WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE COURT OF APPEAL

CRIMINAL DIVISION

NCN: [2020] EWCA Crim 1345

CASE NO 201901508/B4

Royal Courts of Justice

Strand

London

WC2A 2LL

Wednesday 14 October 2020

LORD JUSTICE DAVIS

MR JUSTICE SPENCER

MR JUSTICE WALL

REGINA

V

JEFFREY CARLTON BEVAN

THIRD PARTY APPLICATION REGARDING CONFISCATION DECISION UNDER S 10A PROCEEDS OF CRIME ACT 2002

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR H WATKINSON appeared on behalf of the Applicant (SAMANTHA BEVAN).

MR T EVANS appeared on behalf of the Crown.

J U D G M E N T

LORD JUSTICE DAVIS:

Introduction

1. This is an appeal, brought pursuant to the provisions of section 31(4) of the Proceeds of Crime Act 2002 ("the 2002 Act") and with leave granted by the Full Court, from a determination dated 8 April 2019 in confiscation proceedings in the Crown Court, made pursuant to section 10A of the 2002 Act. Because of the way in which the case was ultimately presented by the prosecution below, and in effect accepted by the judge, the matter comes before us, it has to be said, in a way which is somewhat unsatisfactory.

Background Facts

2. During a trial in the Crown Court at Cardiff, Jeffrey Bevan changed his plea to one of guilt on 15 January 2018. He was formally convicted by the jury in consequence, on the direction of the judge, of a number of counts of transferring or converting criminal property. He was in due course sentenced by the trial judge (HHJ Fitton QC) to a total of 7 years and 4 months' imprisonment.
3. The background facts can be shortly stated as follows. At all material times Mr Bevan and his wife, Samantha, had been married. He was a chartered accountant, apparently with an expertise in auditing software. By reason of his qualifications he was retained as a Payments Manager within the office of the Accountant General in Bermuda. Between May 2011 and May 2013 he committed a series of thefts by rerouting payments totalling over £1.5 million from the Bermudan Government variously to his personal bank accounts or those of his wife. In effect he had covered his tracks by putting the correct account details on the relevant invoice.
4. Thereafter he laundered the proceeds of his thefts variously into property, motorcars, race horses and so on. It also appears that he was in effect an addicted gambler and he gambled vast sums of money, ultimately losing over £500,000. It was in fact said by his wife Samantha that in order to fund his lifestyle he had also stolen even from her (his wife) and from their daughters' savings accounts. She was to say that, amongst other things, he would take money from her accounts and then replace it with monies stolen from the Bermudan Government.
5. In addition to his pleas on the various counts of transferring or converting criminal property relating to the Bermudan Government, Mr Bevan also faced a count of theft. He was convicted on that count at a subsequent trial. Perhaps the flavour of things is gained from the fact that that theft (in sum of some £50,000) involved theft from the estate of his own late mother.

The Confiscation Proceedings

6. There were inevitably confiscation proceedings. In the course of those confiscation proceedings the wife (Mrs Samantha Bevan) was to give evidence. It was said, and was not disputed, that she had been a teacher. She was to give evidence, to the effect that, amongst other things, she had agreed to forego her teaching position in the United Kingdom and had moved with her husband to Bermuda so that they could save money, pay off the mortgage on their house and pay for their children's school fees. It was also said that in effect she had left it entirely to him to run the finances and that he controlled them. It may be noted that charges in fact had initially been raised against Mrs Bevan herself. But those charges ultimately were not pursued by the Crown and in the course of the confiscation proceedings below it was accepted that she was to be treated on the footing that she had no knowledge of Mr Bevan's own criminality.

7. At all events, in the course of the confiscation proceedings below it was in due course found that he had benefited in an amount of just or £1,740,000; indeed that benefit figure had ultimately been agreed. A Confiscation Order was to be made in the sum of £688,090 on the 5 July 2019.
8. As to the available amount that of course, by section 9 of the 2002 Act, had extended to the total net value of Mr Bevan's free property and, in addition, the total of the values of any tainted gifts. The provisions particularly relating to tainted gifts are set out in sections 77, 78 and 81 of the 2002 Act. There is a discussion of the way in which those provisions operate in cases such as R v Beverley Johnson [2016] EWCA Crim 100; R v Hayes [2018] EWCA Crim 602; and R v Box [2018] EWCA Crim 542.
9. In the course of the quite protracted confiscation proceedings disputes had been identified as to the extent of the accused (Mr Bevan's) interests in various properties and assets to which there were other claimants. The trial judge had directed a hearing to be conducted pursuant to the provisions of section 10A of the 2002 Act.
10. Section 10A provides as follows:

    i. "**10A**
    ii. **Determination of extent of defendant's interest in property**

(2) Where it appears to a court making a confiscation order that—

(a) there is property held by the defendant that is likely to be realised or otherwise used to satisfy the order, and

(b) a person other than the defendant holds, or may hold, an interest in the property

ii. the court may, if it thinks it appropriate to do so, determine the extent (at the time the confiscation order is made) of the defendant's interest in the property.

(3) The court must not exercise the power conferred by subsection (1) unless it gives to anyone who the court thinks is or may be a person holding an interest in the property a reasonable opportunity to make representations to it.

(4) A determination under this section is conclusive in relation to any question as to the extent of the defendant's interest in the property that arises in connection with—

(a) the realisation of the property, or the transfer of an interest

in the property, with a view to satisfying the confiscation order, or

(b) any action or proceedings taken for the purposes of any such realisation or transfer.

(5) Subsection (3)—

(a) is subject to section 51(8B), and

(b) does not apply in relation to a question that arises in proceedings before the Court of Appeal or the Supreme Court.

(6) In this Part, the 'extent' of the defendant's interest in property means the proportion that the value of the defendant's interest in it bears to the value of the property itself."

11. In the recent decision of the Supreme Court in the case of R v Hilton [2020] UKSC 29 (at paragraph 24) it was indicated that section 10A and its related Northern Ireland provision was designed so as to provide a streamlined procedure and it might not be appropriate to be utilised in complex matters.
12. We should note that it was common ground at the hearing that the criminal life-style provisions applied under section 10 of the 2002 Act.
13. A significant number of matters had to be decided at the confiscation hearing which do not concern this Court on this appeal. The judge made findings of fact and those matters have been determined. For present purposes however, the relevant assets on which the decision had to be made, for the purposes of s.10A, were these:
    (1) First, there was the matrimonial home, 17 Orchid Court in Cwmbran. That had, as was accepted, been acquired in 2003 for £235,000, long before any criminality on the part of Mr Bevan. The property had been acquired jointly. It was from the outset registered in the joint names of Mr and Mrs Bevan and had throughout remained in their joint names. It was common ground before the trial judge, based on the principles of cases such as Stack v Dowden [2007] 2 AC 432 and Jones v Kernott [2012] 1 AC 776, that each of Mr Bevan and Mrs Bevan, throughout, were beneficially entitled to a half-share in the property. It was common ground, and in any event certainly so found by the judge, that the agreement and common intention between the two of them as to equal beneficial ownership, never changed: a point of some importance.
14. Mr Evans, appearing on behalf of the prosecution before us today, stressed that under the principles of Stack v Dowden and Jones v Kernott the appraisal, when searching for the presumed intention, has to be across the whole course of dealings, taking an objective

viewpoint. That no doubt is right. But in the present case the matter is overtaken by the acceptance at the hearing below, and at all events by the finding of the judge, that here the mutual agreement from the outset was that there be equal ownership in the equity of the property; and that never altered. At the hearing it was agreed that the value of the property was £375,000; although we were told that subsequently it has been realised for a somewhat higher amount.

15. (2) The second asset with which this appeal has been concerned involved a Mercedes car with the registration number BV590RS which had been acquired in the name of Mrs Bevan in December 2012. That had been acquired in her sole name and had remained registered in her sole name.
16. (3) The third matter which is the subject of this appeal was the sum of £20,295 held in a Barclays bank account in the joint names of Mr and Mrs Bevan and the sum of £15,147 held in a Barclays bank account in the sole name of Mrs Bevan.
17. One of the counts on the indictment involving converting and transferring criminal property (count 5 on the indictment) specifically related to Orchid Court. It was alleged by that count, and by his plea Mr Bevan had admitted, that he had converted money stolen from the Government of Bermuda in order to pay off the balance of the mortgage on 17 Orchid Court. That payment was made on 26 June 2013. The sum involved was £140,000.
18. Another count on the indictment (count 4) likewise had alleged, and again by his plea Mr Bevan had admitted, that he had converted money stolen from the Government of Bermuda in order to pay for the Mercedes car. That was eventually valued for the purposes of the confiscation proceedings as £4,290.
19. No count on the indictment alleged conversion of money stolen from the Government of Bermuda with payment thereafter into either of the two Barclays bank accounts. But the judge was to make a finding on the facts that the sums of money in those two accounts derived directly from the money which Mr Bevan had stolen from the estate of his late mother and which had been subject of the further count in indictment (count 15) in respect of which Mr Bevan had been convicted after trial of theft.
20. One feature of the hearing below was that the prosecution, both by their section 16 statement in advance of the hearing and then at the hearing itself, had in terms disclaimed reliance on the tainted gift provisions contained in the 2002 Act. It is not profitable to explore the reasons why they had disclaimed such reliance, although there was, on our query, some debate on the issue before us. The point is that they had disclaimed them. Moreover, it does not appear anywhere in the skeleton arguments lodged in the court below, nor (no doubt in consequence) does it anywhere appear in the judge's ruling, that the prosecution were seeking to say that Mrs Bevan had in some way been bare nominee or bare trustee for Bevan in respect of any of the assets in question.
21. The relevant issue for the judge, for section 10A purposes, was whether Mr Bevan held an interest in these particular assets. If he did, there then there fell to be determined what the extent of his interest was in each case. In summary it was and remains the case of Mrs Bevan that she throughout had, and as indeed the judge accepted, a 50% beneficial share in the matrimonial home. Accordingly, it was said she was entitled to one-half of the total equity, the mortgage having by now been paid off. Likewise it was said that she was the registered owner of the Mercedes car; and there was nothing, so it was said, to displace the presumption that she was also beneficial owner of the car: which indeed she

said in evidence had been the intention, she seeking to say that in effect it replaced the previous Saab car which she had owned and which had previously been sold. So also was it said that she likewise had an interest in the bank accounts. Her beneficial interest followed, as it was to be presumed, the legal title and accordingly, she was entitled to half the money in the joint account and all the money in the account held in her sole name.

22. Mrs Bevan gave evidence at the confiscation hearing. It was not suggested in any way that she had been seeking to give untruthful evidence and, as we have said, it was accepted at the hearing that she had had no knowledge of her husband's undoubted criminality. As for Mr Bevan, he did not give evidence at the hearing.
23. Before the judge the argument of Mr Evans, for the prosecution, essentially focused on the source of the payments for such assets: that is to say, either money stolen from the Bermudan Government or from the mother's estate as the case may be. It was said to the judge that it was neither "legally or morally" appropriate for Mrs Bevan to in effect get the benefit of money stolen by her husband from the Bermudan Government or from Mr Bevan's mother. Thus the argument went on that so far as 17 Orchid Court was concerned, she was entitled to one-half of the "net" equity: that is to say, only after deduction first had been made of the £140,000 used to clear off the mortgage, which £140,000 had been stolen from the Bermudan Government. The like approach was, said the prosecution, to be applied to the Mercedes car where again the purchase price had been funded entirely from monies stolen from the Bermudan Government; and, likewise again, with the money in the two Barclays bank accounts which, as the judge had found, derived from monies stolen from the mother's estate. In this context it was also reiterated that Mr Bevan, on the evidence, had controlled all the family finances.
24. In effect, therefore, the prosecution were adopting a kind of short-form tracing exercise for the purposes of the section 10A ruling, linking the stolen monies to the payment of the mortgage, to the funding of the car purchase and to the payments into the two Barclays bank accounts. It was submitted in this respect that it was irrelevant that Mrs Bevan had no knowledge that criminal money had been used.

<u>The Judge's Ruling</u>

25. In his ruling the judge in effect accepted the prosecution argument. He set out the background matter in some detail (we should record that he also had to deal with many other matters which are not the subject of appeal). His approach can best be illustrated by the way in which he dealt with the position of the Mercedes car. The judge recorded that the car was registered in the sole name of Mrs Bevan and recorded her case that it was hers and hers alone. The judge recorded her evidence about the previous sale of her Saab car and how she had thought that the Mercedes car in effect was to be a substitute for that car. The judge found that undoubtedly the Mercedes car itself had been funded by virtue of the monies stolen from the Government of Bermuda.
26. The judge went on to say this:

    i. "I am accordingly satisfied as a fact and beyond any doubt that the Mercedes car was purchased by Jeffrey Bevan using monies stolen from the Government of Bermuda, and nothing that Samantha Bevan said affected my conclusion to that effect. I am not persuaded that Samantha Bevan has any entitlement in law to any share of the proceeds of that crime, and I reject her claim for any

actual interest in the Mercedes car. I see no injustice to her in that finding. I am not depriving her of property by this ruling - she never contributed to the funds that were used in the purchase of the Mercedes car. It would in my view be contrary to the spirit and the sense of the relevant legislation for me to make any other finding in this respect. There is no basis or justification for me to go beyond the guilty plea as entered ..."

27. The judge then proceeded to adopt a similar approach to 17 Orchid Court. In that regard he made an important finding to this effect. Having noted that the house had been originally purchased in joint names the judge said this:

    i. "There is no dispute or doubt that they are joint owners of the house in law and that the agreement between them was always that they should share the equity in the house in 50/50 shares. I accept that to be so."

28. The judge then went on to refer to the assertion that £140,000 had been stolen from the government of Bermuda, which she accepted, and the judge said this:

    i. "So, the prosecution contend that Samantha Bevan made no contribution to the repayment of the mortgage in the sum of £140,000 that was paid by Jeffrey Bevan. They contend that sum should be set aside from the evaluation of her share. On that basis, their case is that she is only entitled to 50% of the equitable value of the house after setting aside the sum of £140,000 from the estimated sale value of £375,000, ie 50% of the sum of £235,000, namely £117,500."

29. After referring to, but without making any findings as to, certain evidence given by Mrs Bevan, the judge then said this:

    i. "I am not persuaded that Samantha Bevan has any entitlement in law to any share of the proceeds of that crime, and I reject her claim for any equitable interest arising from the payment. Again, I see no injustice to her and in that finding. I am not depriving her of property by this ruling - she never contributed to the funds that were used in the relevant lump sum re-payment of the mortgage. It would in my view be contrary to the spirit and the sense of the relevant legislation for me to make any other finding in this respect ... ."

30. The judge went on to adopt in effect precisely the same approach with the regard to the money in the two Barclays bank accounts which, as he found, derived entirely from the money Mr Bevan had stolen from his mother's estate.

Submissions

31. On this appeal what is now said by Mr Watkinson on behalf of Mrs Bevan (he having also represented her in the court below) is that the judge had had no entitlement or justification whatsoever to adopt the approach which he had adopted. What the judge

had been required to do for the purposes of section 10A was to assess the extent of the interest which Mr Bevan held in the relevant assets. In effect, however, as he submitted, the judge had by a purported tracing exercise increased those interests in favour of Mr Bevan, away from the ostensible legal and beneficial interests, and had correspondingly reduced Mrs Bevan's ostensible legal and beneficial interest in such assets. Mr Watkinson submitted that there was no principle and no statutory provision justifying the judge taking the course which he took. Mr Watkinson pointed out that there were potentially available the provisions in Part 5 of the 2002 Act relating to civil recovery. But those had not, at that stage, been invoked. Nor had any assertion of tainted gifts been made. Accordingly, in the absence of any assertion of tainted gifts, there was nothing to displace the legal and beneficial entitlement of Mrs Bevan to the assets in question.

32. The arguments before us of Mr Evans, for the Crown were, with respect, altogether more elusive. As to the house he said, in substance repeating the submissions which he had made to the judge below, that Mrs Bevan should only in equity be allowed to keep 50% in the "legitimate equity" - his phrase. Similarly, with regard to the car and the two Barclays bank accounts, he said that she should have no beneficial entitlement: just because, as he said, the assets were acquired with the proceeds of Mr Bevan's criminality. Accordingly, he submitted that the judge's approach and conclusions were justified. Were it otherwise, Mrs Bevan in effect would have benefited from Mr Bevan's criminality.

Disposal

33. Having considered the papers and the respective submissions we should say that we are in no doubt that this appeal has to be allowed.
34. We first take the position of the matrimonial home, 17 Orchid Court. Of course there may be cases, and there are indeed many such cases, where the underlying beneficial interest can be at variance with the ostensible legal title. One worked example in this criminal context, for example, can be found in R v Reid [2019] EWCA Crim 690. There are numerous examples, of course, also in the civil courts to this effect. Ultimately it all depends on ascertaining, either by reference to an express agreement or by a process of inference, or possibly on occasion of imputation, from an objective appraisal of all the circumstances and all the course of dealings between the parties, just what the parties' mutual intention was – see, for example, Jones v Kernott (cited above).
35. But in the present the case it had been common ground, and the judge had accepted, that the agreement always had been that the two were to be beneficial owners in equal shares. That agreement had never altered. Thus the agreement had not been and was not said or found to have been altered by the unilateral act of the husband (Mr Bevan) paying off the mortgage of £140,000 by use of the money which he had stolen from the Government of Bermuda. As between him and his wife she had remained entitled to 50% of the equity in the home. Whether a contrary result with regard to the recovery of £140,000 could be achieved under Part 5 of the 2002 Act relating to civil recovery (see for example the case of National Crime Agency v Azam [2015] EWCA Civ 1234), or indeed whether such a recovery could have been achieved by the Bank of Bermuda itself in any civil tracing proceedings which it chose to commence and whether or not Mrs Bevan could at that stage seek to say that she was to be equated with a bona fide purchaser for value without any notice of any wrongdoing, is simply not material for present purposes. At all events,

Mr Evans expressly accepted, when the point was put to him in argument, that Mrs Bevan would have had a 50% share in the entire equity had the £140,000 needed to discharge the mortgage come from Mr Bevan's legitimate earnings. This whole argument was therefore solely based on the proposition that the money had come from the stolen moneys.

36. Mr Evans could, however, identify no statutory or other provision (where the tainted gift provisions are not invoked) whereby legal and equitable rights could be adjusted for these confiscation purposes under Part 2 of the 2002 Act so as to cause such interests to be adjusted away from the legal and beneficial ownership and the parties' mutual agreement. Indeed, it seems rather remarkable that for this particular purpose the criminal husband's share could, on the prosecution argument, positively be increased as a matter of beneficial interest by the amount of his own criminality but the innocent wife's share be reduced *pro tanto*.
37. It is well established that, for the purposes of ascertaining the interests held by a defendant in such circumstances, ordinary principles of property and trust law generally (and putting to one side possible complications that can arise in matrimonial proceedings) have to be applied. As we see it, applying ordinary principles of property and trust law, the position is that so far as the house was concerned Mrs Bevan was, in accordance with the title and the (as found) mutual agreement, entitled to one-half share in the entire equity in the property. It seems to us that really what the prosecution's argument came down to was a broad appeal to "fairness", or perhaps a broad appeal to "public policy" with regard to depriving a criminal of the proceeds of his criminality, as a means for altering the otherwise clear and established legal and equitable entitlements of the relevant owners. Indeed if the arguments are otherwise well founded one might then wonder as to the purpose or perceived need for provisions such as s. 77 (3) or (5) of the tainted gift provisions. But be that as it may, not only is that argument contrary, as we see it, to ordinary principle, it is in any event contrary to authority.
38. That authority is to be found in the case of Gibson v Revenue and Customs Prosecution Office [2008] EWCA Crim Civ 645; [2009] QB 348. That in fact was a decision on confiscation proceedings under the Drug Trafficking Act 1994. But, in our view, that decision is equally applicable in the context of confiscation proceedings under the 2002 Act. The case had, as we gather, been cited to the judge below. But he did not discuss it in his ruling.
39. In the case of Gibson the defendant had been convicted of major drugs offences. A Receiver was appointed in respect of his realisable assets. Those included the matrimonial home acquired in 1990, three endowment policies effected to support the mortgage on the house and two bank accounts. All of those assets were held in joint names with the defendant's wife. Enforcement proceedings were started in the High Court and the wife was joined to those proceedings. She claimed a half interest in the various assets held in joint names. It was a feature of the case in Gibson that the trial judge found on the evidence that the wife had actually known that, from 1993, the money used to pay the mortgage instalments and to make payments under the endowment policies had not been legitimately earned. He held that, although there was no provision in the 1994 Act to this effect which would deprive her of her 50% interest in the assets, public policy required that her guilty knowledge should be taken into account. Accordingly he reduced her interest in the properties to one of 12.5%.

40. The appeal was allowed. It was held, on the facts, that tainted gifts as such did not come into play. That being so, the court noted that Mrs Gibson had applied for no exercise of discretion: her case was that the assets were hers without any court order in her favour. The argument thus was that the prosecution in reality had to establish a public policy jurisdiction entitling the court in effect to confiscate her assets even though she had not herself been convicted of any crime.
41. May LJ in his judgment (at paragraph 17) noted the previous decision in R v Buckman [1997] 1 Cr App R(S) 324. He went on to note that counsel in the present appeal had striven to uncover some legal principle which would support the case that as a matter of public policy people should not retain the benefit of money obtained illegally. May LJ referred to Stack v Dowden and to various submissions made. He then went on at paragraph 18:

    i. "... it seems to me quite impossible for the law, in the guise of public policy, to attribute to Mr and Mrs Gibson an intention which they plainly did not have and would never have assented to. The prosecution cannot, in my view, by the language of imputation achieve a confiscation of Mrs Gibson's assets which the law does not otherwise enable, by imposing on her a notional and fictitious intention. Indeed [counsel] accepted in oral submission that Mr and Mrs Gibson did not change their intention, but that they changed the means of preserving the property.

    ii. 19. No more persuasive, in my view, is [counsel's] submission that the prosecution should be put in a position equivalent to that of a victim whose money had been stolen and used to fund the Gibsons' mortgage ..."

42. In her judgment (at paragraph 25) Arden LJ, amongst other things, stressed that in considering the interests which a husband and wife intended that they should have in a property in their joint names, "the court is not exercising discretion as to what is fair": referring to Stack v Dowden for that purpose. In the course of his judgment (at paragraph 29) Wall LJ amongst other things said this:

    i. "If a confiscation scheme is to extend to assets owned by third parties (other than gifts caught by section 8 of the 1994 Act) it is, in my judgment, for Parliament to enact the appropriate legislation. It is not for the courts to create such a jurisdiction."

43. Mr Evans conceded that section 10A by its actual terms confers no such jurisdiction whereby the result which he argued for could be achieved. His arguments in reality, as we see it, were based on considerations of fairness and public policy. But it was precisely those arguments which were rejected, and rejected on a principled basis, in the case of Gibson – indeed, rejected even where (in contrast to the present case) the wife had actually known of her husband's criminality. There can and should be, in general terms, no different approach or outcome for confiscation proceedings under the 2002 Act.

44. Given therefore the finding of the judge that Mrs and Mrs Bevan throughout always had agreed that each should have a beneficial half-share in the equity of property, the argument of the prosecution cannot, in our judgment, be accepted.
45. That also determines the outcome for the ownership of the Mercedes car and the two Barclays bank accounts. The judge never found on the facts that Mrs Bevan did not have any interest either in the car or in the two bank accounts. On the contrary, she had sole legal ownership of the car, she had sole legal ownership of one of the bank accounts and she had joint legal ownership of the other bank account: and in all cases a presumed beneficial interest would follow: and it seems that her evidence was also to that effect. No findings of fact were made to refute that particular outcome.
46. We should say that Mr Evans did at some stages before us seem rather to change tack from the way in which the case had been presented below. For example, he said, if that were indeed the position, then this was a clear case of tainted gifts. With all respect, he cannot be heard to argue that point in this court on this appeal: because tainted gifts, for whatever reason, whether good or bad, were disclaimed in the court below. Likewise, Mr Evans, at one stage, seemed to be raising an argument that at all events Mrs Bevan was holding, for example, the car and bank accounts as bare nominee for Mr Bevan, who thereby had retained the beneficial interest in such assets. But no such argument was identified or advanced in the arguments presented to the judge below. The judge accordingly made no relevant findings on such an issue in the court below. It seems to us that it is simply not open to the prosecution to make those assertions (and assertions are what they are) now, when such points were not pursued below. Certainly an alleged conclusion concerning nominee status does not flow simply from the assertion that it was accepted that Mr Bevan had entirely controlled the family finances.

Conclusion

47. In conclusion therefore, this appeal, as we have indicated, has to be allowed. The judge's decision with regard to the interests in the equity in the house, in the Mercedes car and in the two Barclays bank accounts must be quashed.
48. There was some debate with counsel as to whether, that being the conclusion of this Court, as it is, the matter could or should be remitted to the court below so that further evidential arguments could be advanced and addressed: for example, perhaps, by way of reference to tainted gifts.
49. However, it seems that there are real doubts on an appeal such as this under the provisions of section 31 of the 2002 Act as to whether this Court even has jurisdiction to remit the matter back to the Crown Court, in effect by way of a fresh hearing, on such issues. Indeed Mr Evans very fairly was minded to accept that this Court had no such jurisdiction: as Mr Watkinson also was disposed to submit. But quite apart from that, this Court in any event considers that, given all that has happened, it would be wholly unfair and unjust on Mrs Bevan if this matter were to be the subject of a yet further hearing. Accordingly, the appeal is allowed and the orders made below are quashed in the way we have indicated. Counsel between them are to draw up a minute of order to reflect our conclusion.
50. MR EVANS: My Lords, as far that is concerned, I think I have made an observation. I do not think neither my learned friend and I in fact have precise figures, but it does look as if the property was sold for a little more than it was valued at the time of the confiscation hearing. As far as the Mercedes is concerned, my information it was, on the

face of it, sold for less than it was valued in the confiscation hearing. So, in terms of a variation of the order -- of course Mr Bevan is not here; he has chosen not to be represented. He has not appealed, he is not here -- but on the face of it the full order will have to reflect, as I think the agreed figure, so it would probably help your Lordship if we --

51. LORD JUSTICE DAVIS: One of the reasons I suggested that you provide a minute of order is so that you can agree the figures. You can do all that?
52. MR WATKINSON: Of course my Lord.
53. LORD JUSTICE DAVIS: The order will need to be a little intricate. Thank you Mr Evans. Could you please agree the figures and lodge -- each of you having signed it -- lodge an agreed minute of order?
54. MR WATKINSON: Of course.
55. There is only one further application my Lords, that is in relation to the costs of the appeal.
56. MR EVANS: I do not seek to interrupt. Can I simply say that subject to the decision of your Lordship, CPS Specialist Confiscation Unit were going to seek further advice (not from me) about the potential for an appeal. I am not going to make it; I think I can nowadays still make an oral application but I am not going to at this stage. We have 28 days to apply to this Court effectively for a certificate that this is a point of public --
57. LORD JUSTICE DAVIS: You have 28 days from our decision to get in front of the Supreme Court. You do not have 28 days to get our permission or not as the case may be; you have 28 days to get in front of the Supreme Court.
58. MR EVANS: I will double check that. My understanding was that -- that was my learned friend's understanding as well -- we have to apply to this Court first.
59. LORD JUSTICE DAVIS: You do. All I am saying is you have to get on with it because you have 28 days from our decision.
60. MR EVANS: Absolutely. No, I fully understand that.
61. Can I say as far as costs are concerned, I know my learned friend is going to make an application -- he was seeking to make an application now. It would have to be, as I understand it, under section 19. The costs do not follow the event of the criminal process. My learned friend I think may have to justify -- I am going to invite him to do it in writing -- because there are a number of authorities, a number of provisions dealing with that and the Court has to order a particular figure.
62. LORD JUSTICE DAVIS: We do have to order a particular figure but we have jurisdiction to make a costs order in a case of this kind.
63. MR EVANS: You do have to have jurisdiction.
64. LORD JUSTICE DAVIS: Sometimes successful defendants cannot recover their private funded costs but I think in this particular case we have jurisdiction - yes?
65. MR WATKINSON: My Lord, it is not under section 19, it is under the Act itself; under section 89(4) which you have in your first tab of your authorities bundle at page 18. It is not under the Prosecution of Offences Act or anything of that nature as is ordinarily the case. Section 89(4): "Subject to any rules made under section 91"; I am not aware any have been made pursuant to that.
66. LORD JUSTICE DAVIS: It is ZA, is it not?
67. MR WATKINSON: Yes. "... costs of and incidental to all proceedings on appeal..." --
68. LORD JUSTICE DAVIS: Are in the discretion of the Court.

69. MR WATKINSON: That is the section I rely on.
70. LORD JUSTICE DAVIS: How much money do you want?
71. MR WATKINSON: My Lord, the question arises as to whether "incidental to all proceedings" is sufficient to cover the costs of the court below, not only the costs of the appeal, because as I had already submitted there is no costs available to the loser in the court below. Mrs Bevan will be out of pocket by the more substantial sum after the three-day trial, if "incidental to the proceedings" does not include the sum below, so I urge on you it should include that.
72. LORD JUSTICE DAVIS: If you are going to argue that, you are going to have to make your submissions in writing. If you are simply arguing for the costs of the appeal today we could deal with it summarily but I think we better have it in writing and then you need to, first of all, establish that your legal entitlement to costs of the proceedings below and also you will need to give, so Mr Evans can see just how much you are claiming.
73. MR WATKINSON: I shall do that in writing.
74. LORD JUSTICE DAVIS: You can do that within five days?
75. MR WATKINSON: I can.
76. LORD JUSTICE DAVIS: Three days response?
77. MR EVANS: Absolutely my Lord.
78. LORD JUSTICE DAVIS: We will decide that matter on the papers. There is no need for you to come up to London again to argue that point.
79. On the question for permission to appeal. If you wish to make such an application, you will need to do that ... Today is Wednesday... you need to do that by Monday midday.
80. MR EVANS: Okay.
81. LORD JUSTICE DAVIS: If you are not going to apply, could you also let my clerk know. If you are going to apply your submissions. Your submissions in response by Tuesday midday if you wish to put any submissions in.
82. MR WATKINSON: I am grateful.
83. LORD JUSTICE DAVIS: Do not forget that the clock is ticking in terms of trying to get in front of the Supreme Court, whether we grant permission or refuse it.
84. MR EVANS: I understand. Again, I will doublecheck it; I may have been misreading something.
85. LORD JUSTICE DAVIS: Are there any other points arising? Thank you both very much indeed for your submissions.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk