



THE COURT OF APPEAL

**President
Birmingham J.
Sheehan J.**

272PX/2013

The People at the Suit of the Director of Public Prosecutions

Appellant

Stephen Reddington

Respondent

Judgment of the Court (ex tempore) delivered on the 5th day of December, 2014 by Ryan P.

1. Under s. 4(e) of the Criminal Procedure Act 1967, an accused person facing trial may apply to the trial court to dismiss one or more the charges. Under subsection (4) if it appears to the trial judge that there is not a sufficient case to put the accused on trial for any charge to which the application relates, the Court shall dismiss the charge. That is what happened in this case; the learned trial judge to whom the application was made dismissed a charge for reasons which I will deal with in a moment. There is a power to appeal that and that is the case that comes before this Court.

2. The case turns on this point. The trial judge determined and held that, viewed objectively, there was not evidence of a sufficient nature to allow the District Judge to be satisfied that the applicant garda had a cause for reasonable suspicion would be found at the relevant address. Therefore, she said: "I am not satisfied that the issuing of the warrant on the 21st of November, 2011 was in accordance with law."

3. The implications of this are as follows. There was search of a premises. If the search was invalid as being not in accordance with a warrant or if the warrant was issued in circumstances that were not in accordance with law, then it invalidated the warrant and it invalidated the search. The prosecution conceded that that was the essential basis of the case and therefore, if the judge was correct in her conclusion, then that was the end of the case.

4. The matter was tried before the judge on the basis of an analysis of the information that was before the District Judge who issued the search warrant. The search warrant was issued under s. 26 of the Misuse of Drugs Act 1977. It says, so far as material, "if a Justice of the District Court is satisfied by information on oath of a member of the Garda Síochána that there is reasonable ground for suspecting that a person is in possession in contravention of this Act on any premises of a controlled drug, then the District Judge or a Peace Commissioner (but we are not concerned with that because in this case it was a District Judge) may issue a search warrant to search the premises", and that is what happened in this case.

5. The trial judge did not hear any evidence, and therefore this Court is in a just as good a position to assess the matter as was the learned trial judge.

6. The information on oath before the trial judge as to the grounds for suspicion was as follows. The investigating applicant Garda said he was member of the Garda Síochána and set out the grounds for suspicion:

"As a result of the ongoing investigation into the sale and supply of controlled drugs in the Clondalkin area, I have received information from a source that a male residing at the above address is in possession of a quantity of Diamorphine for the purpose of sale and/or supply. I have carried out surveillance on this premises and I have observed a number of known drug users frequent this premises. It is my belief that there is a quantity of Diamorphine to be found at this address."

7. There is no contest as to the formality of the procedure; the Garda swore the information and it is signed in proper form and there is no difficulty about that.

8. A further piece of information is that, in additional evidence, the Garda said that the District Judge asked him if he was satisfied with the information that he received, to which he replied that he was and then the judge asked him to confirm his signature, which he did.

9. The learned Circuit judge held that there was not a ground on which the District Judge could have satisfied himself as to the requisites under s. 26 in order to issue a warrant. The first point that the judge made was that the District Court forms were not complied with in that the District Court Rules have a specimen form for use which recites that the Garda has reasonable suspicion in accordance with the section and that is the basis for the request.

10. There are two answers to that. First of all the form is not actually in compliance, it will be observed, with the requirements of s. 26. Secondly, a failure to comply with the forms of the District Court Rules is not fatal to an application, and I do not think in fairness that Mr. Dwyer, counsel for the respondent, relied on that, other than simply to mention the point. He was not conceding it but I do not think he relied on it to any great extent. This is not a good point.

11. The essence of the question is this and the law on this topic is clear. It is not sufficient that the Garda looking for the warrant is satisfied that there is reasonable ground for suspecting. The judge of the District Court must be satisfied on the basis of information on oath that there is reasonable ground for suspecting.

12. Here the garda went to the District Judge and said "I have information", and secondly he said "I have kept the place under surveillance and I have seen drug users going in and out".

13. It is clear that the judge to whom application is made may ask questions of the Garda and may take the answers he is given into account in addition to what is actually stated in the information. It is clear that if he is not satisfied by the information contained in it that he may well be obliged to ask questions before he could be entitled to issue a warrant. That is what the cases establish. They do not establish that the District Judge must ask questions provided he is satisfied of the relevant basis of information.

14. It is also important to note that the requirement is that there is reasonable ground for suspecting; it is not reasonable ground for knowing or reasonable ground for believing, but it is reasonable ground for suspecting, that is the basis of the section.

15. The judge drew attention to the fact, first of all, that nowhere in the evidence of the Garda does he state that he had reasonable ground or grounds for his suspicion. That is the first point, but it is not a good point. The essence of the judgments in cases going back as far as the English case of *R. v Inland Revenue Commissioners Ex p. Rossminster Ltd* [1980] A.C. 952 establish that. This was cited with approval in *Byrne v. Grey* [1988] I.R. 31. In that case the sworn information recited little more than that the Garda held a reasonable basis for his suspicion. It was held that the Peace Commissioner must put himself in a position to form a view as to the reasonableness or otherwise of the suspicion, and it was not open to him/her to take such an assertion at face value:

"It is quite clear that the District Justice or Peace Commissioner issuing the warrant must himself be satisfied that there is reasonable ground for suspicion. He is not entitled to rely on a mere averment by a member of the Garda Síochána that he, the member of the Garda Síochána, has reasonable grounds for suspicion. A member of the Garda Síochána seeking the issue of a warrant pursuant to the provisions of s. 26 of the Misuse of Drugs Acts, 1977 and 1984, must be in a position to so satisfy either the District Justice or the Peace Commissioner of the relevant facts so that the District Justice or the Peace Commissioner can satisfy himself in accordance with the requirements of the section. He is not entitled to rely on the suspicion of the member of the Garda Síochána applying for the warrant."

16. *D.P.P. v. Tallant* [2003] 4 IR 343 was a case with facts very similar to the instant case. The warrants had been obtained from the District Court on the basis of two sworn informations. One was grounded on "confidential information received and inquiries carried out", the other on "information received and inquiries carried out". Both Gardai involved, under questioning from the District Judge, swore that they believed their information to be correct. The finding of the trial judge that the warrants were validly issued was appealed to the Court of Criminal Appeal, which held:

"It is not suggested, nor could it be, that the Gardai are not entitled to go before the District Court and ask for a warrant on the basis of confidential information, that is to say that they cannot go before the District Court and tell the District Court Judge that there is confidential information on which they have acted or there is information upon which they have formed a suspicion that there is a controlled drug in a particular premises. Nor is it suggested and, of course, it is a corollary of that, that hearsay evidence and it is in effect hearsay evidence, may not be given in that particular situation. Therefore, the position in this case is that the District Judge had before him evidence and there is the further indication that he acted judicially. He did not simply take it and rubber stamp it which is, I suppose, in effect the complaint made in the case of *Byrne v. Grey* [1988] I.R. 31. He asked the officer in each case whether he believed the information to be correct or words to that effect. That is not a rubber stamping operation; that is a District Judge taking care in ensuring that he will not issue a warrant unless the minimum question of reasonable basis for belief is addressed and he is entitled to take the evidence of a member of An Garda Síochána. In order to quash the decision of the District Court on this sort of basis, it would be necessary to show that no reasonable District Judge could reasonably have formed the opinion that there was a basis for suspicion which entitled him to form the opinion which caused the warrant to be issued. For those reasons, the court is not satisfied that any ground has been shown to challenge the validity of the warrants issued by the District Court and that being in effect the only ground of appeal, the court refuses leave to appeal."

17. The very point in these cases, and others, is that it is not sufficient for the investigating officer, whether customs officer or policeman or Garda, to be satisfied as to a reasonable ground for suspecting, but rather that the issuing authority who relied on such information must have the relevant satisfaction.

18. Secondly, the judge states that the Garda said that he carried out surveillance on the premises and she said, while noting it was frequented by a number of known drug users, there was nothing to confirm a link with drug users themselves and drugs being found on the premises. Drug clinics are frequented by known drug users but is this a ground reasonable or otherwise for issuing a search warrant of such premises?

19. The Court is satisfied that in this case there was ample evidence on which the District Judge could issue a warrant. The Garda first said he had information and then he said that he carried out surveillance and noted that it was frequented by a number of drug users. The error into which the judge fell was to think that because there was a conceivable, hypothetical possibility of an innocent explanation that that was sufficient.

20. We are dealing here with suspicion not proof. The fact that it might have been possible, although there is no suggestion anywhere that there was any question of a drug clinic or anything of that kind, to conceive of a situation that might indicate an innocent explanation is not an answer to the existence of suspicion.

21. Neither is it a ground of objection that the quality of the confidential information was not accounted for in the statements. It is true that in many of these cases the investigating Garda will say that the source that he or she relies on is a usually reliable source or a known source. As was pointed out by one member of the Court in the course of argument, even if the Garda in this case had not been satisfied as to the reliability and had regarded it as unknown or doubtful, he had then gone and carried out some surveillance. In those circumstances it would perhaps have been an error not to have harboured a reasonable suspicion.

22. This Court is satisfied that the issuing judge, on the basis of the information as contained here in this documentary evidence, erred in dismissing this case. This is a matter of understanding and interpretation of the information as provided to the District Judge in light of the requirements of the section. The Court is quite satisfied that there was a basis, and a rational basis, for issuing the warrant in this case given the information as contained in the documents. This Court emphasises that there is no question of any inhibition on any inquiry or issue as to the warrant being raised at the trial of the case.

23. Obviously, the trial is an entirely different matter and accordingly the Court will make an order under s. 4(e) (8b) to quash the decision of the trial court, so that the trial may proceed as if the charge had never been dismissed.