

THE HIGH COURT**JUDICIAL REVIEW****[2017 No. 341 J.R.]****BETWEEN****PATRICK O'REILLY****APPLICANT****AND****THE DIRECTOR OF PUBLIC PROSECUTIONS****RESPONDENT****JUDGMENT of Mr. Justice Noonan delivered on the 19th day of December, 2017****Chronology of Relevant Events.**

3rd February, 2017 - At approximately 7.40 am during the course of a search of the applicant's room at Pier One Hotel in Limerick, the applicant is alleged to have made threats to kill Inspector Hunt ("the Limerick offence"). He was not arrested at that time.

At approximately 3pm on the same day, the applicant's vehicle was stopped at Knockagh, Cahir, County Tipperary and he is alleged to have made threats to kill Garda Donohue. He was arrested and brought to Cahir garda station where he is alleged to have made further threats to kill Garda Donohue ("the Tipperary offence").

4th February, 2017. The applicant was arrested, charged with the Tipperary offence and brought before Cashel District Court where he was remanded in custody until the 23rd February, 2017.

22nd February, 2017 - The respondent gave directions that the applicant was to be charged in respect of the Limerick offence and it was to be dealt with on indictment. The respondent further directed that all charges arising from the incidents on the 3rd February, 2017, were to be included in one Book of Evidence and prosecuted in the South Eastern Circuit.

23rd February, 2017 - The applicant was arrested, charged with the Limerick offence and brought before Cashel District Court. He was remanded in Custody back to Cashel District Court on the Tipperary charge but the District judge of his own motion decided to transfer the Limerick charge to Limerick District Court on the 27th February, 2017.

27th February, 2017 - The applicant appeared before Limerick District Court and the court was informed that the respondent had directed trial on indictment.

9th March, 2017. The applicant appeared before Cashel District Court when the matter was adjourned to the 23rd March, 2017, for service of the Book of Evidence.

23rd March, 2017. The applicant was again remanded back to Clonmel District Court on the 4th April, 2017, for service of the Book of Evidence.

27th March, 2017 - The applicant appeared before Limerick District Court and the matter was adjourned for two weeks for service of the Book of Evidence.

29th March, 2017. The respondent became aware for the first time that the Limerick charge had been transferred to Limerick District Court and directed that the charge be withdrawn before Limerick District Court and the applicant be arrested and recharged before Cashel District Court.

4th April, 2017 - The applicant appeared before Cashel District Court on foot of the Tipperary charge and the court was informed that the Limerick charge was being withdrawn before Limerick District Court so that the applicant could be recharged before the District Court in Tipperary.

10th April, 2017 - The applicant appeared before Clonmel District Court and was again remanded in custody for service of the Book of Evidence to the 19th April, in Cashel.

11th April, 2017 - The respondent withdrew the Limerick charges before Limerick District Court.

19th April, 2017 - Shortly before the sitting of the court in Cashel District Court, the applicant was arrested, recharged with the Limerick offence and brought before Cashel District Court. At that stage the Book of Evidence was served on the applicant in respect of both the Tipperary and Limerick charges and he was sent forward for trial to Clonmel Circuit Court.

15th May, 2017 - The applicant was granted leave by this court to seek judicial review and apply for an order of certiorari quashing the order of Cashel District Court made on the 19th April, 2017, returning the applicant for trial to Clonmel Circuit Court on the 2nd May, 2017.

The Applicant's Case

1. The grounds in respect of which leave was granted to seek judicial review are that the withdrawal of the matter before Limerick District Court and the subsequent rearrest of the applicant at Cashel District Court for the purpose of conferring jurisdiction on that court amounts to a colourable device and an abuse of process such as deprived the District Court of jurisdiction to send the applicant forward for trial on the Limerick offence to Clonmel Circuit Court.

The Arguments

2. In his written submissions, the applicant initially makes a point that the Book of Evidence in respect of the Limerick matter was served outside of the 42 day time limit provided for by the Criminal Procedure Act, 1967. However, this is not a ground in respect of which leave was granted. Similarly, a submission is made to the effect that the wrong statutory provision was relied upon by the

Gardaí to arrest the applicant at Cashel District Court on 19th April, 2017. Here again, this is not a ground in respect of which leave was granted. However in his oral submissions, counsel for the applicant conceded that he was not placing reliance on these matters but was essentially relying on the colourable device/abuse of process argument.

3. He submitted that the matter had been before Limerick District Court from the 27th February, 2017, until the 11th April, 2017, and this had all occurred with the consent of the respondent, only for the respondent to change tack and in effect "forum shop" by rerouting the matter to Tipperary. It was said that this amounted to an unfairness to the applicant which tainted the order of the District Court sending the matter for trial to Clonmel Circuit Court.

4. The respondent argued that the choice of venue was a matter for the respondent and she had made her directions clear from the outset. The District Judge had no jurisdiction to transfer the Limerick offence to Limerick District Court of his own motion on the 23rd February, 2017, and had the respondent not intervened by in effect bringing the matter back to Cashel District Court, the applicant might legitimately have been able to claim that the order sending him forward for trial on the South Western Circuit would have been bad. The applicant had suffered in the event no prejudice, as he had been in custody throughout in any event on the Tipperary charge and his trial had not been delayed.

Discussion

5. It is clear that the applicant is not entitled to advance grounds for which leave was not given and in that regard, his submissions concerning any alleged delay in service of the Book of Evidence or concerning the statutory basis for the applicant's arrest cannot be considered by the court.

6. The jurisdiction of the District Court in criminal matters is conferred by s. 79 of the Courts of Justice Act, 1924, as Amended, which provides that an accused person may be dealt with by the District Court for the area where the offence was committed, where the accused was arrested or where the accused resides. It is not in dispute that it is for the respondent to choose from these three options in determining where a prosecution shall take place – see *O'Malley v. Kelly & Anor* [2014] IEHC 524 and *DPP v. District Judge John O'Neill & Anor* [2015] IEHC 688.

7. It is clear in the present case that the respondent from the outset gave directions that both the Tipperary and Limerick offences were to be tried in the same jurisdiction, Tipperary, on foot of a single Book of Evidence. The transfer of the Limerick offence to Limerick District Court was not done at the behest of either the respondent or the applicant but rather of the court's own motion. Section 79 (4) of the Courts of Justice Act, 1924 provides:

"...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 ... transfer the case to the District Court District where the offence was committed or where the accused resides or was arrested."

8. Accordingly in the present case, the section enabling the District Judge to transfer a case of his own motion to another district was inapplicable and the District Judge did not therefore have any jurisdiction to transfer the matter to Limerick District Court. It therefore seems to me that as the respondent contends, had the matter ultimately proceeded to trial in Limerick, the applicant may well have had good grounds for complaint. The fact that the respondent sought to correct this difficulty as soon as she became aware of it is now said to give rise to some unfairness to the applicant.

9. There is no suggestion by the respondent that the applicant cannot withdraw a charge and subsequently recharge an accused person. The complaint instead is of a want of fair procedures and the use of a "colourable device" to forum shop. It is suggested that this is in some way an abuse of process. However, as I have said, the applicant is clearly entitled to select the forum so there can be no complaint arising from this. It is difficult to see how any prejudice has accrued to the applicant by virtue of what he complains of. He was already in custody on foot of the Tipperary charge in any event. He was sent forward for trial before Clonmel Circuit Court for the sessions commencing on the 2nd of May, 2017.

10. Had the District Judge in Cashel not transferred the matter to Limerick thus removing any cause for complaint by the applicant, exactly the same result would have ensued, i.e. he would have remained in custody and gone forward for trial to Clonmel Circuit Court on the 2nd May, 2017. Although the applicant complains of a want of fair procedures in the respondent allowing the matter to remain before Limerick District Court for a period of approximately 43 days, the right to fair procedures does not exist in a vacuum and must be connected to some demonstrable prejudice to afford a right to relief. That is absent in the present case.

11. I am therefore satisfied that the applicant has failed to substantiate any of the grounds upon which leave was granted in this case and I accordingly dismiss this application.