issues.

[12] Iddi Yussuf absconded prior to the commencement of the trial. A bench warrant remains outstanding.

[13] With regard to the Smart Bizz premises and the frauds, the following allegations are not in issue and I find them proven as facts in this trial.

[14] In October 2002, Mr. Ayivon became the sole officer of Smart Bizz Services Ltd. and signed the lease of the building on behalf of that company. Ayivon, Onesmus and Yussuf then worked together to set up the premises for business use.

[15] Many of the items of equipment installed in the office including the computers were obtained by fraud – either by way of forged cheques or by way of fraudulent credit card transactions. Those items include a cash register (counts 20-22), Dell computer systems (counts 23-26), a weight scale (counts 30-32), IBM computer systems (counts 33-35), and a safe and two cash drawers (counts 36-38). There is also evidence of a related attempt to obtain computer equipment for the office from Hewlett Packard/Compaq by way of a forged cheque (counts 27-29).

[16] The evidence also shows that once the business at Smart Bizz had been set up, it became the central hub of a fraudulent lottery and counterfeit cheque scam. The scam varied from one victim to the next, but with each, there were key common elements.

[17] The victims of the scam who were mostly elderly Americans were notified by mail or telephone that they had won a large lottery. Before the money could be released, they were told that a problem had to be sorted out, which required a payment by the lottery winner. In some cases, the victims made a payment. This would frequently be followed by further requests to them for more money. When victims were reluctant to send money, they would be offered assistance in the form of cheques, which would be sent to them for cashing. The victims would be instructed to deposit the cheques into their own bank accounts, immediately take out the cash (or write their own cheque) and then send the funds back to the lottery administrators as payment for whatever taxes,

fees, or other charges were supposedly owing. The funds from the victims were sent in various ways - by mail or courier to Smart Bizz or to an associated mail box in the Vancouver area, or wired by Western Union. The victims would later find out that the cheques they had received and deposited were counterfeit. Whether or not the victims had already sent funds to the suspects, they would be liable to the bank for the amount of the counterfeit cheques they had deposited.

[18] The Forensic Accounting Report examined twelve Latvian bank accounts which were identified from documents located at Smart Bizz. It determined that between August 2001 and October 2003, there was a total of \$456,191 deposited from payors who were not the Accuseds or suspected aliases of the Accuseds. Most of these deposits came from 36 identifiable payors.

[19] The deposits and flow of funds followed a distinct pattern. Funds from the payors would be deposited into one of six Latvian bank accounts. Those funds were then transferred to one of five other Latvian bank accounts from which cash was withdrawn by use of the ATMS.

[20] There were \$207,003 in cash withdrawals from accounts in fictitious names through the use of Automated Teller Machine ("ATM") cards. The majority of these withdrawals were made at branches of Canadian financial institutions in the Greater Vancouver area of British Columbia.

[21] Another \$195,090 was transferred to account "#017615438", but there is not enough information to identify the name of the bank or the location. Finally, there was

another \$45,430 transferred or withdrawn from the accounts to an unidentified destination.

[22] Although the Crown submits and the Defence did not take issue with the submission that these bank accounts were used in the frauds, only one of the identified payors, Bruce Love, is a named victim in these charges.

[23] The police shut down the operation at Smart Bizz on February 11, 2003, after it had been running for approximately three months. The evidence seized from the premises shows a relatively large and sophisticated operation involving:

- large numbers of computer generated "bait letters" for the lottery scam;
- lengthy "sucker lists" (often multiple copies) with the contact information of potential victims including the named victims and "scripts" for telephone calls to or from them;
- a large number of fraudulently obtained cell phones, some of which were used to contact or be contacted by victims;
- documents relating to the various mail box addresses given to potential victims;
- lists containing personal information of "plastic people", some of whom had their identities used for credit card or cell phone fraud;
- cheques, both whole and shredded, demonstrating attempts to create counterfeit cheques by copying legitimate ones;
- notes and other references to the named victims and the amounts of the counterfeit cheques sent to them; and
- a forged passport and other forged identification used for opening various Latvian bank accounts, along with banking documents relating to payment instructions and the flow of money through those Latvian bank accounts.

2. Location and Numbering of Exhibits

[24] The Crown submits that the locations of the various exhibits seized by police within Smart Bizz on the day of the search are significant as they demonstrate both individual participation and teamwork.

[25] Several police officers gave evidence regarding their exhibit numbering system which was keyed to those locations. The numbers are all comprised of 9 digits. The first two digits denote the site; the second two digits denote an area within that site. There is then a gap. The next two digits denote a sub-area within the area. The final three digits denote an item number within the sub-area.

[26] There were 52 sites in this case which are set out in the Exhibit Reports: The premises of Smart Bizz are designated as site 12 of 52. Accordingly, all of the numbers on the exhibits which were located in Smart Bizz on the February 11, 2003, raid begin with the digits, 12.

[27] The next two digits designate the area within the site. Smart Bizz was divided up into 27 areas including the persons of Onesmus and Yussuf themselves, so the first four digits of all of the exhibit numbers seized from Smart Bizz that day run from 1201 to 1227. An easy reference to locate these 27 areas is the plan of Smart Bizz found at court exhibit C-Tab 3G.

[28] The next 2 digits after the gap signify a sub-area. Each sub-area is described in detail in the Exhibit Reports. The last three digits comprise the number assigned to each individual item located within that sub-area.

[29] For example, in or near the cabinet in Onesmus' office was area 11, so all exhibits located there would begin 1211. The first exhibit of the first sub-area would be 1211 01001, the second exhibit in that sub-area would be 1211 01002, and so on. The first exhibit of the second sub-area in or near the cabinet would be 1211 02001, the second exhibit from that sub-area would be 1211 02002.

[30] Although most of the exhibits are documents, there are also other physical exhibits, such as phones, wallets, computers, the scale, and the cash register. All of those objects follow the same numbering system.

[31] I find that the numbering system accurately describes the location of each exhibit, and I rely on the numbers assigned to each exhibit as determinative of its location.

4. Crown Evidence Regarding Mr. Ayivon

[32] Smart Bizz was the location from which the frauds took place from October 2002 to February 11, 2003, the day of the execution of the search warrant.

[33] Mr. Ayivon incorporated the company and was the sole officer of Smart Bizz Services Ltd. He signed the lease on behalf of the company for the building at 7805 – 6th Street, Burnaby, B.C. He made the monthly lease payments. He opened the business bank account and did all of the banking. Mr. Ayivon was a carpenter by trade. He did construction and renovations throughout the premises. The Crown submits that all of these activities supported the fraud operation actively carried on by Onesmus and Yussef.

[34] The various businesses at Smart Bizz operated together to provide an air of legitimacy to the premises and to support the frauds. Mr. Ayivon obtained a Western Union franchise. Mr. Onesmus set up an internet café for Mr. Yussef in addition to operating his own pre-existing business, BC Comm.net. Mr. Yussuf had a pre-existing janitorial business and also opened the mailbox business at Smart Bizz.

[35] Each of the three men had an office. The premises were loosely arranged, but not formally divided into areas, where their legitimate businesses were carried out. Western Union and Ayivon's office were on the front right side. At the left of the front were the computers for the internet café. The counter with the cash register was behind the computers and in front of Onesmus' office. The mail boxes were next to Western Union.

[36] The Crown's case against Mr. Ayivon is comprised of evidence:

- that the fraudulent activity was blatant and going on throughout the office and Mr. Ayivon must therefore have known about it; and
- that the fraudulently obtained equipment was used throughout the office. The Western Union office used one of the fraudulently obtained IBM computers and two fraudulently obtained cash drawers. Mr. Yussuf obtained this equipment and Mr. Ayivon did not pay him for it; and
- that Mr. Ayivon participated in the frauds or was a party to them by being the front person behind Smart Bizz. His acquisition of the Western Union franchise was a necessary piece of the lottery frauds so that money could be transferred from the victims.

[37] It is also submitted by the Crown that Mr. Ayivon by programming a number for Mr. Onesmus into his cell phone with the reference "Mike Matako" is evidence of participating in the common fraudulent enterprise since "Matako" was internally used to designate fraud. "Matako" is Swahili slang for bum or derrière.

5. Crown Evidence Regarding Mr. Onesmus

[38] The evidence regarding Mr. Onesmus is extensive. Crown submits that it can be broken down into the following categories. It is submitted by the Crown that explanations offered by Mr. Onesmus are not credible.

- a) Use of false name by Onesmus on Lease

[39] Mr. Onesmus admitted that he signed the Smart Bizz lease with the name "Michele Matako". The name "Matako" appears in many ways in the various frauds.

b) Piles of cash

[40] On January 15, 2003, Mr. Onesmus and Mr. Yussuf were observed sorting cash into three piles. Mr. Onesmus testified that he was helping Mr. Yussuf count cash for a customer who needed currency exchange.

c) Rubber gloves

[41] On the day of the raid of Smart Bizz Mr. Onesmus and Mr. Yussuf were working at the front counter putting bait letters into envelopes. Both of them were wearing rubber gloves. Mr. Onesmus stated that he wore the gloves because his hands were covered in toner from working on the printer.

d) Mr. Onesmus' knowledge of the bait letters

[42] Mr. Onesmus testified that he read the first couple of paragraphs of the bait letters which covered the front counter of Smart Bizz. In both of the two versions of the bait letter it is clear in the first two paragraphs that the recipient has won a lottery, and from this, Crown submits that Mr. Onesmus knew of the lottery frauds and the method of implementing them.

e) The office of Onesmus

[43] From the map of the Smart Bizz office, Mr. Onesmus' office contains the following areas which were searched: The desk (area 9); the shelf brackets (area 10); the cabinet (area 11); and the flower pot. Crown submits that each area was used by Mr. Onesmus and contained evidence of fraud.

[44] Crown has made extensive written submissions with regard to these areas of Mr. Onesmus' office. Those submissions are contained in Appendix A to these Reasons.

f) Computers located under desk were obtained by fraud

[45] The two Dell computers located under the desk of Mr. Onesmus were obtained by fraud. A number of fraudulent documents were located in one of the computers under Mr. Onesmus' desk on the two hard drives in that computer. All but the last three documents in the RCMP Technical Examination Report of Ken Quan were located in one of the hard drives in that computer. All of the documents in one of the hard drives had the name "Mike" in the file path. The evidence was that computer users create the file path names so that people can locate their computer files as one would locate a page in a file cabinet. See Appendix B.

g) Computer network

[46] The evidence is inconclusive as to the extent and degree of computer networking in Smart Bizz. It is possible that some of the files found in the computer under Mr. Onesmus' desk could have been accessed from another computer in Smart Bizz. However, the Crown submits that documents such as that found at Volume 7, tab 43, a letter with the FS logo at the top, is tied to Mr. Onesmus in many ways. See Appendix C.

h) Bait letters being printed from computer on Onesmus' desk

[47] At the time of the raid, the front counter of Smart Bizz was covered in bait letters which had been addressed and were ready to mail. The process of creating those letters was up and running on the computers in Mr. Onesmus' office at the time of the

raid. The screen capture photographs of what was actually running on those computers is found in the Technical Examination Report of Ken Quan, the computer expert.

i) The phones located on Onesmus' person and on his desk.

[48] Again, Crown's submission in this regard is lengthy and detailed and is contained in Appendix D to these Reasons.

j) Offshore banking and Jyske Bank transfer from Onesmus to Ayivon

[49] Much of the fraudulent activity in Smart Bizz related to fraudulent bank accounts in Latvia. Mr. Onesmus had in his wallet a credit card in his name from the Paritate Bank of Latvia.

[50] Mr. Onesmus also sent a wire transfer of \$8,200 US from his Jyske bank account to Mr. Ayivon (date). Crown submits that this evidence shows that a large sum of offshore money was available to Mr. Onesmus.

[51] Crown also submits that the expert forensic accounting report of the Latvian banking records show that the money transfers in the Latvian banking system were done to obscure the flow of money. There were many ties between the Latvian bank accounts and the Smart Bizz location.

k) Onesmus tied to bait letters by changing address

[52] Mr. Onesmus' old business address of 2131 Hartley Avenue, Coquitlam, BC appears on some of the bait letters located at Smart Bizz. Crown submits the use of his old address on letters used or capable of being used in the frauds further ties Mr. Onesmus to the fraudulent activities.

l) Handwriting of Onesmus

[53] The Crown submits that there are two unique characteristics of the known handwriting of Mr. Onesmus that appear in many fraudulent documents. The Crown is not relying on handwriting to prove its case but submits that this is one more point in a long list of points which show the guilt of Mr. Onesmus.

EVIDENCE OF THE ACCUSED

a) **Evidence of Kouami Ayivon**

[54] Mr. Ayivon testified that he had no knowledge of any fraudulent activities taking place at Smart Bizz. He testified as follows: He is 54 years of age. He was born in Togo, West Africa. He began working in the construction industry several years before because after he became a single father he was unable to continue the hours of work required to be a musician. As he gained experience in the construction industry, he started his own renovation business but he was unsophisticated in the ways of business and in particular with regard to running a business connected to offices and paper work.

[55] After some years, due to health problems, he wished to get out of his business requiring physical labour and was considering other business opportunities which would be less physically demanding. The types of businesses he considered included a bottle depot, a car wrecking business, and a beer and wine store. He had a friend who was in the "Pay Day Loan" business and he became interested in this venture.

[56] Mr. Ayivon then learned about Western Union which turned out to be effectively a free franchise with the only requirement being having a location to house the business. He enlisted the assistance of his friend, Michael Onesmus, who he understood to be

experienced in the ways of running office type businesses. Mr. Ayivon had done renovation work for one of Mr. Onesmus' offices where Mr. Onesmus was the employer and had secretarial help and employees working for him. Mr. Ayivon knew that Mr. Onesmus could run this type of business and had experience with computers.

[57] Mr. Onesmus assisted him in looking into this new type of business. Mr. Onesmus called the Western Union Company and made enquiries. Mr. Onesmus called the leasing company of the Smart Bizz premises for him to enquire about the property he saw down the block from his home.

[58] Through savings over the years and a line of credit, Mr. Ayivon was able to take on a commercial lease and begin a business. Although the property was too large solely for his purposes and the lease was too expensive, he was offered an alternative idea through Michael Onesmus by way of Iddi Yussuf. Mr. Ayivon trusted the arrangement as Mr. Onesmus had vouched for Mr. Yussuf and had agreed to be responsible for Mr. Yussuf paying his half of the rent.

[59] Mr. Ayivon believed that Mr. Yussuf's front end business would complement his business. It appeared that an internet café coupled with other office services such as photocopying, mailboxes, mail out services and printing could logically share space with a Western Union business which has Pay Day loans and Money Exchange services.

[60] Mr. Ayivon was not the "boss" of Smart Bizz. He simply incorporated the name Smart Bizz on the advice of Michael Onesmus, used the name Smart Bizz as the overall name of the businesses to be the storefront for the public, and as a whole to lease of the premises. It is submitted that there is no evidence that Mr. Ayivon had anything to

do with nor had any intention of being involved in the internet café and office services business. This arrangement was to be part of the overall package of the premises to be offered to the public.

[61] The arrangement was attractive to Mr. Ayivon for the following reasons:

- He had somebody to split the rent of the premises;
- He had a complementary business which he believed would add to the traffic of his own business;
- He believed he had a good location that he would not otherwise be able to afford;
- He had a friend who was experienced and was able to assist him in business matters that he was unfamiliar with;
- He was able to do renovations on the whole premises with the expectation of receiving a benefit for that in the future; and
- He was able to continue work at his regular contracting business while his new venture began to get running in that he had the assistance of Mr. Onesmus to set up the business and he had the assistance of Mr. Onesmus, Mr. Njambali and Mr. Yussuf to tend to his part of the business when he was not there.

[62] There was evidence from both Mr. Onesmus and Blaine Booth of Western Union that the business location looked very professional and there was an expectation that the business would do well in time. Mr. Ayivon did not expect to be in a position to either run it full time or hire staff for a number of months after the initial opening. Mr. Booth testified that as far as Western Union was concerned, it appeared to be doing quite well relative for a business of its age. The Defence submits that Mr. Ayivon had no reason to believe that there was anything untoward going on or being planned at this location. The evidence of Mr. Ayivon is consistent with an individual who is unsophisticated and excited to start a new business venture.

[63] Counsel for Mr. Ayivon submits that evidence in the following categories should be considered in finding Mr. Ayivon a credible witness and acquitting him of all charges arising from the frauds:

- Mr. Ayivon included all of his contact information on all of his documents;
- Mr. Ayivon was rarely at the Smart Bizz premises for extended periods of time;
- Mr. Ayivon was never observed to be handling any arrivals of either money or equipment or taking part in any fraudulent mail outs;
- There is no evidence of Mr. Ayivon conducting fraudulent transactions;
- There is a lack of incriminating evidence on Mr. Ayivon's computers;
- The phone record analysis does not support a finding that "Ton.Matko" and Mr. Ayivon are the same person in Mr. Onesmus' cell phone contact list;
- Mr. Ayivon's briefcase and wallet do not contain documents related to fraudulent activity;
- There were only three incriminating documents located in a Western Union office, but Mr. Yussuf was using that office on the day the documents were located there, the day of the police raid;
- The post arrest conduct of Mr. Ayivon is inconsistent with an individual who is operating a fraudulent operation. After Smart Bizz was closed, Mr. Ayivon paid off all outstanding business debts.

b) Evidence Of Michael Onesmus

[64] Mr. Onesmus testified that he was not involved in the lottery scheme, he had no knowledge that it was being run out of Smart Bizz and that he was completely unaware of the fact that much of the equipment in Smart Bizz was in fact stolen.

[65] His employment history is relevant as documents from his previous enterprises were found at Smart Bizz.

[66] Mr. Onesmus testified that he emigrated from Namibia at the age of 16 to join his mother who had come a few years earlier as a result of the apartheid system in place at the time.

[67] After arriving in Canada, Mr. Onesmus attended high school in New Westminster and took English as a Second Language courses. He then enrolled in and completed a course at Compu College in Computer and Electronic Repair, finishing in 1991. He has had no further education.

[68] He had difficulty finding employment in his field, and after a few short term employments, he worked at Budget Rent-A-Car from 1992 to 1998.

[69] While working for Budget, Mr. Onesmus needed a part-time job to supplement his income. He worked for a company called Pool International doing telemarketing on evenings. After working there for a few months, he came to believe that he could supply a similar service himself and perhaps do a better job at customer service than the people he was working for. With this goal in mind he took the knowledge he had gained at Pool International and began his own business called Fantasy Five Marketing Inc. where he employed a few people reselling lottery packages from an Australian company.

[70] Fantasy Five Marketing Inc. was a telemarketing company running out of an office that has been described as being above a Chinese restaurant in New Westminster. It employed about six people who were given a lead list purchased from a company called R&P Associates, and the employees were selling packages of lottery tickets which would allow a person, or a group to play a set of numbers over a given amount of draws. There were several packages with a range of prices.

[71] The Australian company who Mr. Onesmus dealt with for Fantasy Five told him that to receive commissions, or the winnings for his customers, he would have to open

an account with the bank that they dealt with, the Paritate Banka, based in Latvia. To that end Mr. Onesmus opened an account in his name and Fantasy Five and received a bank card for that purpose. Mr. Onesmus closed that account upon the demise of his company and had not used the card since.

[72] This business only lasted about 6 months. Mr. Onesmus shut it down after he was contacted by the RCMP a second time involving a complaint about a customer paying for, but not receiving, their lottery package. Mr. Onesmus discovered that at least one of his employees had opened a fictitious account with a name similar to Fantasy Five and asked that customers forward their cheques to that account rather than Mr. Onesmus' business account.

[73] Mr. Onesmus testified that upon the closure of Fantasy Five, he put all of the documents relating to that company in some boxes and kept them in the New Westminster office, in Lorne Parry's office at the Hartley Ave. location in Coquitlam and subsequently in the hydro room at Smart Bizz. He also testified that he sometimes received cheques from customers after the company closed, people who were trying to order new lottery packages, but he could not cash them. There was a cheque for \$5,000.00 for Fantasy Five found on the shelf in Mr. Onesmus' office at Smart Bizz.

[74] The expired Paritate Bank card in the name of Michael Onesmus and Fantasy Five Inc. was eventually found in a wallet in his office at Smart Bizz.

[75] Several other documents from Fantasy Five, including invoices from R&P Associates and client information amongst others were found at Smart Bizz in a

briefcase in Mr. Onesmus' office, in the cabinet in his office and a cabinet in the office behind the Western Union section of Smart Bizz.

[76] For a brief period, Mr. Onesmus tried to run a telemarketing business with the same set up as Fantasy Five but with a new product, travel packages. A travel company in Calgary sold Mr. Onesmus travel packages for his business to resell through telemarketing. The new business, Golden Sunset purchased lead lists for travel package consumers from R&P Associates in the same manner as Fantasy Five. This business did not succeed as Mr. Onesmus found the product difficult to sell. When complaints came in from people who had not received the packages that they paid for he folded that business also.

[77] Upon the demise of Golden Sunset, Mr. Onesmus began operating a business called BC Comm.net which was to provide a number of internet based services including web hosting, web site construction, electronic directory listings, amongst other activities. It later became primarily a web based directory for local businesses. His plan was that his other activities would largely be sources of funding until the directory was large enough to carry itself.

[78] BC Comm.net was never in a strong situation financially. As the salary of his employee Lorne Parry was a large cost, he let Mr. Parry go. He had to periodically borrow money from his family and friends, including Mr. Ayivon, as he was having personal financial problems by the winter of 2002-2003.

[79] Mr. Onesmus first became involved in what became Smart Bizz when he was contacted by his friend Mr. Ayivon in the summer of 2002. Mr. Ayivon was seeking

some help in setting up a Western Union franchise and wanted Mr. Onesmus to do some research for him to find out more about it. Mr. Ayivon contacted Mr. Onesmus and asked him to look into 7085 - 6th Street, Burnaby as a possible location for the franchise. Mr. Onesmus contacted the realtor, Jonathan Lowe, to set up a viewing. Both Mr. Onesmus and Mr. Ayivon attended the viewing. Mr. Ayivon felt that the location was good although it was much too large for a Western Union franchise. Mr. Onesmus thought that his current tenant, Iddi Yussuf, might be interested in the space.

[80] Mr. Onesmus had met Mr. Yussuf several years earlier as someone who had brought his son to Mr. Onesmus' mother for babysitting. As a result of Mr. Yussuf's relationship with his mother, Mr. Onesmus felt he could trust Mr. Yussuf.

[81] After some discussions, Mr. Onesmus informed Mr. Ayivon that Mr. Yussuf was interested in renting half of the space for an internet café.

[82] Within days Mr. Onesmus contacted Mr. Lowe with instructions from Mr. Ayivon to set up a meeting to sign the lease. At the lease signing, after Mr. Ayivon had signed, Mr. Lowe said that he wanted Mr. Onesmus to sign also. Mr. Onesmus was reluctant to sign because he thought that Mr. Lowe would do a credit check on anyone who signed. There was some confusion and an argument between Onesmus and Lowe until Mr. Onesmus understood Mr. Lowe to say to just sign anything. Above his own signature, Mr. Onesmus printed "Michele Matako" on the 'witness' line.

[83] Mr. Lowe visited Smart Bizz on at least one occasion and took a couple of photos with Mr. Onesmus and Mr. Ayivon to see how the business was progressing and testified that he was happy with what seemed to be going on there.

[84] After Iddi Yussuf became involved as the renter of one-half of the premises at 7805 6th St., he proposed having a more complete office services type of business at the location, as opposed to a simple internet café. Mr. Onesmus saw this as a vehicle to promote his company BC Comm.net so he made an agreement with Mr. Yussuf to rent one of the offices from him. In addition, they agreed that Mr. Onesmus would be given three free month's rent in exchange for helping Mr. Yussuf to set up the internet café in Smart Bizz.

[85] All three moved in Smart Bizz over the next few weeks. Renovations took place, equipment arrived for both Western Union and Yussuf's business and Mr. Onesmus moved his material over from the Hartley address almost immediately. As the business was being put together there was a steady trickle of customers and the services offered at the site was expanding. Soon the Western Union portion was operating and by early February, 2003 the internet café was coming into being. New services like payday loans were being tested although only a couple of those had been done by February 11, 2003.

[86] In early February, Mr. Onesmus began to notice that he was being followed to home and back. The people at Smart Bizz did not believe him. Mr. Onesmus and Mr. Ayivon went for a drive and Mr. Ayivon confirmed that indeed Mr. Onesmus was being followed. Soon after, on February 5, 2003, at approximately 3 p.m., Mr. Onesmus approached a vehicle that was following him and asked the occupant why he was doing that. The occupant, Sgt. Reinhart, denied following Mr. Onesmus and left. Surveillance of the three suspects and Smart Bizz was stopped. Mr. Onesmus returned to Smart Bizz and told the occupants that he was indeed being followed and that they appeared

to be police officers. When he attended Smart Bizz the next day the rear office which had generally been occupied by Baba was cleaned out as was the office behind Western Union which was generally occupied by Mr. Njambali. The back office subsequently became a storage room.

[87] Mr. Onesmus continued to come to work to help both Mr. Yussuf and Mr. Ayivon to set up their businesses. A few days before the raid, Mr. Onesmus noticed he was having a problem with one of the computers that he had brought with him from Hartley Avenue. This computer, a generic computer referred to as 'No Name' in evidence, was stationed at the secretary desk near the front counter of the business centre side. It had been used by Lorne Parry at Hartley, and subsequently by Yussuf after he took over Parry's office at Hartley Avenue. Before having this computer repaired he backed up his own files and got confirmation from Iddi and Baba that they had backed up their files. Mr. Onesmus then took that computer to a repair shop on United Blvd. A computer of Yussuf's, a Compac, was put in place at the secretary station.

[88] Since the only computer now with a print driver on it was the Dell in Mr. Onesmus' office, Mr. Yussuf brought the Dell from his office into Onesmus' office stating he wanted to use the printer. With the usual computer with the printer drivers on it missing from the front, Mr. Onesmus thought nothing of this request.

February 11, 2003

[89] Mr. Onesmus stopped at Home Depot, purchased toner and arrived at Smart Bizz around 1 p.m. Once there he found Mr. Yussuf using the computer in the Western Union office and the envelopes and letters spread about. Mr. Onesmus was also

annoyed to note that Mr. Yussuf asked him to help fold and stuff these envelopes for a client of his. Mr. Onesmus had not been asked to help do this before, indeed had not seen Yussuf doing any mass mailings before but thought little of it and agreed to help. Mr. Onesmus described the letters as appearing to him as though they were concerned with a sweepstakes

[90] Before helping with the mail out, Mr. Onesmus opened the store, changed the printer toner, and worked at the cash register trying to program it to add an advertisement for BC Comm.net into its receipts. In doing so he noticed that he had ink on his hands from the toner and put on a pair of gloves left over from the renovations to keep from spreading the ink while he worked.

[91] While folding letters, Canada Post made a delivery that Mr. Onesmus signed for. He placed the package into the large package area below the front counter after filling out the log to note the arrival and going back to folding letters and stuffing envelopes. Mr. Onesmus testified that a person walked in and spoke with him for about 3 to 5 minutes about web services. He concluded that the person was just fishing, possibly inquiring for a friend, so he told the man that he was busy now so the man left.

[92] A short time later the police entered and Mr. Onesmus was arrested as he continued to fold and stuff the envelopes. He testified that he never opened the Canada post package and that he had no idea that it contained money and did not know what had happened to the money.

D. SUBMISSIONS

1. Theory Of The Crown

[93] It is the theory of the Crown that the Accuseds participated together and with others in setting up and running a business, the primary function of which was to defraud people by way of a lottery and counterfeit cheque scam. Furthermore, in setting up the business, the Accuseds used equipment that they obtained by fraud.

[94] The Crown's theory is that Onesmus and Yussuf were the principal participants and Ayivon a lesser participant in the criminal enterprise which moved to Smart Bizz in October 2002. It is conceded that there is no evidence of participation by Ayivon prior to the opening of Smart Bizz. It is also conceded that, on the evidence, Ayivon's participation was considerably less than that of the other parties. However, it is submitted that he was indeed a party to the ongoing offences because he assisted the others in their operation within Smart Bizz, knowing that their operation was rife with fraudulent activity.

2. Defence

[95] On behalf of both Accuseds it is submitted that they had no knowledge of the frauds operating from Smart Bizz. Others, primarily Iddi Yussuf and Filipus Njambali were solely responsible.

E. THE LAW

[96] The relevant sections of the *Criminal Code* are:

**Counts 1, 3, 6, 9, 12, 15, 18, 20, 23, 27, 30, 33, 36, 39,
Fraud**

s. 380(1) Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretense within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service,

(a) is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars; or

(b) is guilty

(i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or

(ii) of an offence punishable on summary conviction,

where the value of the subject-matter of the offence does not exceed five thousand dollars.

Counts: 2, 4, 7, 10, 13, 16, 19, 21, 24, 28, 31, 34, 37, 40

Theft

s. 322(1) Every one commits theft who fraudulently and without colour of right takes, or fraudulently and without colour of right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent

(a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it;

Counts: 5, 8, 11, 14, 17, 26, 29, 41

Uttering Forged Document

s. 368(1) Every one who, knowing that a document is forged,

(a) uses, deals with or acts on it, or

(b) causes or attempts to cause any person to use, deal with or act on it, as if the document were genuine,

(c) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or

(d) is guilty of an offence punishable on summary conviction.

Counts: 22, 25, 32, 35, 38

Possession of Property Obtained by Crime

s. 354(1) Every one commits an offence who has in his possession any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from

(a) the commission in Canada of an offence punishable by indictment; or

(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment.

[97] The Supreme Court of Canada case of **R. v. Theroux**, [1993] 2 S.C.R. 5 at paragraph 27 sets out the requirements of proof of *actus reus* and *mens rea* of fraud:

These doctrinal observations suggest that the *actus reus* of the offence of fraud will be established by proof of:

1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.

Correspondingly, the *mens rea* of fraud is established by proof of:

1. subjective knowledge of the prohibited act; and
2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

[98] **R. v. Wolsey**, [2008] B.C.J. No. 647 is a recent case of the British Columbia Court of Appeal which thoroughly reviews the law of fraud. At paragraph 88 *mens rea* is considered:

As noted, McLachlin J. addressed the *mens rea* of fraud in **Theroux**. A number of propositions follow from her discussion:

1. the test for *mens rea* is subjective; it is "not whether a reasonable person would have foreseen the consequences of the prohibited act, but whether the accused subjectively appreciated those consequences at least as a possibility" (p. 18);
2. in the absence of an explanation to the contrary, "subjective awareness of the consequences can be inferred from the act itself" (p. 18);

3. *mens rea* "consist[s] in the subjective awareness that one was undertaking a prohibited act (the deceit, falsehood or other dishonest act) which could cause deprivation" (p. 19);
4. to determine *mens rea* the question is "whether the accused intentionally committed the prohibited acts (deceit, falsehood, or other dishonest act) knowing or desiring the consequences proscribed by the offence (deprivation including the risk of deprivation)" (p. 19);
5. recklessness as to the knowledge of the consequences of the prohibited act can satisfy the knowledge requirement (p. 20).

[99] **R. v. Sansregret**, [1985] S.C.J. No. 23 at paragraph 22 is the classic statement of the law of wilful blindness:

Wilful blindness is distinct from recklessness because, while recklessness involves knowledge of a danger or risk and persistence in a course of conduct which creates a risk that the prohibited result will occur, wilful blindness arises where a person who has become aware of the need for some inquiry declines to make the inquiry because he does not wish to know the truth. He would prefer to remain ignorant. The culpability in recklessness is justified by consciousness of the risk and by proceeding in the face of it, while in wilful blindness it is justified by the accused's fault in deliberately failing to inquire when he knows there is reason for inquiry.

[100] I have also considered the following cases:

R. v. Helsdon, [2007] O.J. No. 243 (OCA),
R. v. Roach, [2004] O.J. No. 2566 (OCA),
R. v. Abdi, [1997] O.J. No. 2651 (OCA),
R. v. L'Heureux, [1985] S.C.J. No. 51, and
R. v. Nikolovski, [1996] S.C.J. No. 122.

LAW OF PARTIES

[101] The Crown takes the position that the evidence establishes beyond a reasonable doubt that the Accused acted in concert in a criminal enterprise, the primary goal of which was to defraud people by way of a lottery and counterfeit cheque scam. The

Accused also acted in concert to outfit the business premises with office equipment that was fraudulently obtained. The Crown concedes that the evidence does not pinpoint exactly which acts were performed by which Accused. However, it is submitted that the evidence does establish that they all assisted one another in the common goal and that they are therefore guilty as either principals or parties, pursuant to s. 21(1)(b) of the **Criminal Code**.

[102] In **R. v. McMaster**, [1996] 1 S.C.R. 740 (at para. 33), the Supreme Court of Canada said:

It is a well-established principle that where a trier of fact is satisfied that multiple accused acted in concert, there is no requirement that the trier of fact decide which accused actually struck the blow.

[103] In its discussion of “participatory liability”, our Court of Appeal in **R. v. Rojas** 2006 BCCA 193 (at para. 49) adopted the reasoning of the Supreme Court of Canada in **R. v. Thatcher** [1987] 1 S.C.R. 652, as follows:

Earlier in **Thatcher** Chief Justice Dickson (at p. 688) quoted with approval the words of Martin J.A. in **R. v. Sparrow** (1979), 51 C.C.C. (2d) 443 at p. 458 where, speaking for the Ontario Court of Appeal (Martin, Lacourciere and Thorson JJ.A.), Martin J.A. said, at pp. 457-458:

Where, on a joint trial, there is evidence that a crime was committed by two or more accused persons acting in concert, it is, of course, appropriate to charge the jury with respect to the provisions of s. 21 of the *Code* even though it is uncertain which accused was the actual perpetrator: see *Chow Bew v. The Queen* (1955), 113 CCC 337 at p. 342 (1956) 2 DLR (2d) 294, [1956] SCR 124; *R. v. Rice* (1902), 5 CCC 509 pp. 518, 520-1, 4 OLR 223. I am of the view that it is also appropriate, where an accused is being tried alone and there is evidence that more than one person was involved in the commission of the offence, to direct the jury with respect to the provisions of s. 21 of the *Code*, even though the

identity of the other participant or participants is unknown, and even though the precise part played by each participant may be uncertain. It is, in my view, however, improper to charge the jury with respect to the liability of the accused as a party under s. 21 where there is no evidence proper to be left with the jury that more than one person was actually involved in the commission of the offence.

[104] The Crown does not need to prove the precise part played by each participant in this case but must prove that each Accused knowingly participated or assisted in the conduct of the criminal enterprise.

F. DISCUSSION

Anthony Ayivon

[105] The Crown has proven that the fraudulent activity took place from the Smart Bizz premises in New Westminster. The Smart Bizz company was incorporated by Mr. Ayivon who was the sole officer and director. Smart Bizz was the lessee and Mr. Ayivon was the guarantor on the lease. He was the franchisee for the Western Union franchise which operated from the Smart Bizz premises and which was used in some of the frauds. On occasion his phone was programmed to another phone found in the Smart Bizz office which had been obtained by fraud.

[106] The Western Union area of the office utilized an IBM computer and two cash drawers which had been obtained by fraud.

[107] Mr. Ayivon's Western Union password and account number were used in the transactions where money fraudulently obtained from Father Wittenbrink was paid to a person using the fictitious name Father Joseph Copeland.

[108] Mr. Ayivon was at Smart Bizz on 17 of the 19 days of which surveillance of Smart Bizz was conducted.

[109] I accept the evidence, all of it circumstantial, led by the Crown with regard to Mr. Ayivon. The issue is whether it supports the inferences as submitted.

[110] Mr. Ayivon testified on his own behalf and denied any knowledge of the lottery frauds against the individuals or the frauds by which equipment was obtained. I must therefore determine the credibility of Mr. Ayivon with regard to the explanations he offered. I instruct myself as follows: If I believe the evidence of Mr. Ayivon, I must acquit. If I do not believe his evidence but if I am left in a reasonable doubt by it, I must acquit. Even if I am not left in doubt by the evidence of Mr. Ayivon, I must ask myself whether on the basis of the evidence which I do accept, I am convinced beyond a reasonable doubt by that evidence of his guilt.

[111] I am instructed further with regard to the application of the **W.(D.)** test by Mr. Justice Romilly's comments in para. 59 of **R. v. Whitman**, 2005 B.C.J. 2448:

Trial judges must show that they have considered the middle ground as enunciated in **W.(D.)**. Care must be taken to examine the evidence of the defence in the context of the evidence as a whole to determine if the trier of fact is left with a reasonable doubt. Rosenberg J.A. discussed this point in the recent case of **R. v. Minuskin** (2003), 68 O.R. (3d) 577 at para. 22 (C.A.):

- It is important to stress that trial judges in a judge alone trial do not need to slavishly adhere to this formula. This suggested instruction was intended as assistance to a jury and a trial judge does not commit an error because he or she fails to use this precise form of words. Nor is the trial judge expected to approach the evidence in any particular chronology, for example, looking first at the accused's evidence and then at the rest of the evidence. It should, however, be clear from an examination of the reasons that at the end of the day

the trial judge has had regard for the basic principles underlying the W.(D.) instruction. One of those principles is that it is not necessary for the trier of fact to believe or accept the defence evidence for there to be a reasonable doubt. Even if the trier of fact believes the prosecution witnesses, the evidence as a whole may leave the trier of fact with a reasonable doubt. As it was put by Cory J. in W.(D.)... the trier of fact must acquit even if he or she does not believe the accused's evidence because they have a reasonable doubt as to the accused's guilt "after considering the accused's evidence in the context of the evidence as a whole".

[112] I commence with the context of the evidence as a whole. It is the Crown's submission as noted above that Mr. Ayivon was a lesser participant in the frauds but based on the circumstantial evidence led, he was acting in concert with others including Mr. Onesmus and Mr. Yussuf. They submit that it was his role to assist by paying the lease on the premises, constructing and renovating the premises and maintaining the Western Union franchise so that there was a business base for the fraudulent operations. In order for that proposition to succeed in law, it is necessary that the Crown prove that Mr. Ayivon knew of the fraudulent activities or was wilfully blind. In that context I consider his evidence and his denial of knowledge.

[113] The premises of Smart Bizz, as apparent from the video taken on the day of the execution of the search warrant, looked very professional. There was a Western Union, an internet café area, a wall of mail boxes, and a counter with business supplies and a cash register. Mr. Booth of Western Union testified that the franchise was viable. However, the financial and business arrangements within those premises were loose and unprofessional. Mr. Ayivon kept track of his costs for doing the renovations, but had not presented accounts to Mr. Onesmus and Mr. Yussuf for their share on the office sharing arrangement. Mr. Ayivon was paying the rent of \$2700 a month and had

received only \$2000 from Mr. Onesmus to the date of the police raid. Mr. Yussuf was supplying the equipment, as it turns out fraudulently, without any contribution from Mr. Ayivon. Mr. Onesmus was helping both Mr. Ayivon and Mr. Yussuf with their businesses and not being compensated for being essentially the manager of Smart Bizz operation.

[114] Mr. Ayivon testified that the reason for this loose arrangement was that he had a trusting relationship with Mr. Onesmus to whom he acted in a big brother capacity. He had a good working relationship with Mr. Yussuf who was a friend of Mr. Onesmus and who had said that they would "work it all out later". Mr. Ayivon was to pay Mr. Onesmus for his assistance in running the Western Union office, while Mr. Onesmus was to pay Mr. Ayivon his share of the rent when he was financially able. I accept this explanation for his disorganized business practices at Smart Bizz. I note that throughout the evidence, Mr. Ayivon used accurate personal information in his business dealings with others such as banks and Western Union.

[115] For the first year of the Western Union business, Mr. Ayivon expected that he would need the help of Mr. Onesmus and others so that he could continue at his carpentry business in order to pay his bills while Western Union became profitable. To that end, Mr. Ayivon left his Western Union access name and code number in a notebook in the Western Union area. Others including Onesmus, Yussuf and Phil conducted Western Union business with Mr. Ayivon's consent. It was Mr. Ayivon solely who was permitted by the franchise agreement to do the banking. He did this almost daily.

[116] With regard to the Father Joseph Copeland cheques, it was Mr. Ayivon who signed the cheques when they were deposited into the bank. I cannot find on the evidence that it was Mr. Ayivon who conducted the transaction with the person fraudulently using the Father Copeland name at Smart Bizz.

[117] Mr. Ayivon used the computer on loan from Mr. Yussuf. He was planning to use his wife's computer which was in the back room at Smart Bizz awaiting an update to make it usable in the Western Union business. Mr. Ayivon had brought an old cashbox from home for use in the Western Union office, but accepted Yussuf's offer of the two cash drawers intending to deduct that amount from Yussuf's rent. With his explanation of his own old equipment, I cannot find that he knew that Mr. Yussuf's equipment was fraudulently obtained.

[118] There is no direct evidence that Mr. Ayivon saw or heard anything. He was, as on the day of the raid, usually there for brief periods of time. He denies that he heard any of the telephone conversations of the fraudulent lottery scheme. He denies that he saw Onesmus and Yussuf stuffing envelopes on the counter while wearing rubber gloves the day of the police raid.

[119] I believe Mr. Ayivon that he set up the Smart Bizz Company and premises as he testified. I cannot find, and indeed Crown does not submit, that Mr. Ayivon directly participated in either the lottery frauds or the office equipment frauds. Absent the use of the words "Mike Matakoko" programmed into his telephone, I would believe Mr. Ayivon that he did not ever have any knowledge of the frauds operating from Smart Bizz. However, the use of Matakoko in the context of the use of Matakoko throughout the

fraudulent activity is not adequately explained. It creates a suspicion that Mr. Ayivon knew something was going on with Onesmus, Yussuf, the others and the Smart Bizz premises. It is not proof beyond a reasonable doubt.

[120] In the context of the extensive evidence as a whole, the evidence against Mr. Ayivon does not prove his involvement as a party. I cannot find on the evidence that Mr. Ayivon had actual knowledge. I cannot find on the evidence that Mr. Ayivon was wilfully blind.

[121] I therefore find Mr. Ayivon not guilty on all counts.

DISCUSSION REGARDING MICHAEL ONESMUS

[122] I accept the evidence led by the Crown with regard to Mr. Onesmus. Again, the issue is whether or not that evidence proves beyond a reasonable doubt the guilt of Mr. Onesmus and whether Mr. Onesmus' denial raises a reasonable doubt. I must determine whether or not the explanations offered by Mr. Onesmus are credible. I will consider the categories of evidence raised by the Crown.

[123] I commence with the direct evidence which is the evidence of Mr. Onesmus together with Mr. Yussuf wearing rubber gloves stuffing bait letters into envelopes on the front counter of Smart Bizz on the day of the raid. These letters were clear in their first and second paragraphs that the addressee had won a lottery. I find that Mr. Onesmus in readying the letters for mailing knew the content and by his actions intended the purpose of the letters, deprivation of the addressees. I do not accept his evidence that he was wearing rubber gloves because he had toner on his hands from

working with the printer. Although I accept that he had purchased toner that day, his explanation of having to wear gloves because it was on his hands is not credible because he testified that between the toner job and stuffing envelopes he had worked with the cash register so that the tape would say "BC Comm.net" at the bottom. It is not logical that he would do that without washing the toner off his hands. His alternative explanation of having sweaty hands also goes no distance in explaining why Mr. Yussuf was also wearing rubber gloves to stuff bait letters into envelopes addressed to potential further victims of the frauds.

[124] I make that finding of his active participation in the fraud in the context of the evidence as a whole. The extensive nature of the documents located in Mr. Onesmus' office proves both his involvement in the ongoing frauds and forgeries and his knowledge. The documents on the screen of his computer at the time he was stuffing envelopes indicate a connection between Mr. Onesmus and the bait letters beyond his being an unknowing participant in Mr. Yussuf's enterprise. Further, it defies common sense that the volume and nature of the documents found in the various areas of Mr. Onesmus' office could have escaped his knowledge.

[125] The \$3900 US cash which was found under the flower pot in Mr. Onesmus' office ties Mr. Onesmus to the frauds quite directly. The envelope arrived via Canada Post at Smart Bizz at 4:02 p.m. on February 11, 2003. It contained \$3900 US from Peter Veal, one of the victims. Police officers conducting surveillance testified that no one went in or out of the back or front door of Smart Bizz between the time that the package from Veal was delivered and the time of the raid, shortly after the package arrived. Mr. Onesmus and Mr. Yussuf were the only people in Smart Bizz who could have hidden

the money under the flower pot. I conclude that Mr. Onesmus put the money under the flower pot in his office as it would be a common sense conclusion that if Mr. Yussuf was hiding the money, he would have hidden it in a place where it was accessible to him such as in his office. Mr. Onesmus had no credible explanation for the location of the \$3900 US cash. I do not believe his evidence of the unknown person who came to him for general advice in the short time between the Canada Post delivery and the raid. It is entirely inconsistent with the police evidence which I do accept.

[126] By receiving and hiding the money received from a victim I conclude that Mr. Onesmus knew of the fraud which resulted in the funds arriving at Smart Bizz and intended to benefit from the deprivation of Mr. Veal.

[127] Mr. Onesmus' use of the fraudulently obtained cell phones also ties him to the frauds. He made personal calls frequently on the same cell phone as were made calls in furtherance of various frauds. His explanation of using that telephone to save money since his own cell phone was often unavailable to him due to non-payment of accounts is not credible because if he had the use of a free phone it makes no sense for him to continue to pay money on his regular phone. This is particularly the case because he used the fraudulently obtained phone regularly as his own phone to telephone his wife, mother and friends as is apparent from the calls outgoing and incoming as well as the names and numbers stored in the telephone. With Mr. Onesmus regularly in possession and use of this telephone, the conclusion can be and is drawn that if someone called in on that telephone to discuss the lottery and got Mr. Onesmus, that he was available to discuss the lottery scheme with them.

[128] Mr. Onesmus' ability to send \$12,000 Can., \$8,200. US, from his Jyske bank account in Latvia to Mr. Ayivon I interpret as evidence that he had funds available to him from offshore, and that his financial situation was not as dire as he testified. Although Mr. Onesmus testified that this money came from his father and he gave it to Mr. Ayivon to pay a debt, that is not credible since the transfer on December 3, 2002 is inconsistent with the loose business arrangements that all financial obligations would be settled after the business was up and running. Even with the assertion that this was for a pre-existing debt, the payment of that sum of money to a friend for an old debt at the time that Mr. Onesmus testified he was having difficulty paying his cell phone bill leads me to the conclusion that Mr. Onesmus had access to money contrary to his testimony.

[129] His explanation for signing the lease with the alias "Michele Matakko" was his concern that the realtor would conduct a credit check of the signatories. Logically then, Mr. Lowe would initiate a credit check of Michele Matakko and learn quickly that it was an alias. I do not believe Mr. Onesmus' evidence and conclude that he used the alias to hide his identity.

[130] With regard to the particularities of Mr. Onesmus' handwriting and its appearance on a number of incriminating documents, it is my observation that the Onesmus handwriting is sufficiently unique such that it is very likely that Mr. Onesmus wrote the documents alleged. His explanation rings hollow. However, I do not take this area of evidence to be conclusive or definitive but to be part of the evidence as a whole and the general context.

[131] I have considered the totality of the evidence which includes the evidence of Mr. Onesmus. I do not find in his explanation of his previous businesses or documents or possible documents relating to those businesses any credible explanation for the categories of evidence Crown submits and I agree are incriminating. I do not believe Mr. Onesmus' denials with regard to any of the Crown categories of evidence. They are inconsistent with the evidence as a whole.

[132] These findings of lack of credibility bring me to the third step of the oft cited test in *W. (D.)* with regard to credibility: Even if I am not left in doubt by the evidence of the Accused I must ask myself whether, on the basis of the evidence which I do not accept (Mr. Onesmus' evidence with regard to the areas set out above), I am convinced beyond a reasonable doubt in the context of the evidence as a whole. In other words, the onus remains on the Crown to prove each element of each offence beyond a reasonable doubt.

[133] In making that determination, I have considered the law as set out above with regard to fraud and as determined by the *Wolsey* case in particular. I have considered the law of parties and the law with regard to circumstantial evidence.

[134] I am also mindful that this fraudulent scheme as indicated by the Latvian bank account analysis was in operation between August 2001 and October 2003. It continued after Mr. Onesmus' arrest in February 2003. That together with the surveillance evidence and photographs of others frequently at the Smart Bizz premises indicates that Mr. Onesmus did not act alone.

[135] In conclusion, I am satisfied beyond a reasonable doubt that the Crown has proven each element of each of each of the offences including the identity of Mr. Onesmus. I find that Mr. Onesmus knew of or participated in each of the frauds and the fraudulent scheme that resulted in the deprivation of each of the 14 victims of the fraud. He participated in the forgeries that were used in the frauds. I find that each of the frauds and forgeries is tied to the premises at Smart Bizz.

[136] Mr. Onesmus is entitled by law to know why his denial of guilt is not accepted. I must delineate the pathway to conviction (see *R. v. M.K.N.*, [2007] B.C.J. No. 2075). In addition to the consideration of the totality of the evidence and the categories of evidence reviewed above, I find it impossible to believe that Mr. Onesmus did not know of the frauds and the forgeries when he was surrounded by extensive evidence: in his office, on his desk, on his computer, in his briefcase, in his wallet, on a phone he used, and in his hands at the time of the raid. His denials are entirely inconsistent with extensive evidence which I accept.

[137] I therefore find you Mr. Onesmus guilty of:

Counts 1;
3, the lesser included offence of attempt fraud;
5;
6, the lesser included offence of attempt fraud;
8;
9;
11;
12, the lesser included offence of attempt fraud;
14;
15;
17;
18;
20;
23;
26;

27;
29;
30;
33;
36;
39; and
Count 41.

[138] Pursuant to *R. v. Kineapple*, a judicial stay is entered on the remaining counts.



The Honourable Judge J. Watchuk
Provincial Court of British Columbia

APPENDIX A

The map at exhibit C-3-G shows Mr. Onesmus' office contains the following areas:

desk (area 9);
shelf (area 10);
cabinet (area 11); and
flower pot.

There were many documents in Onesmus' office which show (1) the office was used by Mr. Onesmus, and (2), evidence of fraud. Both points are often contained on the *same exhibit*. Each area within the office is a microcosm of that notion: each area contains documents showing it was used by Mr. Onesmus, and evidence of fraud.

Area 11, which was the cabinet and the area beside it, can be broken down further yet. Each sub-area of Area 11 contains evidence it belonged to Mr. Onesmus, and evidence of fraud. Cst. Jan Baker searched Area 11 (except for under the flower pot, see Exhibit 1085, Tab 12, which is the exhibit lists for the search of Smart Bizz), which we see on the floor plan at C-3-G was the cabinet area in Onesmus' office. This area included the briefcase beside the cabinet, and a black accordion folder. Area 11 was broken down into 7 sub-areas as follows:

1. Black accordion folder on the floor beside the cabinet;
2. second drawer of cabinet;
3. third drawer of cabinet;
4. keys;
5. briefcase;
6. near planter, but not under;
7. under the planter, where Sgt. Stein located the \$3,900.

The contents of Mr. Onesmus' office are examined area by area. Area 11 is broken down into its sub-areas. First considered are the documents which show the specific area was used by Mr. Onesmus, and then the evidence of fraud in that area.

Documents on Desk, Area 9, Showing Desk Used by Onesmus

1. Ex. 1030 doc 1209 04069: letter from Onesmus, re: introduction of Mr. Njambali. Mr. Onesmus stated that someone else signed this letter;
2. Vol J, tab 9, doc 1209 03021: Royal City Mail Box notice to Onesmus (also at 7-31-A). Mr. Onesmus stated this was his;
3. Vol J, tab 9, doc 1209 03022: tax invoice to Ms. E Onesmus (also at 7-31-A). Mr. Onesmus stated this was his;
4. Vol J, tab 9, doc 1209 04060: TD Canada Trust document with handwriting: "Mike's total deposit \$3600".

Documents on Desk, Area 9, Evidence of Fraud

The Exhibit List contains many documents which are stamped with a number beginning with 1209. They were found on, or in the desk in Mr. Onesmus' office. They include:

1. E-1-G page 1, marked 1209 03011: list of personal information, including Boniface Wittenbrink (counts 1 and 2), and Zelda Walker (counts 3,4,5);
2. E-2-A page 2, marked 1209 03009: list of personal information including Zelda Walker (counts 3,4,5);
3. F-3-E page 2, marked 1209 03026: list of personal information, including Olesen (counts 6,7,8);
4. F-4-H page 2, marked 1209 03006: list of personal information including Peter Veal (counts 9 and 10), who sent \$3,900 to Smart Bizz which arrived approximately half and hour before the raid. At the time of the raid, \$3,900 was located under the flower pot in Onesmus' office;
5. G-5-D marked 1209 03025: spreadsheet with personal information of Melandish (counts 12,13,14);
6. Vol 6, tab 6, marked 1209 04052: bait letter ostensibly from El Gordo. Except for the addressee, this is exactly the same as those on front counter of Smart Bizz when the raid was executed. Same as one addressed to Bruce Love A-7-C p. 120139 (counts 18 and 19). Similar to the two bait letters in his brief case, see vol J, tab 11 05, doc 1211 05018 and 1211 05180;
7. Vol 6, tab 24, marked 1209 03002 to 03012: list of personal information, including Peter Veal (p 6) (counts 9 and 10), Boniface Wittenbrink, and Zelda Walker (p 11) (counts 1 and 2);
8. Vol 7-31-A, marked 1209 03029: handwritten notes with phone number 1-888-243-3499. This number was used in many of the frauds, see section on phones;
9. Vol 7-32, marked 1209 04052: Spanish El Gordo bait letter;
10. Vol 7-44-B, marked 1209 04047: bait letter from MG Financial, which has been edited to FS Management. FS Management was on the logo of the bait letters on the front counter during the raid (see A-7-D);
11. Vol. J, tab 9, doc 1209 04043: letter to Jim Brown at 641 Columbia Street, Suite 403 New Westminster. The bait letters on the front counter of Smart Bizz during the police raid had a letterhead of FS Management Group Ltd. at this address (see A-7-D);
12. Vol J, tab 9, doc 1209 04049: unsent envelope from El Gordo;
13. Vol J, tab 9, doc 1209 04066: MGM Finance cheque blanks (see section on Companies);
14. Vol J, tab 9, doc 1209 04012 to 1209 04040: notebook. On the desk in Onesmus' office there was a notebook and certain pages are at vol J, tab 9, doc 1209 04012 to 1209 04040, each page is sequentially stamped with its own exhibit number starting with 1209. On page 15 of the notebook (vol J, tab 9, doc 1209 04012) we see: "BC Comm E-Mails" which is the name of Onesmus' company (see Companies). On page 197 (vol J, tab 9, doc 1209 04032) we see: "Jyske B". Mr. Onesmus had a card for the Jyske Bank in his pocket when he was arrested. Interestingly, he denied writing that. On page 200 of the notebook (vol J, tab 9, doc 1209 04034):

- a. "604 603 9438 My Roger". This is a Roger's cell phone number (see list at ex. 1083), and the phone with that number was also found on Onesmus' desk and is exhibit 1209 03001. That phone was used extensively in many of the frauds in this case (as set out in the section on phones);
- b. "Richard Jackson" whose name was used on bait letters. See A-7-C, which includes many bait letters that state in the last paragraph: "Please contact Isabel Garcia or Richard Jackson of MGM Finance and Security";
- c. "4003 – 708 Columbia St." which was extensively used in the frauds;
- d. Mataka, which was extensively used in many of the frauds.

On page 201 of the notebook (vol J, tab 9, doc 1209 04035):

- a. "James Johnson" whose name was extensively used in the frauds (see section of James Johnson);
- b. "Richard Jackson." See above discussion from page 200;
- c. "604 603 9438" See above discussion from page 200;
- d. "4003 – 708 Columbia St." which was extensively used in the frauds;
- e. "604 488 4380" General 1-102 page 3 links this phone number to 641 Columbia St, Viatech and Joseph Brown, who was extensively involved in the frauds, see section on Joseph Brown;
- f. "888 302 2599" which appears on a Bait Letter 7-31b.

On page 202 of the notebook (vol J, tab 9, doc 1209 04037):

- a. ELG, which is extensively involved in the frauds, see the section on ELG;
- b. MGM, which is extensively involved in the frauds, see the section on MGM;
- c. James T. King Jr., a name commonly used in the frauds, see his section.

On page 204 of the notebook (vol J, tab 9, doc 1209 04039):

- a. MGM Finance, extensively involved in frauds, see MGM section;
- b. Vitech, extensively involved in frauds, see Vitech section;
- c. "604 619 4386" which was Onesmus' phone, see section: Onesmus' Phones;
- d. "EFM2002" extensively involved in fraud, see section on EFM;
- e. "888 243 3499" fraudulent number of "John Brown" of Houston Forest Products B-1-A, B-1-B, B-1-K, and other frauds.

Under the desk at area 9, there were 2 Dell computers which had numerous documents within them which are tied to the various frauds (see the report of Ken Kuan, Exhibit 1087). Also, on Onesmus' desk was the phone with number 604 603 9438. As we saw, that particular phone had numerous calls to many of the complainants, interspersed with calls to Onesmus' mother, friends and wife, both at home, and on her cell.

Documents on Shelf, Area 10, Showing Shelf Belonged to Onesmus

The following documents were located on the shelf in Onesmus' office (area 10) and are found in Volume J, tab 10:

1. 1210 01006 Telus Statement for Golden Sunset, Onesmus' company;
2. 1210 01007 AT&T Statement for Goldern Sunset, Onesmus' company;
3. 1210 01008 Internet domain name registry document;
4. 1210 01010 Cheque to BC Comm.net;
5. 1210 01012 Cheque to BC Comm.net;
6. 1210 01013 BC Comm.net document address #104 – 2131 Hartley Ave, Coquitlam.

Documents on Shelf, Area 10, Evidence of Fraud

The following documents were located on the shelf in Onesmus' office (area 10):

1. A-11-A stamped 1210 01002 personal info of Kalar (counts 20, 21, 22);
2. A-11-B stamped 1210 01003 personal info of Kalar (counts 20, 21, 22);
3. Vol J, tab 10, doc 1210 01020 Letter to FFM Inc., which is involved in many of the frauds (see section on Companies);
4. Vol J, tab 10, doc 1210 01021 Cheque to FFM Inc. (see Companies);
5. Vol J, tab 10, doc 1210 01026 Script sheet used widely in the frauds.

**Documents Beside Cabinet, Area 11 01 (Area 11, Sub-Area 01)
Black Accordion Folder Showing it Was Used by Onesmus**

1. Vol J, tab 11 01, numerous pages of Fantasy Five documents. Exhibit 6-7-B shows Michael Onesmus as the only director and officer of Fantasy Five Marketing Inc;
2. Vol J, tab 11 01, doc 1211 01223 Personal Banking Application for Onesmus.

**Documents Beside Cabinet, Area 11 01 (Area 11, Sub-Area 01)
Black Accordion Folder Showing Fraud**

1. Vol J, tab 11 01, doc 1211 01012 lists FFM Inc. (see Companies). This appears to be a bait letter;
2. Vol J, tab 11 01, doc 1211 01137 to 1211 01156 and 1211 01227 to 1211 01265 have "Isabel Garcia" written on them. She was the contact on the bait letters which covered the front counter of Smart Bizz, and she was the contact person for some of the victims.

Documents in Cabinet Itself, Area 11, Sub Areas 02 and 03 Showing it Was Used by Onesmus

1. Vol J, tab 11 02, doc 1211 02013 signed letter from Onesmus for an offshore money transfer;
2. Vol J, tab 11 02, doc 1211 02022 Webnames transaction record for Onesmus;
3. Vol J, tab 11 02, doc 1211 02024 to 1211 02034 Phone bills to Golden Sunset Marketing, which is Onesmus' company (see section on Golden Sunset);
4. Vol J, tab 11 02, doc 1211 02049 BC Comm.net memo from Michael / Mike of 2131 Hartley Ave, Coquitlam;
5. Vol J, tab 11 02, doc 1211 02050 Sender's copy of fax from Michael Onesmus of BC Comm.Net;
6. Vol. 3 Tab 135 (stamped 1211 02012): This is a "Wire Transfer Request and Debit Authorization" signed by Onesmus. It appears to be a money transfer from Onesmus' bank account in Latvia to Ayivon;

Documents in Cabinet Itself, Area 11, Sub Areas 02 and 03 Evidence of Fraud

1. Vol 2, tab 121, folder of blank cheque stock with is the same as numerous of the fraudulent "Allstate" cheques used in various frauds (see for example exhibit 139, which is the shredded and reassembled documents – which were also located in Onesmus' office in the paper shredder. See list of Allstate cheques in Appendix 1);
2. Vol 7, tab 54, file with 99 Truck Parts cheques;
3. Vol. J, tab 11 03, doc 1211 03007 onwards has hundred more 99 Truck Parts cheques;

Documents in Briefcase, Area 11, Sub Area 05 Showing Briefcase Used by Onesmus

The briefcase located in Mr. Onesmus' office is a microcosm of the office in that there are (1) personal documents which show he used it, and (2) evidence of fraud. Documents stamped 1211 05001 to 1211 05192 were located in the briefcase in Onesmus' office. As we see on the Exhibit Flow Chart for this area at tab 12 of Exhibit 1085, there were 192 items stamped from the briefcase. Documents contained in the briefcase which show it belonged to Mr. Onesmus include (except for the first item, these documents are located in Volume J, tab 11 05):

1. Vol. 1, tab 100, (which was number 1221 05192), Onesmus' **wallet**. The wallet contains numerous pieces of ID, personal to Mr. Onesmus.
2. 1211 05079 letter to Michael Onesmus of Fantasy Five Marketing. Onesmus is the sole director of Fantasy Five (Vol 6 tab 7-b). The Paritade bank card in Onesmus's name has "Fantasy Five Marketing" written below his name (Vol 1 tab 100);

3. 1211 05097 letter from Accudata to Michael of Fantasy Five Marketing, which states: "There is another file which we've had some success with called 'Lottery Masterfile' The cost is \$.24 cents per name, with a min. order of 5000 names. These are people who belong to lottery clubs or who actively play the lottery."
4. 1211 05125 This shows the address of BC Comm.net as 2131 Hartley Ave Suite 104 Coquitlam with the name of Onesmus;
5. 1211 05126 letter to "Mike" at BC Comm.net from Maxitel;
6. 1211 05127 money Gram from Michael Onesmus;
7. 1211 05128 note with Address of Jacqueline C Onesmus;
8. 1211 05177 letter to Onesmus at #348 – 720 – 6th St New West;
9. 1211 05185 bank record for Golden Sunset, which is Mr. Onesmus' company (see Companies);
10. 1211 05187-9: bank records for BC Comm.net, which is Mr. Onesmus' company (see Companies).

Documents in Briefcase, Area 11, Sub Area 05 Showing Fraud

1. A-6-B (stamped 1211 05051 onward) Script notes. See discussion below;
2. A-6-C (same as 7-74-D) stamped 1211 05144 payment instructions for Rietumu Banka;
3. F-4-H page 1 (stamped 1211 05024) list of personal information including Peter Veal (counts 9 and 10);
4. Vol 6-7-A (stamped 1211 05090), invoices from RP Associates (see section on this company in company section);
5. Vol 6-16-C (stamped 1211 05054) this tab has bait scripts, in particular one for Hainsworth. There are two documents in this tab for Hainsworth (counts 15,16,17);
6. 7-44-A stamped 1211 05039 script sheet for Leona Spehn. This corresponds to the bait letter to Leona Spehn at 7-44-B, which is essentially the same as the bait letters which covered the front counter of Smart Bizz at the time of the raid (see A-7-D). The margin notes on this sheet state: "She went to the bank to borrow and the bank said no." Then there is a reference to "CE" which (in the theory of the Crown) means "cutting edge" or cheque. In other words, like many victims, it appears this possible victim told the accused that she had no money. It appears that the accused then stated they would send a cheque, which would no doubt be fraudulent;
7. 7-66 stamped 1211 05041, bait letter from Lorne Porry;
8. 7-74-H stamped 1211 05026 payment instructions for Rietumu Banka re Lorne Porry;

And from Volume J, tab 11 05:

9. 1211 05002 to 1211 05017 another set of script notes. See discussion below;
10. 1211 05025 is four pages of a notebook (normally each page has a unique number). Page 2 has the phone number 604 323 4320, which is on the bait letter to Bruce

- Love (see A-7-E page 5). This phone was located on the cabinet in area 13, adjacent to the Western Union area;
11. 1211 05026 payment instructions for the Rietumu Bank in Riga, Latvia
 12. 1211 05042 phone script;
 13. 1211 05079 Letter from Lottery Services Australia to Michael Onesmus of Fantasy Five Marketing;
 14. 1211 05097 Letter from Accudata to Michael of Fantasy Five Marketing, which states: "There is another file which we've had some success with called 'Lottery Masterfile' The cost is \$.24 cents per name, with a min. order of 5000 names. These are people who belong to lottery clubs or who actively play the lottery."
 15. 1211 05106 to 1211 05116 are Jami Marketing documents. 1211 05107 states: "This list is comprised of mail order buyers and sweepstakes players who responded to a highly promotional solicitation. They eagerly volunteered their telephone number and credit card ownership information." 1211 05108 states: "Reach each of these sweepstakes players."

**Two Sets of Script Notes in Briefcase of Onesmus
Showing Onesmus' Involvement in Frauds:
A-6-B: Forms With Handwritten Notes; and
Vol J, Tab 11 05, Docs 1211 05002 to 1211 05017**

There were two sets of "script notes" located in the briefcase in Onesmus' office (in the documents at A-6-B and vol J, Tab 11 05, Docs 1211 05002 to 1211 05017. These script notes are consistent with the stories we heard from the victims of the lottery scheme. As we saw during the testimony of Mr. Onesmus, they are not notes of someone trying to sell lottery tickets, which was the purported business of Fantasy Five Marketing.

The script notes in A-6-B begin at police exhibit number 1211 05051, which means they were found in the briefcase located in Mr. Onesmus' office. Recall that this briefcase contained numerous documents personal to Mr. Onesmus.

It appears that these are notes from phone calls to potential victims. Some people apparently have no money to send. In those cases, it was decided to "send a cutting edge." It appears that means a cheque would be sent. On some of these forms we see the name Cheryl Hainsworth, who testified in the trial. The other names appear to be those of people who had dealings similar to all the lottery scheme victims in our case. Indeed, at Vol 6-16-D we see a Fed Ex waybill to Nona Ammett which was located in area 11, Onesmus's cabinet. Her name also appears at page 3 of A-6-B. The following are quotes from the "script sheets" located on Onesmus cabinet, at A-6-B:

- Page 2: Cheryl Hainsworth (counts 15,16,17)
- Page 3: Nona Ammett "To dep \$2,200"
- Page 4: Cheryl Hainsworth

Page 6: Cheryl Hainsworth "Okay will go for cutting edge"

Page 7: "will try to deposit today"

Page 8 : seems to be a problem "fuckin bitch is not on the same page... cancell"

Page 10: "receive cutting, will deposit today, waiting for release form before we sent funds to ELG"

Page 11: "sent cutting edge new"

Page 12: "no \$, okay for cutt edge."

Page 13: "Will think about it then call me back. No problem, he offer for me to pay. Will go for cutting edge."

Page 14: "I need to find out which insurance company is holding funds ...

Received. *Had a stroke, can hardly reach*, will deposit today Nov 14. Going to send ... Was told not to send the money. Go for cutting edge."

Further to page 6: we will recall that on December 18th 2001, Craig and Cheryl Hainsworth of Rialto, California received in the mail from Federal Express a cashier's cheque in the amount of \$9,500.00 drawn on the account of First Virginia Bank. That same amount appears on the script sheet found on Onesmus's desk. Note the heartless nature of this scheme at page 14. These quotes are *not* consistent with someone trying to sell lottery tickets.

The second set of script notes located in the briefcase in Mr. Onesmus' office are found at vol J, Tab 11 05, Docs 1211 05002 to 1211 05017. Again, as we saw in the testimony of Mr. Onesmus, these notes were clearly not written by someone selling lottery tickets. The Crown is not relying solely upon the handwriting to link these notes to Mr. Onesmus. They were found in a briefcase in his office along with numerous other items which are personal to Mr. Onesmus, as we saw. Some examples of the notes:

1. 1211 05004: "get Spain to call...";
2. 1211 05006: "CB 1 hr, try to find out how much money she has on CC";
3. 1211 05008: in the upper section: "we have to let Spain call her," and near the bottom: "cripple cant go anywhere";
4. 1211 05010: "CE leaving Monday , went to send 25 hundred, bank will not do it, to go open new bank ... don't sent ... until she receive CE";
5. 1211 05015: in the third section we see the name Tony Fernandez. At E-1-H, page 2, we see an El Gordo bait letter to Father Wittenbrink from Tony Fernandez.

APPENDIX B

Ken Kuan noted that computer users create the file path names, and this is often done so that the description of the file path matches the document. This system is used so people can locate their computer files, just like one would locate a page in a file cabinet. You would start with a large file, and then find a sub-file and so on until you found the page you want. While it may be true that some people create file names which are different than the documents, in our case, we see that the file paths of documents correctly denote what the file is. Indeed, we saw this was the case with the documents in Ken Kuan's report, for example:

1. the file path of the first document listed at page 14 of his report ends with the phrase "board meeting", and we see the document (the first one after page 28) purports to be the agenda and minutes of a board meeting;
2. the file path of the second document at page 14 ends with the phrase "Account Letter," and that document is a letter dealing with an account;
3. the file path of the third document at page 14 ends with the phrase "Citibank\Hood" and we see that is a letter to Mrs. R. Hood and refers to Citibank;
4. and so on.

From this, we can see that the file path names were not deceptive; they were a proper description of the contents of the file. Note that the file paths of all the documents described in pages 14 to 18 of Mr. Kuan's report also contain the name "Mike."

At page 14 of his report, the first file path is broken down as follows:

2002E003098	is a number assigned by the RCMP
03_29_03	is the Computer Forensic Lab number for hard drive 3
C\Mike	everything from the "C" onward came from the computer as it was in Smart Bizz.

To take another example, note the file path at the top of page 16 has the name "Mike" and the name "Matako," and recall that Onesmus signed the lease "Michele Matako." As Ken Kuan stated, that document is the one with the file path ending in "letter1.doc" at the bottom. We see it is letterhead, with the address of 2131 Hartley Ave in Coquitlam. We heard from Lorne Parry that address is Onesmus' former business address.

Cpl. Kuan stated that file paths are folders within folders, separated by slashes. As you read a file path (from left to right) you go from folder to sub-folder and so on. Take for example the second last item at page 17 of Ken Kuan's report. The file path is:

```
2002E003398\03_29_03\C\Mike_Old\Zenu2\Mike\
personal\cuttingedge\Payment instructions for transfers.doc
```

That breaks down as follows:

2002E003398 is the RCMP Vancouver Commercial Crime Section number as seen on the cover of Cpl. Kuan's report.

03_29_03 is the harddrive assigned item number 3 as set out at the end of Mr. Kuan's report. So, the document with this file path was located in hard drive 03, which was on computer 01, which was located in area 9, which was under Onesmus' desk.

Up to there, the file path is created by the police. After that, the file path is the same as it was originally on the computer:

C: is the "C" drive of this hard drive;

Mike_Old: is the first folder which contains the subfolder which follows

Zenu2: is a folder contained within "Mike_Old," and Zenu2 in turn, contains the folder listed next

Mike: is a folder contained in "Zenu2," and "Mike" in turn, contains the folder listed next

personal: is the next level of subfolder

cuttingedge: is the next level of subfolder

Payment instructions for transfers.doc: this is the name of the file (as opposed to a folder) which we see in the following pages.

This document is payment instructions for the Paritate Bank. This document is very similar to the one at tab 7-74-A, which was located on the front counter of Smart Bizz when the raid occurred. There were other similar documents for the other Lativan bank accounts noted in John Mak's report.

The point is: the file paths describe what is contained in the document. The file paths also contain the name "Mike," and that is one more piece of evidence that leads to Onesmus. Take for example 6-16-A, page 1. Look at the document for further connection to Mr. Onesmus:

1. the letterhead has the name "Matako," which is Onesmus' alias, and name he used to sign the Smart Bizz lease;
2. the name "Mike" in the file path;
3. the document was located in a computer under Onemus' desk;

4. the letter is addressed to "Nona." We see a "script sheet" for Nona at A-6-B, page 3. We know it's the same Nona, because the address is the same on the two documents. The script sheet at A-6-B was located in area 11, Onesmus' cabinet;
5. the phrase "cutting edge" (whatever that might mean), is in the file path of the letter at 6-16-A, and also on many of the pages at A-6-B, which were located on Onesmus' desk. A-6-B contains the script sheet for Nona, but it also contains other similar script sheets, also located on Onesmus' desk. And many of those contain the phrase "cutting edge".

Cpl. Blake Burgess looked through the computer hard drives and printed off a number of files from them. He labeled the bottom of those sheets with the "file path" in handwriting and initialed them "BB". Because they related to various aspects of the case, they appear in various locations:

- a. 6-15-A: letter regarding setting up a Citibank Offshore account, we will recall Bruce Love testified that he was instructed to set up a Citibank Offshore account too (see A-7-E). This document has a file path which starting at the end has the document name of "Hood", and we see it's a letter to Mrs. R. Hood. That's in a folder called "CitiBank", and we see the letter refers to Citibank in the first paragraph. That's in a folder called "ausie" and we see the letterhead contains OZ. That's contained in a folder called "personal", which is contained in a folder called "Mike". That's contained in "Zenu-2" which is contained in "Mike_Old";
- b. 6-15-B: letter regarding winning the lottery from OZ Lotto, with a file path containing the name "Mike" twice;
- c. 6-16-A: letter from PP Inc. A Mataka Zenu Company regarding a \$9,800 cheque, with a file path including the phrase "cutting edge", and "Mike" twice;
- d. 7-45-B: memo regarding a Unibanka money transfer purportedly from Lorne Porry, with a file path containing the name "Mike" twice;
- e. 7-51: scanned passport of Michael Ngendle, with a file path containing the name "Mike" and "Mataka";
- f. 7-52-A: letter from "ELG International" regarding a prize from El Gordo, with a file path containing the name "Mike" twice and the words "ELG" and "letter";
- g. 7-74- b, e, g, i, and k contain more similar examples.

APPENDIX C

1. The document itself has the address of Onesmus' old business location at 2131 Hartley Ave (see section on Hartley Ave.). Lorne Parry commented on this document (7-43) and stated that is the address where he worked for Onesmus for 18 months (see April 15, 2008 transcript at page 17, line 36);
2. this document was located on a hard drive in a computer under the desk of Onesmus;
3. the file path for this document contains the name "Mike";
4. the file path also contains the name "Matako," and Onesmus signed the lease as "Michele Matako";
5. 7-44-B was found on Onesmus' desk (area 9), and it has the exact same letterhead, before the handwritten changes, except that the address is different;
6. when the raid occurred, Onesmus was standing at the front counter wearing rubber gloves. The counter was covered in bait letters bearing the "FS" logo (see A-7-D). That logo is the same as the logo of the document at 7-43;
7. Lorne Parry stated that he helped to set up the computers in Smart Bizz. He was asked who told him to set up the computer equipment and he replied: "Mike" (April 15, 2008, page 5, line 27);
8. Located in the shredder in Onesmus' office we find (Ex. 139, the "shredded documents" number 50) a shredded letter with the same logo and the same letterhead as 7-43. Only the address is different. Look at 7-44-B. That too, has the same logo and letterhead, with yet a third address. And that paper document was found on Onesmus' desk.

APPENDIX D

PHONES LOCATED IN SMART BIZZ**List of Phones Located in Smart Bizz: Exhibit 1025
Reports of Sgt. Olmstead Setting Out Contents of Phone Memories: Exhibit 1083**

The following is a list of phones found in Smart Bizz, as listed in ex. 1025. Each of the phones was located in Smart Bizz and examined by Cpl. Olmstead. The data from the memories of each of the phones was noted in Cpl. Olmstead's continuation reports, exhibit 1083, which are noted.

1. 604 323 4320 1213 02003 Telus

Continuation Report 185. Located in area 13, adjacent to the Western Union area. Bruce Love testified he received this bait letter with this phone number (see A-7-E, page 5).

2. 604 787 8586 1222 03001 Bell

Continuation Report 175. Found on Yussuf's desk. This number was listed in the memory of phone 604 603 9438 as Eddycell.

3. 778 773 5130 1219 02001 Bell

Continuation Report 176

4. 604 831 8008 1215 02017 Telus: Ayivon Admitted Ownership

Continuation Report 179. See also: vol 3, tab 141. This was Mr. Ayivon's cell phone. Mr. Ayivon admitted ownership of this phone to Sgt. Stein and records for the memory of this phone were initialled signed by Ayivon after the raid (see vol 3, tab 141);

5. 604 786 0200 1213 02001 Telus

Continuation Report 182

6. 604 603 9438 1209 03001 Rogers Located on Onesmus' Desk

Continuation Report 169. This was one of two phones on Onesmus' desk, area 9. This phone had numerous calls to the victims interspersed with calls to Mr. Onesmus' wife, mother and friends.

7. 604 512 0559 1201 02001 Rogers

Continuation Report 171. Located on the front counter of Smart Bizz. G-6-A are the records for this phone ending Feb 4, 2003. This phone was in the name of Larry

Beeusaert. This phone made frequent calls to 888 243 3499, a number involved in many of the frauds.

8. 604 619 4386 1209 04001 Telus Located on Onesmus' Desk

Continuation Report 174. This was one of two phones on Onesmus' desk, area 9. At vol 3, tab 141 we see this number is listed in the memory of Ayivon's phone (831 8008) as "Mike Matak". This phone was called by the phone fraudulently registered in the name of Larry Beeusaert (G-6-A page 4, lines 7 and 55 and also page 6 and 7).

9. not programmed 1221 01001

Continuation Report 183.

10. 604 562 1749 1213 02002 Rogers

Continuation Report 173

11. 604 728 4578 1227 03001 Fido Located on Onesmus

Continuation Report 178. Found on the person of Onesmus (area 27 is Onesmus); This phone number was listed in Ayivon's phone's (604 831 8008) speed dial as "Mike Cell" (see Vol 3, tab 141).

12. 604 619 8218 1225 01001 Telus

Continuation Report 181. Area 25 is the person of Yussuf, and this was on his person

13. 604 649 5466 1201 02002 Rogers

Continuation Report 172. Located on the front counter of Smart Bizz. This phone had a message in the "outbox": "Bruce Love \$".

OTHER PHONES

604 897 8777

1. B-1-K: this number was used in the fraudulent Houston Forest Products incident, and was the supposed phone number of "John Brown" of 708 Columbia Street, New Westminster;
2. D-4-A page 8: this number was used in the CBM Metal incident for the fraudulent NG Financial Management;
3. Registered in the name of Jack Oldford (A-10-D page 2)

888 243 3499

1. This number appears on an El Gordo Bait Letter, as the number for Isabel Garcia and Richard Jackson. The letter was found on Onesmus' desk, 7-32, located 1209 04052;
2. Number for John Brown of Houston Forest Products B-1-A, B-1-B, B-1-K;
3. Norgaard: number for "M. Johnson" D-5-C page 2, D-5-E;

4. IBM: number for Viteck Inc C-3-M;
5. Davco: number for Andy Hood on Davco weigh scale order B-2-A;
6. Number for Matakoto Supply of 708 Columbia Street, New West, 6-28-C, 6-28-D;
7. This number was called frequently by 604 512 0559, a phone in the name of Larry Beeusaert, 6-12-A;
8. Number for J Johnson of EFM Inc. on Purolator waybills, Vol 6-3 pages 1 and 2, and 6-29, pages 1-3, located in the front counter area of Smart Bizz. This phone number was involved in many of the frauds (see section on phones);
9. Number associated with Lorne Porry on notes in area 13 in Smart Bizz, 7-30;
10. Number of MGM, written on note on Onesmus' desk, 7-31-A located 1209 03029;
11. Number for Vitech Solutions, 7-37, located in shredder in Onesmus' office;
12. Number for James King Jr. in Norgaard incident F-3-A, page 5

800 360 6163

1. Number for ELG on handwritten note located on Onesmus's desk, 7-31-A, located 1209 03029;
2. Used on bait letter to Wittenbrink (E-1-H, last page);
3. Used on bait letter to Veal (F-4-A, page 2);
4. Exhibit 139 (the shredded documents located in the shredder of Onesmus' office) Item 50 is a bait letter with this number;
5. Number for FS Management bait letter from James King Jr. of 7895- 6th St., Burnaby located in shredder basket of Onesmus' office (note the use of the Smart Bizz address – perhaps this is why this bait letter was shredded) Tab 7-44-C;
6. This number, with the name "ELG" was stored in the memory of a phone located on Onesmus' desk, which was phone number 604 603 9438, exhibit number 1209 03001, which was fraudulently registered in the name of Nam Pham, and used extensively in the frauds (see Olmstead Continuation Report 169)

604 488 4380

1. F-3-A, page 8: This was the phone number of Joseph Brown of Viatech Inc. on FedEx package to Mogens Olesen;
2. F-4-A page 3: This was the purported phone number of Joseph Brown of Viatech on the FedEx envelope to Peter Veal;
3. Vol 1, tab 102, page 3 links this phone number to 641 Columbia St, Viatech and Joseph Brown;
4. Vol. 7 tab 36 page 2 is a FedEx record which shows this as the number for Viatech for the transaction with Zelda Walker. The document links this number to Joseph Brown and 641 Columbia Street;
5. Vol J: 1209 04036: this is a page of handwritten notes with this as the phone number for Richard Jackson, whose name is on numerous bait letters.

PHONES OF MR. ONESMUS**604 619 4386, Police Exhibit 1209 04001, Located on Onesmus' Desk**

Phone Memory at Continuation Report 174 of Exhibit 1083

This was one of two phones on Onesmus' desk, area 9. At Vol 3, tab 141 we see this number is listed in the memory of Ayivon's phone (831 8008) as "Mike Matakoko".

604 728 4578, Police Exhibit 1227 03001, Located on Onesmus' Person

Phone Memory at Continuation Report 178 of Exhibit 1083

This phone was located on the person of Mr. Onesmus and he agreed this was his phone. The memory for this phone is located in Exhibit 1083, Continuation Report 178.

604 603 9438, Police Exhibit 1209 03001, Located on Onesmus' Desk

Phone Memory at Continuation Report 169 of Exhibit 1083

This was one of two phones on Onesmus' desk, area 9. Also on Onesmus' desk was a notebook. At page 200 of that notebook (vol J, tab 9, doc 1209 04034) it states: "604 603 9438 My Roger". Note this is a Rogers phone (see ex. 1025). This phone was fraudulently registered in the name of Nam Pham and we have the following records:

1. B 2 C records ending Nov 2002
2. 1027 records ending Dec 24, 2002
3. E 1 B records ending Jan24, 2003
4. 1027 records ending Feb 24, 2003

The phone records for this number show calls to six of the named complainants: Veal, Wittenbrink, Melandish, Walker, Norgaard, and Olesen, as well as calls to Latvia (see chart below). Exhibit 1083 has the list of the phone "memories". In that exhibit, Continuation Report 169 page 2 has "Dialled calls, number 9 is 1-210-333-6540 which is the number of Zelda Walker (counts 3,4,5, see also E-2-A page 2, which is a list of personal information found on Onesmus' desk. Walker's number is 7th from the bottom of page 2). This phone has "ELG" in the "Names" menu, which is a commonly used company name in bait letters (see Companies).

In the "Names" menu of 603 9438 is:

1. Nora Cell: 604 715 9669;
2. Nora Home: 604 463 6420; and

Those numbers are also listed in the phone located on Onesmus' person (phone number 604 728 4578, Continuation Report 178, in Exhibit 1083, which is discussed above). We see that the calls from Onesmus' phone 604 603 9438 has calls to his wife,

Latvia, and calls to the various named complainants. There are numerous other similarities in the phone memories of these two phones. Both contain entries for:

1. Eddy
2. Elly, Onesmus' mother;
3. Justice, an acquaintance who organized functions in the African community;
4. Nora Cell;
5. Nora Home;
6. Phil;
7. Tony;
8. Dripa / Ricky (same person according to Mr. Onesmus);
9. but **not** Mr. Onesmus.

Neither phone has an entry for Mr. Onesmus, even though both phones have entries for many of the people who were associated with Smart Bizz. The Crown submits that Mr. Onesmus was not in the speed dial of either phone because they both "belonged" to him.

The record ending **November 24, 2002 (Ex. B-2-C)** has calls to Nora at numbers: 20, 21, 27, 33, 49, 85, 89, 93, 96, 283, 330, 337, 487, 511, 528, 535, 536, 541, 544, 547, 555, 567, 574, 575, 578, 650, 660, 700. Calls by this phone are to numbers which are listed on the "Call Contacts" of the phone Mr. Onesmus admitted he owned:

Call No. of Nov 2002 Record of 603 9438 (Nam Pham Phone)	Name Associated to the Number in Memory of 728 4578 (Onesmus Admitted Ownership)
20	Nora, his wife
21	Nora
27	Nora
91	Peter-Cell, his landlord
94	Peter-Cell
95	Peter-Home
98	Peter-Cell
100	Bruce, an employee of Mr. Onesmus' company, BC Comm.net
121	Peter-Home
122	Peter-Home
123	Peter-Home
124	Peter-Home
127	Elly, his mother
273	Peter-Home
320	Peter-Home
348	Jo&Wendy, friends of the family
363	Elly
391	Peter-Cell
434	Ali

436 Elly
 470 Elly
 475 Peter-Cell
 516 Elly
 517 Peter-Home
 526 Peter-Home
 570 Justice, an acquaintance who organized functions
 576 Justice
 637 Justice
 656 Justice
 658 Justice
 678 Justice
 681 Justice

The record ending **December 24, 2002 (Ex. 1027)**, has calls to Nora at numbers: 99, 120, 167, 168, 184, 267, 290, 293, 306, 354, 374, 381, 416, 424, 425, 451, 452, 461, 506, 513, 515, 530, 535, 597, 598, and 602. We also see two calls to Latvia at numbers 136 and 139 on November 28, 2002 (see pages 5 and 6 of 13).

The record ending **January 24, 2003 (E-1-B)**, is a bill for just under \$1,000, and has calls to:

618 233 2991 Belleville IL page 6, 7, 8, 9 H)	Father Wittenbrink counts 1 and 2 (E-1-H)
808 651 3857 Lihue HI page 6, 11, 12, 14 D)	Melandish (cell) counts 12,13,14 (G-5-D)
808 822 1858 Kapaa HI, page 8	Melandish (home) counts 12,13,14 (G-5-D)
210 333 6540 SanAntonio TX page 11	Zelda Walker counts 3, 4, 5 (E-2-A)
605 330 0944 Sioux Falls SD page 8	Leo Norgaard counts 39, 40, 41 (D-5-C)
989 588 8929 Farwell page 11	Peter Veal counts 9,10,11(F-4-A p. 3)
800 360 6163	Used in frauds – see phone section
408 356 7255 Los Gatos CA, p 11 8)	Mogens Olesen counts 6,7,8 (F-3-A p. 8)

On page "7 of 14" call # 253 is to 604 463 6420, (Nora-Home) at 8:10. 55 minutes later, at 9:05, call 260 is to 618 233 2991, which is Father Wittenbrink (counts 1 and 2). We see Father Wittenbrink's number at E-1-G, line 9, on a document located on area 9, Onesmus' desk. We see calls to Nora at numbers: 8, 12, 31, 52, 68, 73, 75, 76, 98, 104, 124, 139, 147, 170, 212, 215, 219, 227, 232, 253, 401, 403, 412, 439, 443, 552, 599, 633, and 706. In the same record we see calls to the victims Wittenbrink, Melandish, Veal, Walker, Norgaard, or Olesen at numbers: 155, 198, 242, 247, 268, 272, 277, 290, 328, 329, 374, 475, 478, 488, 514, 515, 532, 533, 562, 565, 571, 573, 574, 583, 669, 678, 687. Calls by this phone (603 9438) to numbers which are listed on the "Call Contacts" of the phone Mr. Onesmus admitted he owned (728 4578):

Call No. of Jan 2003

Name Associated to the

Record of 603 9438 (Nam Pham Phone)	Number in Memory of 728 4578 (Onesmus Admitted Ownership)
	01 Jo&Wendy, friends of the family
	04 Jo&Wendy
	23 Elly, his mother
	27 Elly
	28 Elly
	30 Elly
	35 Elly
	67 Jo&Wendy
	86 Peter-Home, his landlord
	87 Elly
	88 Justice, acquaintance who organized functions
	230 Elly
	231 Elly
	446 Peter-Home
	462 Frances, who he couldn't recall
	602 Peter-Home
	673 Mark-Cell, customer of BC Comm.net, Onesmus' company

The record ending **February 24, 2003 (Ex. 1027)**, beginning at the 14th page of that tab), has only January 25 to January 30, 2003. During that time, we see calls to Nora on January 27th (twice) and January 28th. We also see numerous calls to:

408 356 7255	Los Gatos CA	Mogens Olesen counts 6,7,8 (F-3-A p. 8)
808 651 3857	Lihue	Melandish (cell) counts 12,13,14 (G-5-D)
808 822 1858	Kapaa HI	Melandish (home) counts 12,13,14 (G-5-D)
210 333 6540	SanAntonio TX	Zelda Walker counts 3, 4, 5 (E-2-A)
989 588 8929	Farwell	Peter Veal counts 9,10,11 (F-4-A p. 3)