

THE HIGH COURT
IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 39 OF THE CRIMINAL
JUSTICE ACT 1994 (AS AMENDED)

[2021] IEHC 256

High Court Record No. 92 of 2020 CA
[Circuit Court Record No. 1193 of 2019]

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

APPLICANT/RESPONDENT

-AND-

JAMES BAXTER

RESPONDENT/APPELLANT

JUDGMENT of The Hon. Mr. Justice Alexander Owens delivered on the 25th day of March, 2021.

1. Officers of customs and excise have statutory powers to assist them in carrying out their functions of collecting taxes and duties and of preventing import and export of prohibited goods.
2. In former times customs frequently carried out inspections of baggage and vehicles at the land frontier and at ports and airports. There were no green or blue channels at airports. Baggage was routinely inspected for contraband. Inspections in relation to currency leaving the State were conducted in the context of the prohibition contained in the Exchange Control Act 1954 which was continued in force until the 1990s. In more recent times the main concerns of customs are to prevent export of cash suspected of being derived from money laundering and also to prevent unauthorised removal of large amounts of currency in specie from the European Union.
3. This appeal concerns exercise by an officer of the Revenue Commissioners of power to seize and detain cash under s.38(1A) of the Criminal Justice Act 1994 (the 1994 Act), as inserted by s.20(a) of the Proceeds of Crime (Amendment) Act 2005 (the 2005 Act). This provision states as follows:

"A member of the Garda Síochána or an officer of the Revenue Commissioners may seize and in accordance with this section detain any cash (including cash found during a search under subsection (1)) if-

 - (a) Its amount is not less than the prescribed sum, and
 - (b) He or she has reasonable grounds for suspecting that it directly or indirectly represents the proceeds of crime or is intended by any person for use in any criminal conduct."
4. These proceedings are for forfeiture under s.39 of the 1994 Act of cash which the Director of Public Prosecutions contends was properly seized from James Baxter and detained in exercise of the power conferred by s.38(1A). James Baxter disputes the legality of the conduct of customs officers which led to the discovery of the cash and contends that as a result of illegal actions the forfeiture order should be refused. He also contends that the Director of Public Prosecutions has failed to prove that the cash represented the proceeds

of crime or was intended for use in criminal conduct and that it is therefore not liable to be forfeited.

5. I am rejecting this appeal. The Director of Public Prosecutions has proved that the cash seized by customs from James Baxter at Dublin Airport directly or indirectly represented the proceeds of crime or was intended at the time of seizure for use in connection with criminal conduct. The Director of Public Prosecutions has also proved that the cash was lawfully seized following an examination of the carry-on bag of James Baxter which was conducted with his consent.
6. The Director of Public Prosecutions has further proved that the customs officer who interacted with James Baxter in the lead up to the finding of the cash had sufficient grounds to entitle her to rely on s.31 of the Customs Act 2015 (the 2015 Act) in the steps which she took during that interaction. The Director of Public Prosecutions has proved that the cash was properly seized and detained in accordance with s.38(1A) of the 1994 Act. All of these matters are established on the balance of probability.
7. Even if I were disposed to make a finding that there was an impropriety in the exercise by customs officers of powers under s.31(1) of the 2015 Act or in interacting with James Baxter, any such failure would not justify refusal of a forfeiture order.
8. I am affirming the order of the Circuit Court that the cash which is now represented by a deposit balance in a Bank of Ireland account be forfeited. It follows that the money may now be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Public Expenditure and Reform.
9. On 26 November 2017 Edel Kilbride, an officer of customs and excise at Dublin Airport, seized and detained under s.38(1A) of the 1994 Act €79,950 in €50 notes found in the carry-on bag of James Baxter who was about to board a Ryanair flight to Barcelona.
10. Following this seizure an application was made by the Director of Public Prosecutions to the Circuit Court for forfeiture under s.39 of the 1994 Act on the ground that the cash directly or indirectly represented proceeds of crime or was intended at time of seizure for use in connection with criminal conduct. The matter comes before me on an appeal from an order of the Circuit Court after the hearing of that application.
11. The affidavits of Edel Kilbride and Amanda Lovett set out the events which led to the seizure. They are customs officers at Dublin Airport. The affidavit of Edel Kilbride discloses that on the morning of the seizure she was on duty at the Airport along with Amanda Lovett. She avers that "At approximately 6.00 am, as a result of routine profiling, pursuant to the provisions of Section 31(1) of the Customs Act 2015, I stopped and questioned James Baxter (hereafter referred to as 'the Respondent')." She noted down the questions and answers.
12. She got his name and address and confirmed his identity from his passport. "I put a number of questions to the Respondent." "When asked where he was travelling to, the

Respondent replied 'Barcelona'. When asked about the purpose of his trip, the Respondent replied 'I am going to visit my girlfriend for a few days'. When asked if he had booked a return ticket the Respondent answered 'No'. When asked if he was carrying any cash, the Respondent replied: 'a bit of money, about €300.' ...On being asked to empty the contents of his pockets, the Respondent removed approximately €300 from his pocket and showed it to me...The Respondent was in possession of a carry-on bag. On being requested to do so, the respondent handed his bag to Officer Lovett for inspection. On searching the bag, Officer Lovett located a large brown envelope. Within the large brown envelope Officer Lovett discovered a large quantity of cash."

13. Edel Kilbride then proceeded to ask more questions. These questions were answered by James Baxter. The questions were directed to the provenance of the large amount of cash. He told her that the total was "€80,000. I accumulated it, my own money, my life savings." He was asked where he had saved the money and he replied : "In my house". When asked if he was working, he said that he was not and that he had his own company and had €20,000 to €30,000 a year in pensions. She was not satisfied with the answers and formed the suspicion that the cash represented proceeds of crime or was intended for use by some person in connection with criminal conduct at 6.10 am. She told James Baxter that she was seizing and detaining the cash pursuant to the provisions of s.38 of the 1994 Act, as amended, on suspicion that it represented proceeds of crime or was intended for use in connection with criminal conduct.
14. James Baxter asserts that the decision to engage with and question him was unlawful and that the officers were not entitled to ask him to hand over his carry-on bag for inspection and search it. He asserts that as this happened without legal authority the subsequent seizure of the cash was illegal and in breach of his constitutional rights. His evidence on affidavit is that he co-operated with the customs officers. He did not voice any objection to the requests. There is no suggestion that he was not fully aware that the two officials who engaged with him were officers of customs and excise. The evidence does not indicate that Edel Kilbride at any stage expressly referred to s.31 of the 2015 Act or to the exercise of statutory powers of stop, questioning or inspection of baggage in her interactions with James Baxter.
15. The Director of Public Prosecutions submits that the evidence establishes that James Baxter voluntarily answered the questions and consented to the search of his carry-on bag. No breach of legal rights can arise where the person claiming to have been affected by the activity complained of has consented to that activity.
16. Members of the public usually co-operate with requests from officers of the Garda Síochána and customs officers which, absent consent, would involve interference with personal rights such as a right to privacy or to enjoy property. For example, a person driving a car may be requested to state the purpose of the journey and to open the boot of the car to facilitate inspection. A person might co-operate with this type of request because he or she has no objection or because he or she assumes that the officer has legal entitlement to require or enforce compliance. It is only necessary to invoke

statutory powers of compulsion where there is a refusal to engage with what is requested or where some action such as a search will be outside the ambit of any consent. In many cases any potential interference with rights involved in complying with such requests is of a minor order.

17. A body search or a search of land will generally require statutory or other legal authority and compliance with the legal preconditions for exercise of the power. Courts are less likely to infer consent to these types of intrusion from the mere fact that the person affected submits. The reason is that unlawful personal searches and indiscriminate exercise of powers of stop and search involve unwarranted restriction of personal liberty and privacy. Everything depends on the circumstances. Body searches of a non-intimate sort regularly take place in the context of security screening at airports and these are consented to. Baggage examinations are also part of security screening and it is taken that there is a general consent to these processes in the interests of public safety.
18. Gardaí and customs officers are entitled to interact with members of the public in the performance of their duties. An officer of customs at an airport is entitled to approach travellers in the performance of duty and to ask them questions about matters which relate to his or her duties. These include duties to prevent money laundering by exportation of cash and to intercept persons who are about to export controlled drugs or cash which represents proceeds of crime or is intended for use in connection with criminal conduct.
19. A customs officer does not need any statutory power to engage with a traveller in the manner in which Edel Kilbride sought information from James Baxter. A customs officer may also request that a traveller open baggage and permit an examination of that baggage. A traveller may choose to give answers to questions and may choose to consent to an examination of baggage. Suspicion that a person may be engaged in contravention of a prohibition on import or export of goods, including cash, may grow or diminish during the course of this type of interaction. The level of voluntary engagement by the traveller with inquiries and requests made by a customs officer may have a bearing on this.
20. The only qualification to this general rule arises in the context of the obligation to advance the principle of freedom of movement within the European Union by eliminating customs spot checks on baggage of passengers taking intra-Union flights or sea crossings. This originally derived from Council Regulation (EEC) No 3925/91 and is now found in Article 49 of Regulation (EU) No 952/2013 laying down the Union Customs Code.
21. If a traveller co-operates, it may not be necessary to expressly invoke statutory powers or remind a traveller that there is an obligation under s.12(1) of the 2015 Act to answer statutory questions and produce any baggage or item for examination. Even where the powers to ask questions and examine baggage are being relied on by a customs officer, it may not be necessary for that officer to make express reference to them. As was pointed out by the Court of Criminal Appeal in its judgment in *The People (Director of Public Prosecutions) v. Balogun* [2006] IECCA 119, powers of the sort conferred by s.31 of the

2015 Act are commonplace all over the world. A person arriving at an airport is taken to know that baggage and possessions are liable to customs examination to collect taxes or duties and prevent importation of prohibited goods.

22. This observation also applies to travellers departing from an airport. Personal baggage and items carried by travellers have already been examined for potentially dangerous items when they pass through security screening. Travellers may be further stopped by those exercising customs and excise functions relating to taxes, duties and exportation of prohibited goods.

23. Section 31 of the 2015 Act provides as follows:

“(1) An officer of customs may, subject to subsection (2) stop any person entering or leaving the State and question that person with respect to-

- (a) the person’s arrival or departure,
- (b) the person’s identity, usual place of residence and actual or intended address within the State,
- (c) the person’s baggage, and
- (d) anything included in that baggage or brought by that person by whatever means,
and the officer may examine any such baggage or thing.

(2) The power specified in *subsection* (1) shall only be exercised in respect of a person arriving or purporting to arrive from another Member State or departing to or purporting to depart to another Member state where the officer of customs has reasonable grounds to suspect that the person entering or leaving the State-

- (a) may be engaged in-
 - (i) the importation into the State of non-Community goods (including any such goods that have been conveyed through one or more other Member States),
 - (ii) the exportation of goods from the Community, or
 - (iii) the carriage of goods which are subject to any prohibition or restriction on importation or exportation,
- or
- (b) has not come from another Member State or is not travelling to another Member State.”

24. The requirement that a customs officer has reasonable grounds to suspect that the person entering or leaving the State may be engaged in an activity set out in s.31(2)(a) before exercising powers under s.31(1) only applies to persons travelling to or from member states of the European Union. The purpose of the provision is to exempt travellers between the member states of the European Union from customs spot checks and to qualify this exemption where checks may be necessary under national law of a member state for non-customs duty purposes.

25. The restrictions on questioning and inspection of baggage set out in s.31(2) of the 2015 Act have nothing to do with any European law objective of protection of the privacy of the baggage or personal possessions of travellers at ports, airports and other points of entry and exit at borders between member states.
26. A traveller who comes into the State from a state other than a member state of the European Union or who departs from the State to a state outside the European Union may be subjected to stop and questioning and examination of baggage by a customs officer under s.31(1) without any requirement that such officer has a reasonable ground for suspecting that they may be engaged in evading duty or tax on goods or are engaged in the import or export of prohibited goods. Customs officers may carry out "spot checks" of baggage and items carried by any such traveller.
27. The legislative history of the provision now contained in the 2015 Act is relevant. One of the purposes of the Act as set out in the long title is to partially consolidate the law relating to customs powers. The Act repeals and replaces a number of provisions. Section 31 of the 2015 Act replaces s.29 of the Finance Act 1971 as repealed and replaced by s.19 of the Customs and Excise (Miscellaneous Provisions) Act 1988. The amended s.29(2) of the 1971 Act stated as follows:

"A person entering or leaving the State shall answer such questions as may be put to him by any officer of Customs and Excise with respect to his baggage and anything included therein or brought with him, and shall, if required by the officer, produce that baggage and any thing [meaning "any thing included in his baggage or brought with him which on importation is subject to any prohibition or restriction or to any duty or tax"-see s.29(1)] for examination."
28. This was supplemented by article 8(2) of the European Communities (Customs) (No. 2) Regulations 1992 (S.I. No. 431 of 1992) which were made under s.3 of the European Communities Act 1972 for the purpose of giving effect to Article 8a of the Treaty establishing the European Economic Community, Council Regulation (EEC) No 3925/91 and Commission Regulation (EEC) No 1823/92.
29. Article 8(2) reads as follows:

"Insofar as subsection (2) of section 29 of the Act of 1971 applies to a person who is entering the jurisdiction of the State, having come from another Member State, or to a person who is leaving the jurisdiction of the State for another Member state, it shall so apply, on or after the 1st day of January, 1993, only to the extent that an officer of Customs and Excise has reason for believing that there may be included in that person's baggage or brought with him goods which, as the case may be, are subject on importation to any prohibition or restriction or are subject on exportation to any prohibition or restriction."
30. The purpose of Council Regulation (EEC) No 3925/91 was to eliminate controls and formalities relating to cabin and hold baggage of persons taking intra-Community flights

and baggage of persons making an intra-Community sea crossing and the recitals emphasise that "Member States must, however, be free to take specific measures compatible with Community law for the purpose of carrying out special controls, *inter alia*, in order to prevent criminal activities linked in particular to terrorism, drugs and the traffic in works of art,..."

31. Article 1.1 of that Regulation specified that subject to Articles 3, 4 and 5 "no controls or formalities shall be carried out in respect of :- the cabin and hold baggage of persons taking an intra-Community flight." Article 1.2 specified that: "This Regulation shall apply without prejudice to:- checks linked to prohibitions or restrictions laid down by the Member States, provided they are compatible with the three Treaties establishing the European Communities."
32. Article 49 of the Regulation (EU) No 952/2013 of 9 October 2013 laying down the Union Customs Code (recast) which sets out the current provision relating to "Intra-Union flights and sea crossings" reads as follows:
 - "1. Customs controls or formalities shall be carried out in respect of the cabin and hold baggage of persons either taking an intra-Union flight, or making an intra-Union sea crossing, only where the customs legislation provides for such controls or formalities.
 2. Paragraph 1 shall apply without prejudice to either of the following:
 - (a) security and safety checks;
 - (b) checks linked to prohibitions or restrictions."
33. The statutory level of suspicion set out in s.31(2) of the 2015 Act which permits exercise of powers under s.31(1) is set at the lowest level of "has reasonable grounds to suspect that the person entering or leaving the State...*may* be engaged" in one or more of the activities listed at s.31(2)(a)(i)-(iii). This may be contrasted with the level of suspicion which an officer of customs must have in order to exercise more invasive statutory investigatory powers under other provisions of the 2015 Act and under other legislation. It will not take much in the way of information to trigger a reasonable suspicion that a person may be engaged in a prohibited importation or intended exportation. Similarly, it will not take much to justify interaction with a traveller to secure safety at an airport or on an aeroplane.
34. Section 31 of the 2015 Act must be read along with ss. 12 and 50 of the 2015 Act. Section 12 reads as follows:

"(1) A person entering or leaving the State shall-

 - (a) at such place as the Commissioners may designate and in such manner as the Commissioners may determine, declare to an officer of customs any goods included in his or her baggage or brought with him or her, which are

- liable to any duty or tax, or are subject to any prohibition or restriction on importation or exportation,
- (b) answer such questions as may be put to him or her by an officer of customs, in exercise of the powers conferred on the officer by *section 31*, with respect to-
 - (i) the person's arrival or departure,
 - (ii) the person's identity, usual place of residence and actual or intended address within the State,
 - (iii) the person's baggage, and
 - (iv) anything included in that baggage or brought by that person by whatever means,
 - (c) if required by that officer, produce and unpack that baggage and any such thing for examination, and repack it following such examination, and
 - (d) remain present for the duration of such examination.
- (2) For the purposes of *subsection (1)(a)*, where a channel system is in place at a customs port or customs airport, a person entering the State shall declare, by electing to enter and entering the red channel, that he or she has in his or her baggage, or has brought with him or her goods that are liable or may be liable to any duty or tax, or that are subject or may be subject to any prohibition or restriction on importation.
- (3) A person entering the State who leaves a place approved under section 7(1), or who leaves a customs port or customs airport, without making a declaration under *subsection (1)* shall be deemed to have declared that there are no goods included in his or her baggage or brought with him or her, that are liable or may be liable to any duty or tax, or that are subject or may be subject to any prohibition or restriction on importation.
- (4) A person who contravenes *subsection (1)* commits an offence and is liable on summary conviction to a fine of €5,000.
- (5) In this section and in section 13, "duty or tax" means duties of customs, excise duty or Value-Added Tax payable on goods imported or exported."
35. Section 50 of the 2015 Act provides that "Goods subject to any prohibition or restriction on importation or exportation in any enactment shall be prohibited or restricted goods on importation or exportation, as the case may be, for the purposes of the Customs Acts and the provisions of the Customs Acts shall apply accordingly." In s.2(1) the term "goods" is defined as "...includes things of every kind, whether animate or inanimate." Currency in the form of notes or coin comes within this definition of "goods".
36. It is an offence under s.7(1) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the 2010 Act) for a person to remove from the State property which is the proceeds of criminal conduct, where that person knows or believes or is reckless as

to whether or not such property is the proceeds of criminal conduct. This section replaces the offence of money laundering as originally provided for in s.31 of the 1994 Act and as later substituted by s.21 of the Criminal Justice (Theft and Fraud Offences) Act 2001. These provisions created similar, less extensive offences of money laundering which included somewhat narrower criminal prohibitions on removing proceeds of criminal conduct or activity from the State. Other statutory provisions contain prohibitions on import or export of numerous types of goods such as controlled drugs.

37. The 2005 Act repealed and replaced some of the provisions in Part VI of the 1994 Act. One effect of these changes was that powers of search and seizure of members of the Garda Síochána and officers of customs and excise of any person's cash proceeds of drug trafficking or cash for use in that activity and the provisions for detention and forfeiture of cash so taken were extended to cash which directly or indirectly represents proceeds of crime. The following power of personal search is conferred by s.38(1) of the 1994 Act:

"A member of the Garda Síochána or an officer of customs and excise may search a person if the member or officer has reasonable grounds for suspecting that—

- (a) the person is importing or exporting, or intends or is about to import or export, an amount of cash which is not less than the prescribed sum, and
- (b) the cash directly or indirectly represents the proceeds of crime or is intended by any person for use in connection with any criminal conduct."

38. It is clear from the enquiry directed by Edel Kilbride to James Baxter as to whether he was carrying any cash, that she suspected that he may have been carrying cash representing proceeds of crime. We are not told the nature of the information arising from "routine profiling" which gave rise to her suspicion.
39. The issue of whether she had reasonable grounds to suspect that James Baxter may have been engaged in carrying goods consisting of cash which was the proceeds of criminal conduct in contravention of s.7(1) of the 2010 Act has not been challenged by seeking to have her cross-examined. The substance of the complaint by James Baxter appears to be nothing more than that her affidavit did not expressly state that as a result of the routine profiling she formed the suspicion on reasonable grounds that James Baxter may have been carrying on his person or in his baggage goods subject to a prohibition on exportation from the State.
40. In the absence of a challenge based on evidence, the averment by Edel Kilbride that she was exercising her power under s.31 of the 2015 Act as a result of routine profiling was sufficient to convey that she had reasonable grounds for suspecting that James Baxter may be engaged in the carriage of goods subject to a prohibition on exportation. The Director of Public Prosecutions has established to my satisfaction that the examination of James Baxter's carry-on bag which led to the finding of the cash was lawful. It is also established that he consented to the inspection of his bag.

41. Even if I were to conclude that there was no consent by James Baxter to the search of his bag or that there was insufficient evidence that Edel Kilbride was possessed of information which gave her reasonable grounds to suspect that he may have been engaged in the carriage of goods which were the subject of a prohibition on exportation, this is not a case where I would intervene to direct that the money representing the cash be returned.
42. I refer to the decision of the Supreme Court in *Criminal Assets Bureau v. Murphy* and others [2018] 3 I.R. 640. It does not follow that property which has been taken as a result of some unlawful act by a State agency, will always be returned to the holder or will not be amenable to some further process such as a forfeiture or an order under s.3 of the Proceeds of Crime Act 1996.
43. For instance, there could be no question of a person being permitted to recover possession of illegally seized controlled drugs or prohibited firearms or child pornography. This is because it is an offence to be in possession of these items. In less extreme cases courts are concerned to ensure that in dealing with such property the administration of justice is not brought into disrepute by producing a result which would flow from lending themselves to the sort of practices referred to by Kingsmill Moore J. in the context of illegally obtained evidence in *The People (Attorney General) v. O'Brien* [1965] I.R. 142 at p.160 in the following passage:
- "It is desirable in the public interest that crime should be detected and punished. It is desirable that individuals should not be subjected to illegal or inquisitorial methods of investigation and that the State should not attempt to advance its ends by utilising the fruit of such methods. It appears to me that in every case a determination has to be made by the trial judge as to whether the public interest is best served by the admission or by the exclusion of evidence of facts ascertained as a result of, and by means of illegal actions, and that the answer to the question depends on a consideration of all the circumstances. On the one hand, the nature and the extent of the illegality have to be taken into account. Was the illegal action intentional or unintentional, and, if intentional, was it the result of an *ad hoc* decision or does it represent a settled or deliberate policy? Was the illegality one of a trivial and technical nature or was it a serious invasion of important rights the recurrence of which would involve a real danger to necessary freedoms? Were there circumstances of urgency or emergency which provide some excuse for the action? ...The nature of the crime which is being investigated may have to be taken into account."
44. This passage was quoted with approval by Finlay C.J. in the majority judgment of the Supreme Court in *Director of Public Prosecutions v. McMahon and Others* [1986] I.R. 393 at pp. 399-400. An example of a relevant consideration referred to by McCarthy J. in his concurring judgment at pp. 401-402 would be a policy to conduct searches which required a warrant without warrant.

45. There was insufficient evidence to engage any real issue that the cash was seized in circumstances involving any breach of constitutional or lesser legal rights of James Baxter in the sense referred to by O'Malley J. at paras. 130-131 of her judgment in *Criminal Assets Bureau v. Murphy and Others* [2018] 3 I.R. 640 at p.68.
46. At most, and even assuming that there was insufficient material available to Edel Kilbride to justify her in relying on the provisions of s.31(1) of the 2015 Act to stop and question James Baxter or to conduct the baggage examination on either a compulsory or voluntary basis, the only protected right interfered with was a right of James Baxter not to be subjected to a customs spot check on his baggage and personal possessions because he happened to be travelling from Ireland to another member state. Any deprivation of this benefit was not a matter of great moment when placed against the objectives of the European Union and member states to combat money laundering, international drug trafficking and other transnational crime.
47. Prior to the time that Edel Kilbride seized the cash which was found in the bag, she asked James Baxter further questions and had got answers which she considered unsatisfactory. At that stage there was ample material to justify her in concluding that the cash was in excess of the prescribed sum of €1,000 set out in the Criminal Justice Act 1994 (Section 44) Regulations 2016 (S.I. 436 of 2016). She had reasonable grounds for suspecting that the cash directly or indirectly represented the proceeds of crime or was intended by some person for use in criminal conduct.
48. The evidence establishes to the requisite standard of proof that the cash found by the customs officers in James Baxter's bag was proceeds of crime or intended by any person for use in criminal conduct. It consisted of used €50 notes and the explanation that it represented cash proceeds of the sale of a house some years previously or proceeds of policies is unbelievable. James Baxter's assertion that he had lost faith in banks and was in the habit of carrying this large sum of cash on his holiday travels is unbelievable.
49. The documents produced by James Baxter did not support these explanations. He continued to have a bank account and more recent extracts from his bank statements showed expenditure in Barcelona on 8 November 2017. When asked about his travel prior to the date the cash was seized, he claimed he could not remember where he had travelled. He had the option of producing more details from his bank account to show the source of the cash which he claimed to be derived from proceeds of the house sale and policies. He chose not to do so. He was travelling to Barcelona, supposedly to visit a female friend who he would not identify, without any change of clothes or travel accoutrements.
50. He claimed that bank drafts bought by him using proceeds of sale in 2014 of his wife's house which he inherited were used to get cash. He failed to produce any evidence of this. He claimed he travelled abroad frequently and took this large amount of cash with him. In response to an allegation in a custom's officer's affidavit that €148,100 was seized from James Baxter as suspected proceeds of crime at Fuengirola in Spain while he was the company of a well-known Limerick criminal on 26 September 2016, his affidavit

accepts that the incident occurred. He asserts that this is inadmissible as it is only relevant to character.

51. This is relevant evidence. No explanation is provided by James Baxter of why he was in possession of €148,100 in cash in Fuengirola. The fact that cash was taken from him in this incident made it highly unlikely that he would then carry around his life savings in cash and subject himself to the risk that this cash would go the same way as the Fuengirola money. The obvious inference which must be drawn is that the two seizures of cash are not capable of being explained away as unfortunate coincidence and that James Baxter was carrying the cash seized from him by customs in Dublin Airport as a bagman for criminals.