THE HIGH COURT

JUDICIAL REVIEW

[2015 No. 344 J.R.]

BETWEEN

CRAIG LEE

APPLICANT

AND

DISTRICT JUDGE LEO MALONE, JUDGES OF CORK DISTRICT COURT AND THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENTS

JUDGMENT of Ms. Justice Faherty delivered on the 6th day of October, 2017

1. The background to the within application for judicial review is as follows:

By way of summons procedure in a matter entitled *Director of Public Prosecutions at the suit of Garda Adrian Lomasney v. Craig Lee* it is alleged that the applicant, on 23rd September, 2014, at Waterrock, Midleton in the County of Cork: drove in a manner which was dangerous to the public contrary to s. 53 (1) of the Road Traffic Act 1961, (hereinafter "the 1961 Act") as amended; failed to keep the vehicle at the place of the occurrence of an injury to a third party for a period which was reasonable in all the circumstances, contrary to s. 106 (1) (b) and (3) of the 1961 Act; failed to stop the vehicle which was involved in the occurrence of the injury contrary to s. 106 (1) of the 1961Act; and failed to report the occurrence of the injury to the third party as soon as possible to a member of An Garda Síochána contrary to s. 106 (1) (d) and (3) of the 1961 Act.

2. The application for the summonses for the aforesaid alleged offences was made at Cork District Court on 12th February, 2015. The summonses were duly served on the applicant with a return date of 25th June, 2015, to the District Court at Midleton, District Court Area No. 20 in the County of Cork.

3. On 8th June, 2015, the applicant attended at Shannon Airport, together with his girlfriend, intending to travel to San Francisco. He was refused clearance to travel by the United States immigration services on the grounds that he had insufficient funds for travel and that he was therefore unable to satisfy the immigration service of his bona fides for travelling to the US.

4. In an affidavit sworn by the applicant's solicitor on 21st April, 2016, in the within proceedings, it is averred that the applicant had legitimately purchased a return ticket to the US and that, accordingly, his proposed return on 22nd June, 2015, to this jurisdiction would not have interfered with his appearance at Midleton District Court on return date listed on the summonses.

5. Immediately subsequent to the refusal of the United States immigration authorities to allow the applicant to travel he was arrested by An Garda Síochána and was then driven in custody from Shannon to Cork District Court in Cork City, District Court Area No. 19, whereupon he was charged by way of charge sheet procedure in respect of the same offences for which the summonses had already issued and had been served on the applicant.

6. When the applicant appeared before the first named respondent on 8th June, 2015, evidence was given of his arrest, charge and caution. The applicant's solicitor objected to evidence which the arresting gardaí sought to adduce concerning confidential information that the applicant was purportedly attempting to leave the jurisdiction in avoidance of the offences for which he had been charged on the grounds that same was hearsay evidence. After hearing the submission, the first named respondent denied to admit the said evidence.

7. The applicant's solicitor then submitted that as the applicant had already been summonsed in respect of exactly the same offences as were contained in the charge sheets, the arrest and charging of the applicant by way of charge sheet procedure constituted an abuse of process of the court and it was submitted that the first named respondent should decline to accept jurisdiction relating to the charge sheet procedure. Upon hearing from the prosecutor the first named respondent did not accept the submission made on behalf of the applicant.

8. Upon further application by the applicant's solicitor, the applicant was admitted to bail and he was directed to hand up his passport. He was remanded to appear again in respect of the charge sheet procedure to Midleton District Court on 11th June, 2015. The applicant duly appeared before Midleton District Court on the said date. No application was made on that date by the third named respondent to strike out charge sheet procedure.

9. By order of Noonan J. of 22nd June, 2015, the applicant was granted leave to apply for judicial review. The reliefs claimed are as follows:

> 1. An order of *certiorari* quashing the decision of the first named respondent of 8th June, 2015 to accept jurisdiction to try the applicant on charge sheets in circumstances where proceedings arising from the same offences were already extant by way of summons procedure;
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> 2. In the alternative an order of *certiorari* quashing the decision of the first named respondent to accept jurisdiction to try the applicant at Cork District Court, District Court No. 19 in circumstances where the first named respondent had no jurisdiction to do so, and in circumstances where District Court No. 19 was otherwise than in the District Court area where the applicant had been arrested;
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> 3. An order of *certiorari* quashing the decision of the third named respondent to arrest and to charge the applicant by way of charge sheet procedure in circumstances where the applicant had already been prosecuted by way of summons procedure;
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> 4. An order of prohibition prohibiting the respondents and each of either of them from proceeding with the charge sheet procedure;

5. In the alternative, an injunction prohibiting the respondents from prosecuting and/or trying the applicant on the charge sheet procedure; and

6. An injunction restraining the respondents from taking any further step in the proceedings the subject matter of the judicial review pending the final determination of the judicial review proceedings.

An order was also made on 22nd June, 2015, staying the proceedings of 8th June, 2015, pending the determination of the judicial review proceedings.

10. The grounds in respect of which the aforesaid reliefs are claimed are:

1) The decision of the first named respondent to accept jurisdiction to try the applicant by way of charge sheet procedure in circumstances where the exact same offences have been prosecuted by way of summons procedure was a breach of the applicant's right to a trial in due course of law pursuant to Art. 38.1 of the Constitution and or in contravention of Art. 6 .1 of the European Convention on Human Rights (ECHR) and/or contravened fair procedures;

2) The decision of the first named respondent to accept jurisdiction in circumstances where the applicant ought to have been brought to the first available court sitting at Shannon Airport or in the court area of Shannon Airport contravened the Rules of the District Court, 1997 and/or breached Art. 38.1 of the Constitution and or Art. 6 .1 ECHR;

3) The decision of the third named respondent to prosecute the applicant by way of charge sheet procedure in circumstances where the exact same offences have been prosecuted by way of summons procedure was a breach of the applicant's right to a trial in due course of law pursuant to Art. 38.1 of the Constitution and or in contravention of Art. 6 .1 of the European Convention on Human Rights (ECHR) and/or contravened fair procedures;

4) The applicant's arrest without warrant and subsequent detention by the manner of his transport to Cork District Court contravened his right to personal liberty as guaranteed by Art. 40.4.1 of the Constitution.

11. The grounds are further particularised, as follows:

1. That arising as a direct result of the decision of the first named respondent to accept jurisdiction to hear and determine the charges contained in the charge sheets for which the applicant appeared before him there is presently extant two separate suits of criminal proceedings arising out of the same offences presently pending before the District Court in two separate District Court areas;

2. That having regard to the matters as set out at para. 1 the applicant stands in jeopardy of being tried and convicted of two sets of charges arising from the same offences;

3. The applicant is obliged to attend at two separate District Court venues in two separate District Court areas in circumstances where the offences charged in both sets of proceedings are identical; and

4. The failure of the third named respondent to bring the applicant before the first available court, or to the appropriate sitting of the District Court area of Shannon Airport, after having arrested the applicant at Shannon Airport, has caused the applicant to be deprived of his liberty during his detention and transportation in custody to Cork District Court.

12. The complaint that the applicant is obliged to attend at two separate venues was not pursued in the judicial review application, it being accepted that the charge sheet proceedings have been adjourned to the same date in the same court as the summons procedure.

13. In the course of the hearing, the grounds of challenge were effectively distilled by counsel for the applicant into broadly two complaints.

14. Before addressing these complaints, it is apposite to set out the provisions of the Courts of Justice Act 1924, in relevant part, and the relevant provisions of the District Court Rules 1997.

15. Section 79 of the Courts of Justice Act 1924 (hereinafter "the 1924 Act") provides:

"Provided that the jurisdictions by this Act vested in and transferred to the District Court shall be exercised by the Justices severally as follows:—

In civil cases, by a Justice for the time being assigned to the District wherein the defendant or one of the defendants ordinarily resides or carries on any profession, business or occupation;

In criminal cases, by a Justice for the time being assigned to the District wherein the crime has been committed or the accused has been arrested or resides;

In licensing cases, by a Justice for the time being assigned to the District wherein the licensed premises are situate."

16. Section 41 of the Courts and Courts Officers Act 1995 ("the 1995 Act") amended s. 79 of the 1924 Act by inserting, inter alia, the following subsections:

"(2) On the coming into operation of section 41 of the Courts and Court Officers Act, 1995, where a judge for the time being assigned to a District Court District is unavailable, any judge of the District Court may exercise jurisdiction, subject to subsection (3) of this section, in respect of such District in a criminal case in any place in the State.

(3) A judge of the District Court exercising jurisdiction under subsection (2) of this section shall not have jurisdiction to conduct a preliminary examination under the provisions of the Criminal Procedure Act, 1967 , unless that jurisdiction is exercised in the District Court District—

(a) where the crime was committed, or

(b) where the accused resides or was arrested.

(4) Where a person accused of a criminal offence is before a judge of the District Court in a District other than the District in which the crime has been committed or where the accused resides or was arrested, the judge may, on his or her own motion or on the application of the accused or the prosecution, transfer the case to the District Court District where the offence was committed or where the accused resides or was arrested."

17. Order 13, r. 1 of the District Court Rules 1997 provides:

"Criminal proceedings shall be brought, heard and determined either—

(a) in the court area wherein the offence charged or, if more than one offence is stated to have been committed within a Judge's district, any one of such offences is stated to have been committed; or

(b) in the court area wherein the accused has been arrested, or

(c) in the court area wherein the accused resides…"

18. Order 17, r. 2 of the District Court Rules 1997 provides:

"(1) A person arrested pursuant to a warrant shall on arrest be brought before a Judge having jurisdiction to deal with the offence concerned as soon as practicable."

The first complaint

19. The first complaint is that the first named respondent was not entitled to assume jurisdiction to try the applicant in District Court Area No. 19 on foot of the charge sheet procedure pursuant to the provisions of s. 79 of the 1924 Act, as amended, since the applicant did not reside within that area, the offence was not committed within that area and the applicant was not arrested within that area. It is submitted that the respondents disregarded the fact that the applicant had been arrested within District Court Area No. 12. The applicant contends, in particular, that the third named respondent did not have regard as to whether the District Judge sitting at Ennis District Court was either available or unavailable. In those circumstances, it is argued that it was not permissible for the third named respondent to disregard the provisions of s. 79 of the 1924 Act and elect to bring the applicant before the first named respondent whose court area had no connection to the applicant's residence or arrest or to where the offences were allegedly committed.

20. It is submitted that if the third named respondent, having arrested the applicant at Shannon Airport, was required to utilise the limited jurisdiction of the District Court pursuant to s. 79 (2)-(4) of the 1924 Act then it was incumbent on the third named respondent to bring the applicant before the judge having the requisite jurisdiction. It is contended that the requisite jurisdiction lay in the District Court Judge sitting at District Court Area No. 12 (Ennis). The applicant says what occurred however was that he was brought to District Court Area No. 19 situate in Cork City which had no jurisdiction to try the applicant.

21. It is thus argued that the first named respondent never had jurisdiction to entertain the charges brought against the applicant on foot of the charge sheet procedure.

22. In aid of his submissions counsel relied on the decision of Geoghegan J. in *Coates v. Judge O'Donnell* [1997] 1 I.R. 417. I am not persuaded that *Coates* assists the particular argument advanced by the applicant in these proceedings. In *Coates*, the accused had been brought before Mullingar District Court which was not the District Court area in which the alleged crimes had been committed or in which the accused had been arrested or resided. When the case first came before the respondent s.41 of the 1995 Act was not then in force but was in force by the time the judicial review application came before Geoghegan J. Counsel for the respondent sought to rely on the provisions of s. 79(4) of the 1924 Act, as had been inserted by the 1995 Act, in arguing that where a person had been charged before the wrong District Court the judge may transfer the case to the District Court which would be entitled to exercise jurisdiction. The applicant's contention was that s.79(4) should be interpreted as no more than permitting a District Judge in one of the districts, in which under the 1924 Act the jurisdiction could be exercised, to transfer the case to another of the districts where under the 1924 Act the jurisdiction could be exercised.

23. Both submissions were rejected by the learned Judge. As to the meaning of s.79(4) Geoghegan J. found that:

"[It] enabled a judge who had assumed jurisdiction in a case under the new sub-s.2…to transfer the case to a District Court where the case should have been originally brought, had the judge for the time being assigned to that District Court been available. In other words, sub-s.4 should be regarded as a follow-on sub-section to the new sub-ss. 2 and 3 and related to the situation covered by sub-section 2."

24. He went on to state:

"The true meaning of sub-s. 4 becomes clear in my view when one regards it as part of a new code or regime provided for by the amendments to s. 79 of the Act of 1924. If on a particular day, there is no District Judge available for some reason in an appropriate district where it is intended to charge an accused, a judge in some other district can deal with the matter, but sub-s. 4 enables that judge to send it to the judge of the district in which the case would have been commenced had such judge been available."

25. Albeit not found to be applicable in *Coates* (because it was found that the respondent judge in that case never had jurisdiction to entertain the charges) it is clear from *Coates* that Geoghegan J. recognised the new regime which s.79(2)-(4) of the 1924 Act provides for.

26. The provisions of s. 79 of the 1924 Act, as amended, were also considered by MacMenamin J. in *Massoud v. Dunne* [2009] 3. I.R. 79. In that case the applicants had been brought before the Dublin District Court pursuant to warrants issued outside that District. The applicants contended that although the alleged crime had occurred in Dublin they should nevertheless had been brought before a court in the District Court area in which the warrants had issued. They further submitted that the District Court Judge before whom they had appeared was restricted in what he could lawfully do and that he was confined to transferring the case back before the original judge in the original District Court area. MacMenamin J. concluded that the judge in Dublin was also entitled to hear and

determine the case. In the course of his judgment he made reference to *Coates*:

> *"But the essential point at issue, and upon which the decision in Coates v. Judge O'Donnell [1997] 1 I.R. 417 hinged was that the respondent judge never had jurisdiction save for the limited purposes of transferring the case to another of the districts where, under the Act, the jurisdiction could be exercised. In Coates v. Judge O'Donnell the applicant was brought before a District Court in a district where the alleged crimes had not been committed, nor where he had been arrested nor resided. But this is far from the case here. In fact as is evident the allegations contained in the charges relate to matters which are stated to have occurred within the Dublin Metropolitan District itself, and therefore while the warrant may have been issued by District Judge McBride on the foot of residence, the Judges of the Dublin Metropolitan District simultaneously held jurisdiction in the instant case because of the place where the crimes were allegedly committed."*

27. More pertinent to the present case, MacMenamin J. went on to state:

> *"I do not accept that by swearing the information and obtaining the warrant before a judge in one district, the respondent either irrevocably elects to bring the arrested party before that judge, or a peace commissioner in that district if a judge is not sitting, or confines himself to bringing the applicant before another district wherein the powers of such other judge are limited only to transferring the case back to the district in which the information was sworn. That would be the case if there was no other foundation for jurisdiction. But that is decidedly not the case here because of the identified location of the alleged offences which vested jurisdiction in the Dublin Metropolitan District. It is clear that the position in the instant case is therefore quite distinct from that which arose in the case of Coates v. Judge O'Donnell [1997] 1 I.R. 417."*

It is, to my mind, clear from the foregoing that MacMenamin J. acknowledged that an accused could be brought before a judge in a District Court Area where the offence was not committed and where an accused neither resided nor was arrested provided that the condition precedent for the exercise of the limited jurisdiction conferred by s.79(2) of the 1951 Act was met, namely the unavailability of the District Judge in any of the District Court Areas seized, under s.79 of the 1951 Act, with jurisdiction to try the accused.

28. In *O'Malley v. Judge Kelly* [2015] IECA 67, Mahon J., in adopting the dicta of Geoghegan J. and MacMenamin J. in *Coates* and *Massoud* respectively, stated:

> *"20. Provision does exist to enable a District Judge sitting elsewhere to the district where the accused has his place of residence or the place in which the crime was committed or where an accused had been arrested, to transfer it to the district in which the judge is sitting. That issue was considered in Shane Coates v. Judge Aidan O'Donnell and DPP [1996] 1I.R.417…*
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> *21. In Massood v. Judge Cormac Dunne and DPP [2006] 3I.R. 79, McMenamin J. found that jurisdiction was capable of being held simultaneously by the judges of the District Court, both in the District Court where the accused person resided and the District Court where the offence was allegedly committed."*

29. It is unquestionably the case that Midleton District Court (District Court Area No. 20) has jurisdiction to try the applicant for the alleged offences, it being the area in which he resided and where the offences were allegedly submitted. Equally, District Court Area No. 12 has such jurisdiction, being the area where the accused was arrested.

30. As deposed to by Detective Garda Eoghan Healy in his affidavit sworn 8th March, 2016, the applicant "was conveyed to Cork District Court … in circumstances where it was not possible to convene a special sitting of the District Court within District No. 20" and "District Judge Malone [the first named respondent] held a session for that District. There the judge entertained a bail application, declined a prosecution request for a remand in custody and release the Applicant on bail to appear at Midleton District Court on 11th June."

31. The position therefore is that as Midleton District Court was unavailable on 8th June, 2015, the first named respondent sat in exercise of jurisdiction for Midleton District Court Area (as provided for by s. 79(2) of the 1924 Act, as amended). He exercised the jurisdiction conferred by s.79(2) and then, pursuant to s.79(4), transferred the applicant's case to District Court area No. 20 where, pursuant to the 1924 Act, the jurisdiction to try the applicant could be exercised.

32. I am satisfied that there is no substance in the applicant's argument that it was incumbent on the arresting garda to bring him to District Court Area No. 12 (Ennis) where he was arrested, since, on the authority of *Massoud*, jurisdiction is capable of being exercised simultaneously by the judges of the District Court which would have jurisdiction to try him under the 1924 Act. In the present case, the first named respondent assumed jurisdiction, pursuant to the provisions of s. 79(2) of the 1924 Act, to transfer the accused to Midleton District Court where the applicant would have been brought, had the District Judge for that District Court Area been available.

33. While s. 79(3) of the 1924 Act imposes a limitation on the jurisdiction provided for in s. 79 (2), that had no applicability in the applicant's circumstances as the first named respondent did not conduct a preliminary examination under the provisions of the Criminal Procedure Act 1967, a procedure that is, in any event, no longer applicable.

34. Accordingly, I am satisfied that when the first named respondent convened in District Court Area No. 19 on 8th June, 2015, and remanded the applicant (on bail) to Midleton District Court Area No. 20 (the area where the applicant resides and where the offence was committed) the first named respondent did so in accordance with the provisions of s.79(2) and (4) of the 1924 Act.

The second complaint

35. The second limb of the applicant's challenge is that as he had already been summonsed on foot of a complaint made by Garda Lomasney on 17th February, 2015, and a summons had issued made returnable to Midleton District Court for 25th June, 2015, the procedure utilised by the third named respondent on 8th June, 2015, in charging the applicant by way of charge sheet procedure before the first named respondent sitting at District Court No. 19, constituted a new complaint on foot of the exact same proceedings which had already been instituted on 17th February, 2015. Accordingly, it is the applicant's contention that this constituted an abuse of process, and in the circumstances the first named respondent did not have jurisdiction to receive the complaint made on 8th June, 2015, or to embark upon any hearing of the complaint or to make any orders on foot of that complaint. It is thus submitted that:

> (i) The complaint of Sergeant Lomasney in the District Court Office in District Court Area No. 20 founded jurisdiction in that District alone in respect of the offences for which the applicant was summonsed.

(ii) The acceptance of the first named respondent of jurisdiction to try the applicant on foot of the same charges as set out in the charge sheet procedure utilised on 8th June, 2015, was done without jurisdiction, and the charge sheet procedure constituted an abuse of process in that the applicant is in jeopardy of being tried twice for the same offence.

36. In support of his submissions that the first named responded entertained the charge sheet procedure brought against the applicant, counsel for the applicant relies on the *State (King) v. Tallon* [2007] 2 I.R. 230 where MacMenamin J. reprised the relevant jurisprudence as to when jurisdiction to enter on a hearing is conferred: He stated:

> *"6 The entry of a charge on a charge sheet does not amount to the making of a complaint for the purpose of conferring jurisdiction on the District Court per se. The charge sheet is merely an internal police document. The court is therefore not actually seised with jurisdiction in the case until the complaint is made to the court itself: see Walsh, Criminal Procedure (2002) at p. 659.*
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> *7. In Attorney General (McDonnell) v. Higgins [1964] I.R. 374 at pp. 390 to 391, it was stated by Kingsmill Moore J. as follows:-*
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> > *"That an information or complaint to an authorised person is the very foundation of the jurisdiction hardly needs authority but I may refer to Paley on Convictions (1st ed., 1814) at p. 14:- 'It is requisite in all summary proceedings that there should be an information or complaint, which is the basis for all subsequent proceedings and without which it seems that the Justice is not authorised in intermeddling'. Hutton on Convictions (1st ed., 1835) has as the first words in his treatise:- 'In exercising the power of convicting summarily any person charged with having infringed the provisions of the statute, the initiative proceeding is that the party complaining must present a statement of the offence complained of to a Justice authorised to take such an information'. To the same effect are Nun and Walsh, Justice of the Peace (2nd ed., 1844), at p. 472; Molloy, Justice of the Peace (1890), at p. 169; O'Connor, Justice of the Peace (2nd ed., 1915), vol. 1, at p. 227.*
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> *Neither summons nor warrant to arrest, consequent on the information, confer jurisdiction. They are merely processes to compel the attendance of the person accused of the offence …"*
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> *At p. 393 Kingsmill Moore J. added:-*
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> > *"This charge cannot be a complaint or information for it is not made before a District Justice, a Peace Commissioner or a Clerk. The charge sheet on which it is entered initiates as a purely police document and the entry of the offences charged is necessary for the protection of the Garda to show that such offences justify arrest and detention in the barracks without warrant. Subsequently when the charge sheet is put before the District Justice and the final two columns are utilised by him to record his decisions, it becomes a document of the court, but before the District Justice enters on the case it seems to me that there must be a complaint to him by some person, preferably but not necessarily the Superintendent alleging the commission of the offences by the defendant with such particularity and details as are required by the authorities for legal complaint. Only when this has been done is jurisdiction conferred to enter on the hearing of the case."*

37. Counsel also cites *DPP (O'Connor) v. Mangan* [2010] 3 I.R. 530 where Hedigan J. held that *"jurisdiction to enter upon a hearing of the charge derives from the making of the complaint".* It is submitted that it has not been contested in the statement of opposition that the first named respondent accepted jurisdiction to try the applicant.

38. With regard to the applicant's reliance on the aforesaid authorities, the Court has already found that the first named respondent's actions on 8th June, 2015, were in accordance with the procedures provided for by s.79(2) and (4) of the 1924 Act.

39. Counsel for the applicant further submits that on 8th June, 2015, the first named respondent was apprised of the fact that the applicant had already been summonsed of foot of a complaint by Sergeant Lemonsey in respect of exactly the same offences as were contained in the charge sheets, yet, neither on that date, nor on 11th June, 2015, when the matter came on before District Judge Sheridan at Midleton District Court, was an application made to have the charge sheet procedure struck out. In submitting that as a consequence the applicant is in peril of being tried twice for the same offences, counsel cites the dictum of Kenny J. (quoting Hawkins on Pleas of the Crown) in *O'Leary v. Cunningham* [1980] 1 I.R. 367, as follows: "*It is an established rule of the common law that a man may not be put twice in peril for the same offence*". Counsel also relies on *Director of Public Prosecutions (Rafter) v. Furlong* [2011] 4 I.R. 611, albeit he acknowledges that the factual matrix in the applicant's case is not on all fours with *Furlong*.

40. The applicant's contention that he is in jeopardy of being tried for the same offences in two separate sets of proceedings is addressed by the respondent in the affidavit sworn by Garda Inspector Healy, as follows [at para.61]:

> "I note the Applicant's complaint that, arising from the foregoing there are now in being two separate "suites" of proceedings for the same offences. Whereas he contends that he stands in jeopardy of being tried and convicted for both "suites", this is not the case there is no credible basis for him so believing. District Judge Malone was expressly assured of this in open court in the Applicant's presence on 8th June. Judge Sheridan was similarly informed in Midleton Court when the case was mentioned there. I believe the Applicant should have disclosed this when he applied for leave. Indeed I can say that were it not for the "stay" ordered by the High Court when leave to apply by way of judicial review was granted in these proceedings, one set would already have been withdrawn and there would now only be one set of proceedings in being. I confirm herein that which the Applicant is already aware, that one of the sets of proceedings will be withdrawn".

41. I am satisfied from the foregoing that as at all material times it has been made clear to the applicant that it is only intended to proceed with one "suite" of charges there is no reason for this Court, at this juncture, to intervene. It is to be presumed that the District Judge having seisin of the trial will act in accordance with fair procedures and that he or she will not try and convict the applicant on both "suites" of proceedings. As noted by Quirke J. in *D.D. v. Judge Gibbons* [2006] 3 I.R. 17:

> *"Judges are required to bring detachment and impartiality to the performance of their judicial duties and functions. They have taken an oath to do so. The respondent directly referred to that fact … There is no reason why an objective, informed person should doubt the commitment of a judicial office holder to honour his or her oath of office and to perform judicial functions in a fair, independent and impartial manner …".* [at paras.43-44]

42. The respondents also contend that given the stage at which the summons procedure was at, there could be no apprehension on the part of the applicant of an abuse of process. I agree with this submission. The fact of the matter is that the complaints laid out in the summonses have not yet been made to a judge.

43. Accordingly, the applicant has no basis to challenge the charge sheet procedure that stands adjourned to Midleton District Court on grounds of abuse of process. As held by Kelly J. in *Murray v. McArdle (No. 2)* [1999] 4 I.R. 383, a complaint in relation to a summons initiated under the Court's (No. 3) Act, 1986 only arises when such a complaint is made before the District Judge when the matter is listed for hearing. Furthermore, as confirmed in *Director of Public Prosecutions v. Clein* [1983] I.L.R.M. 76:

> *"a summons … is only a written command issued to a defendant for the purpose of getting him to attend court on a specified date to answer a specified complaint". [at p. 77]*

44. This has yet to happen with regard to the summonses issued in respect of the applicant.

45. In the course of his submissions, counsel for the respondents contends, insofar as it may be relevant, that the jurisdiction of the District Court to embark on the hearing of criminal proceedings is not affected by the fact that an accused may have been brought before the court by an illegal process. In this regard, reference was made to *Director of Public Prosecutions (Ivers) v. Murphy* [1999] 1 I.R. 98 where, at page 113, Keane J. states:

> *"It has been repeatedly pointed out that, as a general rule, the jurisdiction of the District Court to embark on any criminal proceeding is not affected by the fact, if it be the fact, that the accused person has been brought before the court by an illegal process. If I refer to a judgment which I delivered in Killeen v. Director of Public Prosecutions [1997] 3 I.R. 218, it is simply because, so far as I am aware, it is the latest restatement of that well settled principle. I said (at p.228):-*
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> > *"It can, in general, be said that the jurisdiction of the District Court to embark on any criminal proceeding, including the holding of a preliminary examination, is unaffected by the fact, if it be the fact, that the accused person has been brought before the court by an illegal process. This was so held by Davitt P. in The State (Attorney General) v. Fawsitt [1955] I.R. 39 at p.43 where he said:-*
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> *"The usual methods of securing the attendance of an accused person before the District Court, so that it may investigate a charge of an indictable offence made against him, is by way of arrest or by way of formal summons, but neither of these methods is essential. He could, of course, attend voluntarily, if he so wished: so far as the exercise of the Court's substantive jurisdiction is concerned it is perfectly immaterial in what way his attendance is secured, so long as he is present before the District Justice in court at the material time. Even if he is brought there by an illegal process, the Court's jurisdiction is nonetheless effective."*

46. In circumstances where as of yet no complaint has been laid before the District Court on foot of the summonses which have issued in respect of the applicant, the doctrine of *autrefois acquit* has no applicability on the facts of the applicant's case. Insofar as the applicant relies on the *dictum* of Kenny J. in *O'Leary v. Cunningham*, the underlying logic of *autrefois acquit* is clear from that case, as is the fundamental and material distinction that can be drawn between the mere issuing of proceedings and their determination.

47. It is also the respondents' contention that it is clear from the evidence of Garda Inspector Healy, as before this Court, that there is no suggestion of an unfair hearing having taken place before the first named respondent on 8th June, 2015. It is submitted that on that date, having noted the garda evidence of arrest, charge and caution, the first named respondent accepted the defence objection on grounds of "hearsay" to the proposed garda evidence intended to support their "flight risk" concerns with regard to the applicant. It is further contended that while the first named respondent rejected the defence allegation of an "abuse of process" on the part of the Gardaí that was done entirely within jurisdiction.

48. Counsel for the respondent also submits that insofar as the applicant suggests (at para. 4 of the statement of grounds) that the failure of the third named respondent to bring the applicant to the first available District Court (at Ennis) and the consequent conveying of the applicant from Shannon to Cork deprived the applicant of his liberty, any such alleged breaches are issues to be considered in the trial process and are not matters for judicial review.

49. I agree with the respondents' submissions that any issues arising from the applicant's arrest or from the processing of his charges or the manner of his being brought before the District Court on 8th June, 2015, are matters more appropriate for ruling by the District Judge at the applicant's trial and/or by the Circuit Court by way of appeal. It is well established that it is only in exceptional circumstances that the High Court will intervene by way of judicial review in issues pending in a trial in a lower court. This was confirmed by O'Keefee J. in *McGlinchey v. Gibbons* [2009] IEHC 254. The learned Judge adopted the *dictum* of Keane J. in *Simple Imports Limited v. The Revenue Commissioners* [2000] 2. I.R. 243:

> *"We are not concerned in this case with an issue which arose in Byrne v. Grey [1988] I.R. 31 and in another case decided by Hamilton P. Berkeley v. Edwards [1988] I.R. 217. In both cases, the court was of the view that the discretionary remedy of certiorari should be refused since the object in seeking it was to have excluded the evidence obtained on foot of the search warrant and the proper forum for the determination of the issue of the admissibility of the evidence was the forthcoming trial of the Applicant*." [at para. 34]

50. Recent jurisprudence of the Supreme Court has upheld the aforesaid approach, as is evident from the decision in *Byrne v. Director of Public Prosecutions* [2011] 1 I.R. 346, as endorsed in *Kearns v. Director of Public Prosecutions* [2015] IESC 23:

> *"The constitutional right, the infringement of which is alleged to ground an applicant's entitlement to prohibit a trial, is the right to fair trial on a criminal charge guaranteed by Articles 38 and 34 of the Constitution. The manner in which the Constitution contemplates that a fair trial is normally guaranteed is through the trial and, if necessary, appeal processes of the courts established under the Constitution. The primary onus of ensuring that that right is vindicated lies on the court of trial, which will itself be a court established under the Constitution and obliged to administer justice pursuant to Article 34. It is, in my view, therefore, entirely consistent with the constitutional order to observe that it will only be in exceptional cases that superior courts should intervene and prohibit a trial …*" [at pp.13-14]

Summary

In all the circumstances of this case and for the reasons set out above, the relief sought in the notice of motion is refused.