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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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THE QUEEN

-v-

LEONARD HENRY WARWICK

_____

Before: Morgan LCJ, Girvan LJ and Weatherup J

_____

GIRVAN LJ (delivering the judgment of the court)

Introduction

[1] The appellant was jointly indicted with Thomas James Fox, Anthony Michael Fox and Frances Patrick Markey on Bill No. 52687-09. He pleaded guilty to a total of 17 charges. Seven of these relate to money laundering offences, three to charges relating to forgery, two to charges relating to offences involving VAT fraud and the laundering of proceeds thereof, one to a charge relating to a mortgage fraud and one to a charge in respect of deception.

[2] Details of the relevant counts may be briefly stated as follows:

(a) Counts 56, 58, 60 and 62 related to the opening of four bank accounts in false names in order to assist others to retain the benefit of criminal property. (These comprised an account in the Bank of Ireland at Keady in the name of Thomas Doherty; an account in the names of Noel Patrick Sweeney in the First Trust Bank, Coalisland; an account in the name of Thomas James Doherty in the First Trust Bank, Magherafelt and an account in the names of James Doherty and Patrick Markey in the Bank of Ireland, Keady.)

(b) Counts 57, 59 and 61 related to the use of false instruments (namely a false driving licence and false passports) in respect of the opening of the said accounts.

(c) Counts 65 and 66 related to the conversion of unlawfully obtained cash into accounts in the names of James Doherty and Patrick Markey in the Bank of Ireland in Keady. This related to the sum of £16,074 lodged in cash. The appellant was jointly charged with Patrick Markey on those counts.

(d) Counts 67, 68, 69 and 70, on which the appellant was jointly charged with Thomas Fox related to the fraudulent evasion of VAT and to the concealment of the proceeds of criminal property.

(e) Counts 54 and 55 related to the conversion of cash to a credit with Parmamendies Limited.

(f) Counts 82 and 83 related to the obtaining by deception of a mortgage loan by deception and obtaining the sources of a current account. Apart from counts 82 and 83 the other offences alleged related to a fuel smuggling operation run by James Fox and his sons.

[3] On 1 March 2010 the appellant pleaded guilty to each of the counts against him. The learned trial judge McLaughlin J ("the trial judge") decided to impose a custody probation order. Having decided that the appropriate sentence was one of 18 months he concluded that the appellant should serve one year in custody and one year on probation. Although he decided to impose a serious crime prevention order and financial reporting order on the appellant's co-accused Thomas Fox he decided not to impose such orders in respect of the appellant. In opening the case for the prosecution before the trial judge counsel for the Crown accepted that the Crown could not make the case that the appellant had been an organisational mind behind the fraudulent operation and that there was no evidence that the appellant had a particularly lavish lifestyle commensurate with substantial profits from the operation.

[4] In passing sentence the trial judge stated:

> "Leonard Warwick was involved in the financial side of this operation … There were a

> number of bank accounts in his name, ten in his name and seven with which he can be associated in false names. There were large movements of cash through those accounts. These effectively were the accounts that enabled the operation to continue. There were a large number, over 100 lodgements, to the false accounts outlined already and they were linked to the false named accounts which were linked to him in various ways (fingerprints, photographs produced). You cannot open a bank account without photographic ID. There was a driving licence a passport and the photograph was not in the name of the person but in fact of (the appellant). … *Whilst he was an important cog in the machine,* he was by no means an organiser and whilst his name is associated with all these accounts I think it is less clear to what extent he was the actual person conducting the day to day operation of those accounts. I say that for the very good reason that not only is this a man with significant drink problems, and they have been amply demonstrated and attested to in the reports of Dr Davies and Dr Weir, but he is also a person of, without overstating it, restricted cognitive abilities. And whilst it is not a very complex matter to operate a bank account or open one, *it is nonetheless a matter requiring some mastery of circumstances to be able to operate an account through which hundreds of thousands of pounds were passing.* So I am not sure of the extent to which he was actually doing all of that." (italics added)

The Confiscation Order Application

[5] The Crown made an application for a confiscation order under the provisions of the then applicable Proceeds of Crime (Northern Ireland) Order 1996 ("the 1996 Order") in respect of the appellant. The prosecution and the defence were agreed that the court was entitled to make a

Confiscation Order but they disagreed on the amount which should be the subject of such an order. The Crown asserted that the amount should be £687,430 representing the totality of the sums passing into the accounts operated by the defendant being the proceeds of the unlawful operation. The defence asserted that it should be for no more £38,836 which represented the mortgage monies obtained by deception, the subject matter of count 82. The prosecution and the defence were agreed that there were, in fact, no realisable assets. Any order accordingly was bound to be for a nominal amount.

The relevant statutory provisions

[6] Under Article 2(7) of the 1996 Order it is provided:

> "For the purposes of this Order –
>
> (a) any property obtained by a person as a result of or in connection with the commission of an offence is his benefit from the offence;
>
> (b) any pecuniary advantage derived by a person as a result of or in connection with the commission of an offence is his benefit from the offence;
>
> (c) the value of his benefit from the offence is the value of the property or a sum of money equal to the value of the pecuniary advantage or aggregate of the values of the property and money."

[7] Article 8 of the 1996 Order so far as material provides:

> "Where a defendant is convicted, in any proceedings before the Crown Court or a court of summary jurisdiction, of an offence to which this Order applies the court shall –
>
> (a) if the prosecution asks it to proceed under this Article, or

(b) If the court considers that, even though it has not been asked to do so, it is appropriate for it so to proceed,

determine whether the defendant has benefited from any relevant criminal conduct or, as the case may be, from drug trafficking.

(2) Subject to paragraph (4) if, in the case of an offence of a relevant description the court determines that the defendant has benefited from any relevant criminal conduct, the court shall make an order (a confiscation order) ordering the defendant to pay.

(a) the amount equal to the value of the defendant's benefit from the relevant criminal conduct; or

(b) the amount appearing to the court to be the amount that might be realised at the time the order is made

whichever is the less."

[8] Article 9 insofar as material provided:

"(1) Where, on the conviction of a defendant of an offence of a relevant description, the prosecution asks the court to proceed under Article 8 and the defendant-

(a) is convicted in the same proceedings of at least one other offence to which this Order applies, or
(b) has been convicted of at least one other such offence during the period of 6 years ending when the proceedings were instituted against him,

if the prosecution also asks the court to apply the provisions of this Article, the Crown Court or a court of summary jurisdiction may, for the purpose-

(i) of determining whether the defendant has benefited from relevant criminal conduct; and

(ii) if he has, of assessing the value of the defendant's benefit from such conduct,

subject to paragraph (3), make the assumptions set out in paragraph (2).

(2) Those assumptions are-

(a) that any property appearing to the court-

(i) to be held by the defendant at the date of conviction or at any time since that date, or

(ii) to have been transferred to him at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him,

was received by him, at the earliest time when he appears to the court to have held it, as a result of or in connection with the commission of offences to which this Order applies;

(b) that any expenditure of his since the beginning of that period was met out of payments received by him as a result of or in connection with the commission of offences to which this Order applies; and

(c) that, for the purposes of valuing any benefit which he had or which he is assumed to have had at any time, he received the benefit free of any other interests in it.

(3) The court shall not make any of the assumptions set out in paragraph (2) in relation to any particular property or expenditure if-

(a) that assumption is shown to be incorrect in the defendant's case;

(b) that assumption is shown to be correct in relation to an offence the defendant's benefit from which has been the subject of a previous confiscation order; or

(c) the court is satisfied that there would (for any other reason) be a serious risk of injustice in the defendant's case if the assumption were to be made."

The judge's conclusions

[9] The judge was satisfied that the evidence showed that the appellant had operated bank accounts in the Isle of Man and Northern Ireland in his own name and four accounts were opened by him using false identification and documents. He considered that the true issue was whether or not the appellant had "benefited" from the sums in the accounts. He noted that the case had proceeded on the basis that he was not the "main player", that he was exploited and got no personal benefit, did not use the money to fund his lifestyle or, in the judge's words "splash out" with it. It was accepted that he was an alcoholic of limited intelligence. The judge concluded that the appellant had a power of disposition and control over the monies in the relevant accounts and that he exercised control over them. The fact that he "kept the criminal code" by keeping to the plan of others in relation to the use of the money did not strip him of being in reality the person in receipt of the money which he had received and obtained in the terms of the statute. He was not a mere nominee holder of

the money. The judge accordingly concluded that the appellant was accountable for the sum of £687,430 but as he had no real realisable assets the order made was for the payment a nominal £1.

The parties' submissions

[10] Mr O'Rourke QC argued that the appellant did not benefit from the criminal conduct to the extent claimed by the Crown in the sense that he did not obtain the property as particularised by the Crown. Counsel relied on what a police officer Graham told the writer of the pre-sentence report in respect of the appellant, namely that the appellant received little financial gain from his involvement in the offence and that he was used by his co-defendants. Counsel referred in particular to what said by the House of Lords in R v May [2008] 1 AC 1028 at paragraph [9]. He also referred to R v Sivaraman [2009] 1 Crim. App. R (S) 80 particularly at paragraphs [19] and [20]. He also called in aid what was said in R v Allpress [2009] 2 Crim. App. R (S) in which the court, after stating that normally payment into a bank account gives rise to a thing in action in favour of the holder of the account and thus is his property, went on to say that in certain circumstances money may be paid into a bank account in the name of D but which is in reality operated entirely by P for the benefit of P and where it would be wrong, unusually, to conclude that D had not obtained money paid into the account. An example was given of the possibility of a husband or father operating an account in the name of his wife or child which he treats entirely as his own and in respect of which the wife or child is a mere nominee. Mr O'Rourke QC argued that the judge wrongly conflated criminal liability with the assessment of the extent to which the applicant had benefited from that criminality. He failed to apply to the case his own assessment of the facts (viz the appellant was not the main player, was exploited, obtained no personal benefit and had not "splashed out"). In R v May the House of Lords indicated that the court should first establish the facts as best it could on the material available. The court had failed to assess the benefit to the applicant as a question of fact but gave to the word "benefit" a judicial gloss. The court misinterpreted R v Allpress. The judge erred in saying that no issue arose in respect of questions (ii) and (iii) as formulated by Lord Bingham in paragraph 48(6) in R v May. Those questions were at the heart of the matter. The judge's assessment of the level of benefit was manifestly excessive and bore no relation to the reality of the appellant's role in the offences and his actual benefit therefrom.

[11] Mr O'Rourke QC drew particular attention to the trial judge's statement in the course of argument that he accepted that the appellant did not splash out with his money, the money came in and it went back out and he was a "custodian of it and nothing more". Earlier in the course of the argument the judge had said "there is a single issue to be determined whether when the money came in and he operated the accounts and was custodian of the money that he had at that point benefited from it". Mr O'Rourke argued that in the light of what Lord Bingham had said in R v May at paragraph 48(6) this was a conclusion by the judge that the appellant was a mere custodian of the monies and therefore could not be said to have benefited from them.

[12] Counsel for the prosecution pointed out that the basis of the appeal was that the appellant was in effect a poorly paid employee of Mr Fox who only received some kind of nominal irregular fee for assisting others. There was no evidence to support that suggestion. In R v Sivaraman the appellant had the duties and responsibilities of an employee. The appellant in the present instance was the sole signatory on all but one of the fictitious accounts and the controller of the accounts. The majority of withdrawals from the Bank of Ireland account held in the name of Patrick Markey and Thomas Doherty were in the form of over the counter cash withdrawals generally of the value of £16,000 which totalled in excess of £300,000. These withdrawals were carried out either by the appellant personally or by Patrick Markey who claimed that he made withdrawals at the request of the appellant and handed the cash to him. The appellant pleaded guilty to a number of money laundering offences. The fictitious accounts were opened by the appellant for the specific purpose of money laundering. The appellant was no mere courier or custodian or nominee. The fact that the appellant may have retained little personal financial gain in comparison with the total amount of benefit did not mean that the appellant had not obtained a benefit for the purposes of confiscation (R v Sharma [2006] EWCA Crim. 16).

Conclusions

[13] In considering this appeal we must consider whether the confiscation order should properly have included the sums which passed through the accounts of the appellant in his own name or in the fictional names of others and the joint account in the name of a fictional person and Patrick Markey. Money was laundered through those accounts in connection with the fuel fraud. It is now accepted by the Crown that the

confiscation order should not have included the sum of £38,836 the mortgage sum obtained by deception bearing in mind the recovery of monies from a sale of the mortgaged property.

[14] At the heart of the appellant's case is the proposition that the appellant did not enjoy the fruits of the relevant accounts or if he did enjoy some of the fruits thereof they were of a very limited nature with most of the monies in question going elsewhere to others involved in the criminal enterprise. In considering this matter we must consider the relevant authorities in the light of what the Supreme Court has said in its most recent decision in confiscation proceedings in R v Waya [2012] UKSC 51.

[15] There is no doubt on the evidence that the appellant had obtained monies held in the accounts as a result of or in connection with the commission of relevant offences. Article 2(7) of the 1996 Order makes clear that any property obtained as a result of or in connection with the commission of an offence represents his benefit from the offence(s). Where a defendant has benefited from relevant criminal conduct the court is bound to make a confiscation order ordering the defendant to pay the amount equal to the value of the defendant's benefit or, if less, the realisable amount at the time the order is made.

[16] In R v Sharma [2006] EWCA Crim. 16 the defendant was convicted of conspiracy to defraud. The fraud realised a sum of £179,000 which was paid into a company account of which the defendant was the sole signatory. The defendant argued that the confiscation figure of £179,000 sought by the Crown should be reduced to take account of sums paid out by the defendant to his fellow conspirators. It was held that a person who receives money into his bank account obtains it from the source from which it is derived and where he is the sole signatory on the account he obtains the money and has possession of it for his own benefit. The amount of the benefit obtained by a defendant is not affected by the amount which might be obtained by others to whom transfers of any part of the benefit are made. Newman J giving the judgment of the court stated at paragraph [19]:

> "In our judgment it is clear, applying general principles of law, that a person who receives money into his bank account obtains it from the source from which the money is derived and where he is the sole signatory of the account he

> obtains the money and has possession of it for his own benefit. In this area of the criminal law where the proceeds of crime are concerned, there is no room for the application of trust principles and the application of the normal legal consequences which flow from the receipt of money for others. Nor in this area of the law would be the purpose of the statute, namely to deprive criminals of the benefits of their criminal enterprise, be assisted by the introduction of collateral enquiries on an issue as to whether, when the benefit or part of the benefit paid on to another criminal or other person participating in the crime, the original recipient is to be regarded as having never held the benefit for himself and to have obtained no fresh or continuing benefit from making the disposal to another. In this area of the law, the legitimate purpose of the statute is met, where the defendants have not jointly obtained the benefit, but there has been a disposal by one member of a criminal enterprise to another of the same criminal enterprise who knowingly receives it, by each being treated as a recipient of a benefit to the extent of the value of money which has come into possession of each of them. …"

In R v May [2008] UKHL 28 at paragraph [34] the Judicial Committee unanimously concluded that R v Sharma was correctly decided.

[17] In R v May the House of Lords at paragraph [31] also approved earlier decisions in R v Patel [2000]2 Crim. App. R(S) and R v Currey [1994] 16 Crim. App. R(S) 421 Lord Bingham stated:

> "In R v Patel the appellant, a postmaster, pleaded guilty to one count of conspiring to obtain property by deception. He had obtained payment of £51,920 from the Post Office by using stolen benefit books and forging signatures. He had then paid a share of the

> proceeds to an accomplice. A confiscation order was made against him in the full sum of £51,920. It was argued on his behalf on appeal that the judge had had a discretion to order payment of a smaller sum, and that he should not in any event have ordered the payment of more than what was left to the defendant after paying his accomplice. These submissions were rightly rejected. The discretion which the court had originally enjoyed under the Act had been removed by the 1995 Act. The defendant admitted receiving in his hand the sum ordered, and what he did with the money afterwards was irrelevant. (This was consistent with the ruling in R v Currey (1994) 16 Cr App R (S) 421, 424, that what matters is whether someone has obtained money, not whether he has retained it). The accomplice was not before the court and his position was not discussed."

[18] In R v Sivaraman [2009] 1 Crim. App. R. (S) 80 the court concluded on the evidence that the defendant's involvement in the criminal enterprise of receiving and selling illicit fuel was that of a mere employee who received the consignment of illicit fuel and who as a reward for doing so received only an enhanced wage or cash payment. The question as to what benefit the defendant gained was a question of fact. The Court of Appeal concluded that having regard to the role played by the defendant in the case it would be wrong to make a confiscation order in the sum of £128,520 being the value of duty and VAT avoided and substituted a confiscation order of £15,000 being the sum which the defendant had received as his share in the sale proceeds. Mr McCollum QC, correctly in our view, argued that that decision related to a finding by the court that the defendant's role was akin to that of a mere courier or minor contributor rewarded by a specific fee and having no interest in the property or the proceeds of sale and who could not normally be considered to have obtained the property. In R v May at paragraph [48(6)] in the endnote to the judgment Lord Bingham said:

> "(6) D ordinarily obtains property if in law he owns it, whether alone or jointly, which will ordinarily connote a power of disposition or

> control, as where a person directs a payment of conveyance of property to somebody else. He ordinarily obtains a pecuniary advantage if (among other things) he evades a liability to which he is personally subject. *Mere couriers or custodians or other very minor contributors to an offence rewarded by a specific fee and having no interest in the property or the proceeds of sale are unlikely to be found to have obtained that property. It may be otherwise with money launderers*." (italics added)

[19] In R v Allpress [2009] EWCA Crim. 8 the court had to consider a number of different cases one of which involved a defendant called Morris, a solicitor who let his solicitor's practice account to be used as a means of laundering money on behalf of criminals. It was argued on behalf of Morris that he had no personal interest in the monies which went into the account and the money was held in accordance with the Solicitors' Accounts Rules. Morris contended that he was a mere trustee of the funds acting at all times on behalf of the criminal and under the criminal's instructions. The prosecution argued that the Solicitors' Accounts Rules had no relevance since the account was not being used for a genuine professional purpose and the use of the firm's client account could give Morris no more protection that the money had gone into account opened by Morris. It also submitted that the judge had been entitled on the evidence before him to reject the argument that the true nature of Morris's connection with the relevant monies was that of a bare trustee. The court accepted the prosecution's submissions. At paragraph [85] the court said:

> "The account was an account of Morris and his partners with their bank. Payment of monies into that account gave rise to a thing in action in favour of Morris (jointly with his partners). The starting point (as in R v Sharma [2006] EWCA Crim 16, is that this was therefore his property. In Sharma the defendant caused the proceeds of a fraud in which he was engaged to be paid into a company account of which he was the sole signatory. It was held that the money in the account was money held for his benefit as the sole signatory on the account, and that decision

> was approved by the House of Lords in May (para 34). In this case the account was not only in the name of the firm of which Morris was a partner, so that he had a thing in action against the bank, but he also had in fact sole operational control over the account."

[20] Mr O'Rourke relied on paragraph [86] of that judgment where the court said it did not exclude the possibility of a case where money is paid into a bank account in the name of D but which is in reality operated entirely by P for the benefit of P and where it would be wrong, unusually, to conclude that D obtained monies paid into the account. It considered that this was more likely to arise in a domestic than a commercial context. The court had in mind for example the possibility of a husband or father operating an account in the name of his wife or child which he treats entirely as his own and in respect of which the wife or child is a mere nominee. It concluded however that in the case before them Morris was not a bare trustee or nominee in relation to the funds in the account.

[21] Mr O'Rourke relied on the point that the judge in the course of the argument had referred to the appellant as a custodian of the monies in the account. Counsel contended that the appellant was in effect no different from the defendant Martin in R v Allpress who held illegally obtained cash in a safe for safe keeping for an offender but who did not otherwise contribute to the crime. He was held not to have benefited from those monies. The meaning of the term custodian as used by the judge in argument is not entirely clear. However, it is what the judge said in his relevant ruling which is important as opposed to what was said in the course of argument. In his ruling the trial judge clearly distinguished between this defendant (who actively assisted the criminal enterprise in that he came into possession of the money, held it in the accounts, had the power of disposition over and did dispose of it) and a mere nominee such as described in Allpress. On the material before the judge his conclusions were entirely justified. In R v May the House of Lords recognised that *mere* couriers or custodians or other *very minor contributors* to an offence are unlikely to be found to have "obtained" the property. The House of Lords, however, did make clear that it may be otherwise in the case of money launderers. While it did not spell out the reason why that should be so, it is not difficult to see why. Where a person lends himself to a process of money laundering he is allowing his identity to be used to hide and launder illegal funds. His participation is an essential step in that process. The judge in his ruling concluded that the appellant had played an active and important role in the furtherance of the criminal enterprise

lending himself to the opening and operation of bank accounts used to launder criminal assets on a very substantial scale. Thus the appellant could not be categorised as a mere custodian of the monies nor could he be said to have played a very minor contributory role to the relevant offences.

[22] In R v Waya mortgage monies were lent to a defendant as a consequence of a fraud. These monies were subsequently repaid in full and they had always been fully secured. The case was one in which substantial benefit was gained from the fraud in the form of a large increase in the value of the flat which the fraud enabled the offender to buy. The Supreme Court pointed out that in general where the mortgage loan has been repaid or is bound to be repaid because it is amply secured a proportionate confiscation order is likely to be in respect of the benefit which the defendant has derived from his use of the loan. Normally this will be measured as the increase in value of the property attributable to the loan. In the course of the judgments in that case the Supreme Court took the opportunity to subject the confiscation regime to analysis particularly in relation to the effect of Article 1 Protocol 1 of the Convention on its provisions and the role to be played by the principles of proportionality in the making of confiscation orders.

[23] The Supreme Court did not call into question the House of Lords analysis of the law in R v May and in particular it considered Lord Bingham's speech and his endnote to be "seminal". The court stated that it was clear law and it was common ground between the parties that Article 1 Protocol 1 imports the requirement that there must be a reasonable relationship of proportionality between the means employed by the state in the deprivation of property as a form of penalty and the legitimate aim sought to be achieved by deprivation. It accepted as correct the proposition that a confiscation order which did not conform to the test of proportionality would constitute a violation. Thus the statutory duty to make a confiscation order where a defendant benefited from criminal conduct must be read as subject to the implied words "except insofar as such an order would be disproportionate and thus in breach of Article 1 Protocol 1". A judge must only accede to an application for such sum as would be proportionate.

[24] In paragraphs [26] and [27] of their joint judgment Lord Walker and Sir Anthony Hughes stated:

> "26. It is apparent from the decision in May that a legitimate, and proportionate, confiscation order may have one or more of three effects:

(a) it may require the defendant to pay the whole of a sum which he has obtained jointly with others;

(b) similarly it may require several defendants each to pay a sum which has been obtained, successively, by each of them, as where one defendant pays another for criminal property;

(c) it may require a defendant to pay the whole of a sum which he has obtained by crime without enabling him to set off expenses of the crime.

These propositions are not difficult to understand. To embark upon an accounting exercise in which the defendant is entitled to set off the cost of committing his crime would be to treat his criminal enterprise as if it were a legitimate business and confiscation a form of business taxation. To treat (for example) a bribe paid to an official to look the other way, whether at home or abroad, as reducing the proceeds of crime would be offensive, as well as frequently impossible of accurate determination. *To attempt to enquire into the financial dealings of criminals as between themselves would usually be equally impracticable and would lay the process of confiscation wide open to simple avoidance.* Although these propositions involve the possibility of removing from the defendant by way of confiscation order a sum larger than may in fact represent his net proceeds of crime, they are consistent with the statute's objective and represent proportionate means of achieving it. ….

27. Similarly, it can be accepted that the scheme of the Act, and of previous confiscation

> legislation, is to focus on the value of the defendant's obtained proceeds of crime, whether retained or not. It is an important part of the scheme that even if the proceeds have been spent, a confiscation order up to the value of the proceeds will follow against legitimately acquired assets to the extent that the that they are available for realisation." (italics added)

[25] The Supreme Court made clear that where a defendant has restored to the loser any proceeds of crime which he had it would be disproportionate to make a confiscation order because it would not be necessary to achieve the statutory purpose of removing his proceeds of crime but would be in fact an additional financial liability, in effect a fine. If he obtained some other benefit then an order confiscating that benefit would be a different matter. Their Lordships stated that "there may be other cases of disproportion analogous to that of goods or money entirely restored to the loser to be resolved case by case as the need arises".

[26] We must bear in mind (a) that the Supreme Court said nothing to criticise the analysis in R v May which it approved and (b) R v May itself approved the principle stated in Sharma. We must also note what the Supreme Court said in paragraphs [26] and [27] in Waya and that the present case is not analogous to a case of goods or money being entirely restored to the loser. We conclude that there is nothing in R v Waya to lead to the conclusion that the confiscation order as made by the trial judge produced a disproportionate outcome in the present instance. We conclude that the trial judge was right to decide that the appellant had benefited as a result of his involvement in the relevant criminal offences in respect of the sums in the relevant bank accounts.

[27] In the result we must affirm the confiscation order reducing it by the agreed sum of £38,836. To that limited extent we allow the appeal.