

THE HIGH COURT

[2011 10 CAB]

IN THE MATTER OF THE PROCEEDS OF CRIME ACTS 1996 AND 2005

BETWEEN

CRIMINAL ASSETS BUREAU

APPLICANT

AND

MICHAEL MURPHY (JUNIOR) AND MICHAEL MURPHY (SENIOR)

RESPONDENTS

AND

AMY FORREST

NOTICE PARTY

JUDGMENT of Mr. Justice Birmingham delivered the 7th day of November 2014

1. At issue in the present proceedings is an application pursuant to s. 3 of the Proceeds of Crime Act 1996, in relation to property referred in the schedule to the notice of motion, namely an Audi A4 motor vehicle, registration number 03 C 25314, the sum of Stg£6,625, now in the possession of An Garda Síochána subsequent to a search of 12 Clonard Avenue, Granagh, Co. Cork, the home of the notice party on the 28th day of May, 2009, the sum of €9,000 taken possession of by gardaí in the course of the same search, an Irish Life Investment Bond in the name of Michael Murphy Senior in the amount of €20,000 (Irish Life Sure Options Plus Plan No. 11XXXXXX) and an Irish Life Investment Bond in the name of Michael Murphy junior in the amount of €10,000 (Irish Life Sure Options Plus Plan No. 11XXXXXX).

2. The history of the proceedings is that the s. 2 order was made by Feeney J. on the 20th July, 2010. The application for a s. 3 order then came on for hearing before Feeney J. in December 2012 and January, 2013. Sadly, Feeney J's untimely death occurred before he delivered judgment. It is of some significance that the notice party did not participate actively in the s. 3 proceedings before Feeney J. The first named respondent did not participate either. The circumstances in which he opted not to participate, or came to be regarded as having opted not to participate was the subject of some controversy during the run up to the listing of the matter before me. However, that controversy was disposed of when I gave leave to Mr. Murphy Junior to intervene and participate, which Mr. Murphy Junior duly did.

3. Having decided to participate on this occasion and having been given leave to do so, the first respondent, Mr. Murphy Junior, has mounted a challenge to the admissibility of much of the evidence sought to be adduced by the applicant, arguing that evidence was unconstitutionally obtained as it derived from a search carried out by members of An Garda Síochána on foot of a warrant issued pursuant to the provisions of s. 29 of the Offences Against the State Act 1939, as amended.

4. At the hearing before me a significant issue in the case was whether 12 Clonard Avenue, Grenagh, Co. Cork, was as a matter of fact and law the dwelling of the first named respondent and if that was the situation, what consequences for the application followed.

5. The challenge to the admissibility of the fruits of the search was advanced in circumstances where the Supreme Court had delivered its judgment on the 23rd February, 2012, in *Damache v. DPP* [2012] 2 I.R. 266, declaring s. 29 of the Offences Against the State Act 1939, to be unconstitutional.

6. I propose to leave to one side the issues relating to the search of 12 Clonard Avenue, Grenagh, Co. Cork, on the 28th May, 2009, but instead seek to offer context for that issue by addressing some of the wider issues in this case.

7. The evidence presented on behalf of the applicant included evidence from the Chief Bureau Officer who was cross examined on his affidavit. He stated pursuant to s. 8 (1) of the Proceeds of Crime Act 1996, that it was his opinion that the property referred to in the schedule constituted directly or indirectly the proceeds of crime or was property that was acquired, in whole or in part with or in connection with property that directly or indirectly constitutes proceeds of crime.

8. The starting point for the present proceedings is that on the 28th May, 2009, the first named respondent, Michael Murphy Junior was caught in possession of a number of firearms while driving the Audi motor car referred to in the notice of motion.

9. Arising from the seizure of the firearms, he received and served a six year prison sentence. The case for the applicant is that Mr. Murphy Junior was actively involved with a well known major Limerick criminal gang, which was involved in very serious criminal activity, including drug trafficking. In the course of interviews conducted with Mr. Murphy Junior following the arrest, he indicated that the firearms were being transported to Cork, where they would be used to apply pressure on drug dealers.

10. After Mr. Murphy Junior's vehicle was stopped at Abbeylisk, a follow up search took place at 12 Clonard Avenue, Granagh, Co. Cork, the residence of Amy Forrest, the notice party, and the girlfriend of Mr. Murphy Junior. The warrant was issued pursuant to s. 29 of the Offences against the State Act 1939, as amended. That search took place on foot of a warrant issued by Supt. Con Cadigan of Gurrabraher garda station.

11. During the course of the search Ms. Forrest pointed out to Det. Gda. Mossie Leahy a number of items belonging to Michael Murphy Junior in a rucksack that was in an upstairs bedroom. The rucksack contained the Stg£6,625 cash and €9,000 cash referred to in the

notice of motion. Also in the rucksack were two mobile phones and the passport of Michael Murphy Junior. So far as the cash located in the course of the search is concerned, Mr. Murphy Junior was interviewed about this following his arrest and he stated that the Stg£6,625 recovered belonged to his father and that the €9,000 cash came from a compensation claim which he, Mr. Murphy Junior, had received some ten years earlier. The analysis subsequently conducted by the Bureau's financial analyst would seem to exclude the compensation settlement of Mr. Murphy Junior of January 2001, in the amount of €8,500 as the source of the €9,000 found in the rucksack as the analyst is able to point to a series of withdrawals between January 2001 and April 2005, which account for the entire settlement.

12. The respondents are father and son. Mr. Murphy Senior is blind as a result of an accident which occurred in 1983. Mr. Murphy Senior resides at 36 Riverview Estate, Cork. It is clear that father and son have a particularly close relationship, that much was obvious during the course of the proceedings, and that relationship extended to Michael Murphy Junior spending periods of time, at least, at 36 Riverview Estate, significant periods of time indeed and for certain purposes at least that is his address.

13. The case presented by CAB is that the relationship between father and son extends to a shared involvement in crime. They are for example alleged to have handled stolen property derived from the robbery of a transit van on the 27th day of March, 2009.

14. A financial crime analyst employed by CAB conducted a lifestyle analysis in respect of Michael Murphy Junior for the period 2000 to 2009. During that period Mr. Murphy Junior had legitimate earnings of €77,384.66, however, the funds available to him over that period amounted the €210,546.28 leaving an unexplained deficit of €133,161.61. The case on behalf of CAB is that these unexplained funds are the proceeds of Mr. Murphy Junior's criminal activity.

15. During this period Mr. Murphy Junior was in receipt of unemployment assistance between December 1999 and June 2001 and again between January 2002 and May 2002. He was also in receipt of a carers allowance between February 2007 and July 2009 and in addition Mr. Murphy Junior has recorded PAYE earnings between February 2005 and January 2007 amounting to €18,524.

16. In 2007 Mr. Murphy Junior registered a waste disposal business, Murphy Waste Recycling with the Revenue Commissioners. An income tax return for 2007 showed a net loss of €6,188 and a turnover of €300. No further tax returns were made by that company thereafter.

17. So far as the waste disposal activity is concerned, it does not appear that this was ever profitable and certainly inquiries carried out by the gardaí among other waste disposal facilities in the Cork area would strongly suggest that the volume of activity in which Murphy Waste Recycling was involved could certainly not provide an explanation for the substantial funds that were available to Mr. Murphy Junior. Mr. Murphy Senior has indicated that it was his practice to travel on the waste lorry and that it was not unusual for waste facilities to wave that lorry through, this out of deference or sympathy to his status as a blind man and thus that the recorded level of transactions involving Murphy Waste Recycling significantly understates the real level of activity. That there would be sympathy and goodwill for somebody coping with sight loss is understandable, but however, that certainly does not provide an explanation for all the funds available to Mr. Murphy Junior. It is nonetheless, a subject to which I will return.

18. So far as Mr. Murphy Senior is concerned, he has no recorded employment over the past 25 years, and his sole income since 1983 has come from various social welfare payments including blind pension and disability payments. He is at present in receipt of the State Contributory Old Age pension.

19. So far as the cash seized at 12 Clonard Avenue, is concerned, Mr. Murphy Senior has laid claim to part of this, namely the Stg£6,625 and also €5,000 out of the €9,000. So far as the Euro element is concerned, Mr. Murphy Senior's position has evolved somewhat in that he is not now advancing a direct claim, but rather he is saying that he is owed €5,000 by his son, which is to come out of the €9,000 which would be repaid to him if the funds are returned to his son by CAB.

20. So far as the investment bonds are concerned, the evidence adduced by CAB indicates that the greater part of the funds to purchase these bonds cannot be accounted for by any traceable sources. However, in the case of the bond purchased in the name of Michael Murphy Senior, the sum of €7,550 came from a compensation claim and it is acknowledged that this element is legitimate. However, the balance of €12,450 according to CAB cannot be accounted for legitimately and represents the proceeds of crime.

21. Mr. Murphy Senior maintained an account at Blarney Credit Union, Acct. No. 05XXXX, where a balance of €5,944 was achieved of which €5,000 was applied to the part purchase of the €10,000 bond in the name of Michael Murphy Junior. The other €5,000 coming from Acct. No. 04XXXX in the name of Michael Murphy Junior.

22. Evidence adduced by CAB established that between September 2002 and February 2005, when his social welfare entitlements amounted to approximately €26,000 that Mr. Murphy Senior succeeded in achieving a balance of over €20,000 in an AIB account of his (Acct. No. 8XXXXXX) this exclusive of a lodgement attributable to the compensation claim to which I have referred.

23. The respondents, and in particular the second named respondent have provided explanations, indeed sometimes multiple and inconsistent explanations for various lodgements to the accounts that have been subject to scrutiny. So, in the case of a lodgement of €3,203.40 on the 27th May, 2002, to the account of Mr. Murphy Senior at the Bandon Credit Union branch, he initially explained this by reference to the maturation of a New Ireland Life policy. However, when inquiries conducted by CAB excluded that explanation, he offered an alternative explanation that this was the return of a recognisance in the sum of €3,000 entered into by him in the District Court following the conviction of his son and sentencing of his son to twelve months imprisonment.

24. Further inquiries via the courts service established that sums lodged by way of recognisance are never returned in cash. The lodgement in question was made up of €3,150 cash with the balance accounted for by a cheque from the Department of Social and Family Affairs for €53.40.

25. The question of returned bail money was also raised on another occasion by Mr. Murphy senior when dealing with a cash lodgement of €3,080 on the 24th March, 2003. On this occasion, Mr. Murphy Senior contended that it was explained by the return to him of €3,000 which he had lodged by way of bail on behalf of a Mr. Patrick O'Leary. Again, the point was made on behalf of CAB that bail money is never returned to a bail's person on cash. A further point is that if €6,000 was lodged by way of recognisance/bail, €3,000 on behalf of Mr. Michael Murphy Junior and €3,000 on behalf of Mr. O'Leary, then it has not been established where this came from. In the case of the €3,000 recognisance for his son, Mr. Murphy Senior did provide the explanation that it was lent to him by a lady called Cathy Heverin of a particular address. No Cathy Heverin lived at the house in question, but a Kitty Heffernan did, but is now deceased.

26. Other explanations offered included the explanation provided for the sterling which is that it was given by Mr. Michael Murphy

Senior to Mr. Michael Murphy Junior so that he could buy a truck for the waste disposal business. Mr. Murphy Junior is alleged to have travelled to Bournemouth, but did not proceed with the truck purchase as the vehicle was not suitable for his needs. He did however, it is said, purchase an old Volkswagen Passat which he imported to Ireland and sold for scrap.

27. This explanation in turn raises the question of where the funds for the proposed truck purchase would have come from. Mr. Murphy Senior answers that by saying that he had put money aside from the waste disposal activity without even telling his son.

28. A further explanation offered by Mr. Murphy Senior is that he has also said his daughter Laura, who is living in London, owned a restaurant and that she sent him money on a regular basis. Inquiries of Laura by gardaí indicated that she had never owned a restaurant in London, though she did at one time manage a public house in Islington and that apart from gifts on the occasion of his birthday, that she did not send money back to her father. In the course of his evidence at the hearing, Mr. Murphy Senior appeared to row back somewhat on this explanation. In that he was indicating that the monies were paid at a time his daughter was resident in Cyprus, but that the amounts in question were repayments by his daughter, paid out of periodic rent payments that she received, of monies that he himself had advanced to her necessitated by the absence of any social welfare system in Cyprus.

29. Again the question arises how, if significant sums were repaid to Mr. Murphy Senior by his daughter, how was it that Mr. Murphy was in a position to make significant payments in the first place.

30. One explanation offered to explain access to significant funds with which I have particular difficulty is that Mr. Murphy Senior says that in October 2005, he and his son each placed a bet of €500 on Watford to be relegated from the Premier League. He says that Watford were relegated in 2006 and that his son collected the winnings which Mr. Murphy Senior then retained in a cashbox at his home. In the course of argument, I expressed scepticism that a combined bet of €1,000 on Watford to be relegated could produce winnings of €11,000, pointing out that Watford spent only one season in the Premier League and that it is notoriously the case, that teams promoted from the Championship to the Premier League struggle and that many go straight back down. A bookmaker offering odds of 10-1 or 11-1 against a newly promoted team being relegated would not stay in business for long. In fact Watford was in the Premier League for the 2006/2007 season and not unexpectedly they struggled there finishing last. Mr. Murphy Senior said that the bet was placed in October 2005, even allowing in ease of Mr. Murphy Senior that the reference to 2005 was a mistake and that he meant 2006, by October in any year, the season is well under way and the league is taking shape and that a team is in the relegation mix will be obvious.

31. Overall I have found the explanation offered by the respondents quite unconvincing. One exception to that is a lodgement in the sum of €1,800 by way of a cheque in the amount of €1,800 from DTZ Sherry Fitzgerald, Auctioneers derived from a house clearing/waste disposal in Cobh, Co. Cork. Again, this was a case where a different explanation have been forthcoming. At one stage, a very different explanation had been offered relating to a carer's allowance payment which did not stand up, but it does appear the DTZ Sherry Fitzgerald payment was genuine and account will have to be taken of this.

32. So far as the Audi A4 is concerned, initially Ms. Forrest indicated in a statement in writing to the gardaí that Michael Murphy Junior had contributed €8,000 cash towards the purchase of the car from Douglas Renault on the 10th March, 2009. In the course of a later interview on the 1st October, 2009, she confirmed that the vehicle had been purchased for €10,250, but refused to speak further about the involvement in the purchase of Mr. Murphy Junior. Mr. Murphy Junior for his part during the course of his post arrest questioning denied contributing the €8,000 as alleged by his girlfriend. When these proceedings were in gestation, it was indicated that the notice party would be maintaining a claim in respect of the motor vehicle. However, that has not really been actively pursued.

33. The case made by CAB against Mr. Murphy Senior is that he minds money for his son Mr. Murphy Junior. He has presented six affidavits, was interviewed on three occasions by gardaí and was cross examined on the contents on his affidavits before me. The case made on behalf of CAB has not been undermined.

34. I have considered the possibility that funds to purchase the bonds came from earnings which were not recorded and on which tax was not paid as an alternative to the proposition that the unexplained funds are the proceeds of crime but I find myself in the difficulty that I do not accept that there was a significant work history, or a significant history of successful trading in cars or motor bikes or lawnmowers, as has been canvassed, which can provide an explanation. Any such activity, if it ever occurred at all, must have been extremely limited and any profits very modest indeed.

35. In relation to the circumstances of the respondents, both have significant criminal records, Mr. Murphy Senior has 21 previous convictions and Mr. Murphy Junior has some 43 previous convictions. However, I do not ignore the fact that Mr. Murphy Junior has said that while he has been involved in crime since he was 15 or 16 years of age, and been in and out of custody since then, that he has not made money from crime. In fairness to Mr. Murphy Junior, it is the case that many of the recorded offences are linked to drunkenness and violence rather than offences involving property acquisition. Nonetheless, the combination of unsatisfactorily explained funds, inconsistent explanations and a background of criminality is a disquieting one. So disquieting indeed, that one is forced, in the absence of a satisfactory explanation, to conclude that the property in question has not been acquired honestly, or even by unrecorded commercial activity of one form or another, but rather represents directly or indirectly the proceeds of crime.

36. I turn now to the question of whether 12 Clonard Avenue, Granagh, Co. Cork, was the dwelling of Michael Murphy Junior on the 28th May, 2009, and if that was the case, identifying the consequences that flow from that.

37. Mr. Murphy Junior contends that in May 2009, he was living most of the time at Clonard Avenue. He says that he left there on the morning of the occasion when he was stopped transporting firearms. More generally he says that he was spending four or five nights there a week. He comments that when his girlfriend went to live in the house, that he had carried out work in the house, installing wall cabinets and the like and that he carried out maintenance there and general housework, as well as gardening. These claims are not accepted by CAB, which very understandably point to the fact that while Mr. Murphy Junior might now be saying that he lived in 12 Clonard Avenue, before the possible significance of having that address emerged he was saying something quite different. It was pointed out to him that when he was interviewed following his arrest, that when he was asked the question where he had got up that day and where he was staying, that he had replied 26 The View, Gleann na Rí, Blarney and had then gone on to say that he lived there for almost two years. When asked where he stayed when not staying in Glenn na Rí he responded "my dad or other friends". The applicant also points out that when Mr. Murphy Junior was asked where he picked up the car on the day that he was stopped, he replied "Granagh", but when asked what the full address was, his response was to say "I don't know, she's only living there a few weeks". It was pointed out that at another stage of the interview that Mr. Murphy Junior had said with reference to 12 Clonard Avenue, that that was where his girlfriend lived, that she lived there alone, before adding that her cousin lived there as well.

38. Mr. Murphy Junior says that at the time of his interviews that he was concerned lest he jeopardised his girlfriend's lone parent

allowance. He also says that his girlfriend was insistent that he should avoid involving her in his activities. Resolving this issue is not made easier by the fact that Mr. Murphy Junior now has an incentive to put himself at Clonard Avenue, while at the time of the arrest and detention, the incentive was to distance himself from his girlfriend's home. I have concluded that as a matter of probability that Mr. Murphy Junior, not unlike many young men, stayed in several different locations. It is likely that he spent time with his father, with his sister at Glenn na Rí, at his girlfriend's home and possibly at other locations on an occasional basis. Indeed, in the case of Mr. Murphy Junior, the likelihood is that such was the extent of his involvement with the criminal legal system that he was happy enough not to be too predictable in his movements. However, it seems to me that the probabilities are that a young man in the position of Mr. Murphy Junior, who is in a relationship and in a situation where his girlfriend had her own home, that it is likely that he would spend considerable periods of time there. Having formed that view, I think it is proper to approach this case on the basis that 12 Clonard Avenue, is a dwelling of Mr. Murphy Junior.

39. On the basis then, that 12 Clonard Avenue was a dwelling, or the ionad cónaithe, of Mr. Murphy Junior, to use the term that appears in the Irish language version of the Constitution it is contended on behalf of the first named respondent that the search of the premises was unlawful, following on an unlawful entry and that the evidence obtained as a result of that search was unconstitutionally obtained evidence.

40. The first named respondent's arguments arise from the decision in *DPP v Damache* [2012] 2 I.R. 266. It must be said though some points of distinction arise. The decision in *Damache* came against the background of a criminal prosecution. Here, the issue arises in the course of the Proceeds of Crime Act application. This is of significance as Proceeds of Crime cases are *sui generis*, they are proceedings in rem as McGuinness J. pointed out in *CAB v. Gilligan*. In *Damache* the warrant was issued by a member of An Garda Síochána investigating team, which was investigating the matter. Here the warrant was issued by Superintendent Cadogan, as part of the garda operation following up on the firearms seizure, but the present proceedings have been commenced by the Criminal Assets Bureau.

41. A further factor is that the issue in relation to the search was raised for the first time in March 2014, almost five years after the search took place and two years after the Supreme Court had delivered judgment.

42. The seminal cases in relation to the exclusionary rule are those of *People (A.G.) v O'Brien* [1965] I.R. 142 and *DPP v Kenny* [1990] 2 I.R. 110. In the latter case the majority judgment of the Supreme Court was delivered by Finlay C.J. who took the view that O'Brien had left open the choice between the deterrent principle and what he called the "absolute protection principle". He commented

"The courts had a duty pursuant to Article 40.3.1 in as far as practicable, to defend and vindicate personal rights. Therefore: as between two alternative rules of principles governing the exclusion of evidence obtained as a result of the invasion of the personal rights of a citizen, the court has . . . an obligation to choose the principle which is likely to provide a stronger and more effective defence and vindication of the right concerned.

To exclude only evidence obtained by a person who knows or ought reasonably to know that he is invading a constitutional right is to impose a negative deterrent. It is clearly effective to dissuade a policeman from acting in a manner which he knows is unconstitutional or from acting in a manner reckless as to whether his conduct is or is not unconstitutional.

To apply, on the other hand, the absolute protection rule of exclusion while providing also the negative deterrent, incorporates as well a positive encouragement to those in authority over the crime prevention and detection services of the State to consider in detail the personal rights of the citizen as set out in the Constitution and the effect of their powers of arrest, detention, search and questioning in relation to such rights.

It seems to me to be an inescapable conclusion that principle of exclusion which contains both a negative and positive force is likely to protect constitutional rights in more instances than is a principle with negative consequence only."

43. The question of whether the exclusionary rule applies outside the area of criminal law has arisen for consideration on a number of occasions. In *Kennedy v. The Law Society (No. 3)* [2002] 2 I.R. Fennelly J. delivered a judgment with which the four other members of the Supreme Court concurred. He was of the view that the application of the exclusionary rule on matters of evidence was not based on concerns regarding the relevance or probative value of the impugned evidence, but rather the constitutional rights of the liberty of the individual or the inviolability of the person or dwelling. Although the circumstances in which the exclusionary rule could be applied were not confined exclusively to criminal law, the scope for such circumstances to arise outside of the criminal law must necessarily be limited.

"That an element of deliberate and knowing misbehaviour must be shown before evidence should be excluded. The courts should be slow to adopt any mechanical exclusionary rule which hindered disciplinary tribunals from receiving and hearing probative evidence. A balance must be struck between the rights of individuals and those professional bodies assigned the task of supervising their behaviour."

44. However, in *Competition Authority v. The Irish Dental Association* [2005] 3 I.R. 210, McKechnie J. distinguished that case and in doing so, drew support from a decision of Laffoy J. in *Universal City Studios Incorporated v. Mulligan* [1999] 3 I.R. 407. Laffoy J. was dealing with alleged pirated video tapes of films, seized in the course of a vehicle search. She was of the view that as a matter of principle, the exclusionary rule laid down in *People v Kenny* was applicable. However, the particular circumstances, she was dealing with involved illegally obtained evidence as distinct from unconstitutionally obtained evidence and she exercised her discretion to admit the evidence. Her comments that as a matter of principle *People v Kenny* was applicable were not therefore strictly necessary in order for her to decide the case. The facts in the *Irish Dental Association* case were unusual, in that a warrant obtained to search the premises of the Irish Dental Association referred, presumably as a result of cutting and pasting, to the business that was carried out at the premises sought to be searched as one of selling and distributing motor vehicles. McKechnie J. was of the view this was a case of unconstitutionally obtained evidence and that he had no discretion but to exclude the evidence sought to be tendered. However, he went on to say that if this was a case of illegally, as distinct from unconstitutionally obtained evidence that he would in any event in his discretion exclude the evidence.

45. I have referred to the fact that Proceeds of Crime applications are *sui generis*. That being so, it seems to me that the question of whether the exclusionary rule applies with full force and effect is free from authority and neither *Irish Competition Authority v. Irish Dental Association* or *Kennedy v Law Society* disposes of the issue and the question is whether the exclusionary rule should be extended to cover such cases.

46. In my view the factors that militate against extending the rule are that the gardaí who carried out the search were following a

procedure provided by statute. This was not a case of wilful disregard of constitutional rights, of recklessness, or shortcut taking or even carelessness. That being so, the policy considerations which influenced Finlay C.J. in *Kenny*, do not arise. It does not seem to me that the protection of constitutional rights is advanced by condemning the activity of gardaí following a statutory procedure. It follows from what I have said, that if this was a case where there was discretion to be exercised as to whether to admit evidence, that I would exercise the discretion in order to admit the evidence.

47. In this case the impugned search had discovered two sums of cash, but consider other possibilities. Suppose in the course of a search that had taken place under the purported authority of a s. 29 warrant, firearms or explosives were found or controlled drugs. Could it be suggested that the items seized had to be returned to the person whose dwelling was searched? Suppose property was seized which could not possibly be the property of the occupant of the dwelling – a unique piece of art stolen from a leading gallery. Could the dwelling occupant be permitted to remain in control of the stolen masterpiece? Could the gallery be prevented from recovering its property?

48. In all the circumstances, I am not of the view that I am precluded from having regard to the outcome of the Clonard Avenue Search by virtue of the Supreme Court decision in *Damache*. Even if I am wrong about this, it seems to me that the issue would effect only the property seized in the course of the search and would not have any implications for the Audi motor car or the investment bonds.

49. I will therefore follow the procedure directed by McCracken J. in *F. McK. v G.W.D* [2004] 2 I.R. 470. I have regard in the first instance to the evidence of Detective Chief Superintendent Eugene Corcoran and I also have regard to the evidence of Detective Garda Garry Sheridan, the financial analyst, the revenue officer and social welfare officer. I am of the view that there are reasonable grounds for the belief/opinion held by the Chief Superintendent and accordingly, the belief evidence of the Chief Superintendent forms part of the evidence in the case. By reference to the belief evidence of the Chief Superintendent and the other evidence adduced on behalf of the applicant, I am satisfied that a *prima facie* case has been made out by the Criminal Assets Bureau. I have then considered the evidence on behalf of the respondents and notice party, both the affidavit evidence and have also had regard to their evidence in the witness box. I am not satisfied that the respondents have discharged the onus on them and instead I remain of the view that the property, the subject of the application represents the proceeds of crime.

50. I have considered the question of whether making the order sought will give rise to a serious risk of injustice and I am firmly of the view that that is not the case, provided that the order made, takes account of the fact that it is accepted that a figure of €7,550 is legitimately explained as coming from a compensation claim and also that I am satisfied in relation to the authenticity of the alleged payment from Sherry Fitzgerald. Also I am prepared to accept the possibility that there might have been some limited activity involving motor cycles, vehicles and lawnmowers and that there might have been some level of waste disposal activity which was not recorded. To take account of these possibilities and to avoid any risk of injustice, I propose to exclude a further sum of €5,000, in addition to the €7,550 in respect of the compensation claim and the €1,800 in respect of the DTZ Sherry Fitzgerald cheque. Having regard to the quality of the evidence on these topics, the amount that I am proposing to exclude is, if anything, generous. Subject to that qualification, I will make the order sought by the Criminal Assets Bureau.