Neutral Citation Number [2007] IEHC 267

THE HIGH COURT

IN THE MATTER OF SECTION 2 OF THE SUMMARY JURISDICTION ACT, 1857, AS EXTENDED BY SECTION 52(1) OF THE COURTS (SUPPLEMENTAL PROVISIONS) ACT, 1961

[2007] 236 SS

BETWEEN

EDWARD VALENTINE

APPELLANT/ACCUSED

AND
THE DIRECTOR OF PUBLIC PROSECUTIONS
(AT THE SUIT OF GARDA SEAN BREEN)

RESPONDENTS

Judgment of Mr. Justice Birmingham delivered on the 25th day of June, 2007

1. This is an appeal by way of case stated from a decision of Judge Ann Watkin, a judge of the District Court assigned to the Dublin Metropolitan District pursuant to s. 2 of the Summary Jurisdiction Act, 1857 as extended by s. 51 of the Courts (Supplemental Provisions) Act, 1951. The case stated is in the following terms:-

> "1. At a sitting of the District Court held at Court No. 54, Richmond Hospital, North Brunswick Street, Dublin 7, on the 7th February, 2006, Edward Valentine, the Appellant herein (hereinafter referred to as the "Appellant") appeared before me to answer a charge that he committed an offence contrary to s. 4 of the Criminal Justice (Theft and Fraud Offences) Act, 2001. The particulars of the offence alleged were that the Appellant did on the 15th June, 2003 at Texas Homebase steal a rotor saw and accessories, the property of "Texas Homebase". A copy of the charge sheet which formed part of the case stated was attached at annex 1.
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> 2. At the said hearing the Director of Public Prosecutions was represented by Garda Breen, the prosecuting Garda. Mr. Eoin Lawlor Barrister-at-Law represented the Appellant, instructed by Grainne M. Malone & Co., solicitors of 4 Main St., Tallaght, Dublin 24.
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> 3. The prosecution case consisted of one witness, a Mr. Whelan, who gave evidence on oath that he had at the time of the incident worked as a security guard at Texas Homebase for three or four months. The witness gave evidence that on the date in question, the Appellant entered the above mentioned store, took a rotor saw and related accessories, placed them under his jacket and left the store, passing all points for payment, without paying for them. The witness also gave evidence of apprehending the Appellant, arresting him and searching him outside the store. He recovered the articles under the jacket of the Appellant. The Appellant did not go into evidence
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> 4. No evidence was given of the existence of "Texas Homebase" as a legal person or that "Texas Homebase" was the owner of the articles as alleged.
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> 5. At the close of the prosecution case, counsel for the Appellant sought a direction that there was no case to answer, as there had been no evidence given of the ownership of the articles alleged to have been stolen nor had there been evidence that those articles were taken without the permission of their owner. I took the view that the evidence to the effect that the witness was engaged by Texas Homebase at the Texas Homebase store, and that he was watching the Appellant walk past all points of payment and apprehended him when he did not pay, was sufficient evidence that the Appellant did not own the property, and therefore took it from an owner without consent and with the necessary intent.
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> 6. Having heard the prosecutions case and as the defence did not go into evidence, I held that it had been proved beyond a reasonable doubt that the Appellant committed the offence of theft, contrary to s. 4 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 with which he had been charged. Copy of the Warrant of Execution that issued consequent to the conviction of the Appellant was attached at annex 2.
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> 7. The opinion of the High Court is sought on the question as to whether I was correct in law in convicting the Appellant on the evidence before the Court and in particular whether I was correct in law in doing so in the said circumstances."

2. It is clear that the High Court should not entertain a case stated involving the determination of issues of fact. See the decision of *Director of Public Prosecutions v. Nangle* [1984] I.L.R.M. 171, and the case of *Fitzgerald v. Director of Public Prosecutions* [2003] 3 I.R. at p. 247.

3. While the High Court should not entertain a case stated involving the determination of issues of fact, the authorities are clear that the question of whether there is sufficient evidence in law to support a conviction is not a question of fact, but a question of law. See the decision of the Supreme Court *in (The State) at the prosecution of Joseph P. Turley v. District Justice Cathal O'Floinn and James O'Connor* [1968] 1 I.R. 245. In particular see the decision of Ó Dalaigh C.J. who at p. 251 observed:

> "The ground of the District Justice's refusal to state a case was that there was no question of law involved, but the question whether there is sufficient evidence in law to support a conviction is not a question of fact but a question of law."

4. This judgment was quoted with approval by Hardiman J. in *Fitzgerald v. The Director of Public Prosecutions* at p. 269. Hardiman J. observed as follows:-

> "as was held in the *(The State) At the prosecution of Joseph P. Turley v. District Justice Cathal O'Floinn and James O'Connor* [1968] 1 I.R. at 245, per Ó Dalaigh C.J. at p. 251:
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> > 'The question whether there is sufficient evidence in law to support a conviction is not a question of fact but a question of law.'
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> This is so because the ingredients of an offence are always known or ascertainable and the question of whether there is evidence to support the existence of each of them is a wholly legal question. But if the question raised related not to the existence of evidence, but to its credibility or to inferences of fact which could reliably be drawn from it, that would be a

> question of fact. A useful method of approaching the question of whether a particular issue, in a criminal case, is a matter of fact or of law, is to ask whether, if the case were being tried by judge and jury, the issue would be one for the judge or for the jury."

5. In my view had the case which was heard by Judge Watkin in the District Court been dealt with by judge and jury, the question of whether there was evidence to establish the presence of one of the ingredients, namely whether the property appropriated was owned by the entity referred to on the indictment and whether the appropriation was without the consent of the owner would have been a matter for the trial judge. I am reinforced in that view by the fact that the issue was raised with Judge Watkin by way of an application for a direction at the close of the prosecution case.

6. Paragraph 4 of the case stated states clearly and unequivocally no evidence was given of the existence of "Texas Homebase" as a legal person or that "Texas Homebase" was the owner of the articles as alleged.

7. The requirement as to evidence of ownership does not seem to have been considered by the Superior Courts but the issue has been the subject of consideration in the Circuit Court on a number of occasions, these decisions of long standing are of persuasive authority.

8. In the case of *The People (At the suit of the Attorney General) v. Patrick Harris*, Irish Law Times Reports [1957] 91 ILTR 34. Judge Neylon in ruling on an application for a direction said there was not sufficient evidence of the existence of a company and that being so, the accused was entitled to a direction. It should be noted that the question of proving ownership was addressed in that case, albeit insufficiently to satisfy the trial judge. In contrast no such efforts were made in the present case. A similar conclusion to that reached by Judge Neylon was reached by Judge Sheehy in the case of *People v. Cullen* 81 I..L.T.R. & Sol. Jo. 45. Again, that was a case where quite elaborate efforts were made to satisfy the evidential requirements in relation to ownership.

9. It is clear from the authorities that the production of a Certificate of Incorporation is not an absolute requirement. Rather what is required is evidence to show that the company carried on business in fact as such a company. See *R. v. Langton* [1876] 2 Q.B.D. 296, referred to with approval by Gavan Duffy P. in the case of *Attorney General v. Smith* [1947] I.R, p. 332.

10. So far as the obligation to prove the property was owned and that the appropriation was without the owner's consent it is the case of course that from time to time there may be difficulties in establishing an owner, the pickpocket in the crowded street being an obvious example and there the jury or judge will have to consider whether the evidence is such that the property in question is proved to be owned by the person unknown and that an absence of consent can be inferred.

11. Here, though, the charge was laid as the property of "Texas Homebase" and the identical formula appears in the Warrant of Execution that issued consequent to the conviction. No information whatever was laid before the court in relation to the nature of the entity referred to or even as to its existence. Given the manner in which the charge was laid I am of the view that the judge was not correct to convict and in these circumstances I would answer the question posed by the learned judge of the District Court in the negative.