



THE COURT OF APPEAL

[01/2018]

Edwards J.
Baker J.
Kennedy J.

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND -

JOHN THEADDUS

APPELLANT

JUDGMENT of the Court (*ex tempore*) delivered on the 28th day of March 2019 by Ms. Justice Kennedy

1. The appellant seeks to appeal his conviction of the 15th November 2017 by a jury before Dublin Circuit Criminal Court. He was found guilty of three counts, namely; conspiracy to import a controlled drug contrary to s.71 of the Criminal Justice Act, 2006, possession of a controlled drug contrary to s. 3 of the Misuse of Dugs Act, 1977 and possession of a controlled drug for the purpose of sale or supply, contrary to s. 15 of the Misuse of Drugs Act, 1977. A sentence of 5 years' imprisonment was imposed and this judgment is concerned with the appeal against conviction.

Background

2. The offences arose in the following circumstances. Firstly, the offence of conspiracy concerned a plan on the part of the appellant and his co-accused to import a controlled substance, specifically, cocaine. This offence encompassed packages which were delivered to two hostels in Dublin concerning which, on the 6th January 2015, the appellant's co-accused was arrested and was found in possession of a bag in which was found a number of items including a laptop computer, a driver's licence in the name of the appellant, and a room key for a hostel in Dublin together with booking receipts for that room in the name of John Theaddus. Enquires were made then by the Gardaí regarding the appellant and following a social welfare enquiry, an address was obtained for the appellant, that address being, Flat 3, 190 South Circular Road, Dublin 8.

3. On the 7th January, Garda Wayne Carey applied for a search warrant before the Dublin District Court in respect of this address. Following the grant of which, the Gardaí called to the address. The property was divided into a number of bedsits and the Gardaí spoke with the owner, Mr John Ryan, and were informed by him that the appellant had been resident in Flat 3, but had recently moved to Flat 8 due to renovations. The appellant was arrested and the Gardaí then proceeded to apply for a warrant to search Flat No. 8. Having obtained a search warrant, the Gardaí executed the warrant and found a quantity of cocaine, and this seizure concerns the offences contrary to s.3 and s.15 of the Misuse of Drugs Act, 1977 (as amended).

4. This appeal is concerned solely with the validity of the search warrant issued in respect of Flat 8, the admissibility of which was the subject of a *voir dire*. The trial judge found the search warrant was validly issued.

5. The notice of appeal contains a single ground that: -

"The learned trial judge erred in principle in ruling that the search warrant contained in the book of evidence was valid and any search carried out on foot of that warrant was lawful"

6. It is contended on behalf of the appellant that the search warrant was invalid for the following reasons: -

- (1) The sworn information provided to the District judge was incorrect and represented untruths as the basis upon which the warrant was being sought,
- (2) The sworn information did not contain the relevant and most up to date information as to why the warrant was being sought,
- (3) The sworn information was clearly a sworn information prepared for an earlier application in respect of another address.

Relevant Facts

7. Garda Carey gave evidence that, on the 7th January 2015, he applied for a warrant to search Flat 3, 190 South Circular Road, before the District Court following the arrest of the co-accused pursuant to s.26 of the Misuse of Drugs Act, 1977, (as amended). Evidence was given that he swore an information in relation to his application and was granted a warrant to search Flat 3. No. 190 South Circular Road. This premises contained 20 bedsits and on arrival at the property and before executing the search warrant, the Gardaí met with the landlord and were informed that Flat 3 was under recent renovation and that the resident was known to him as 'John' and he had moved to Flat No.8.

8. The evidence revealed that Garda Carey contacted Garda John Donnelly, who was involved in the investigation and that he conveyed this information to him, following which, Garda Donnelly said he drew up an information in order to apply for a warrant to search Flat No. 8.

The application before the District Court

9. Garda Donnelly gave evidence that he was aware he needed to obtain a search warrant as soon as possible, and on the 7th January 2015, having prepared an information he proceeded to the District Court. It transpired on the evidence before the Circuit Court that the application for the second warrant was moved on the same date and before Judge Walsh who was the judge who granted the first warrant.

10. Garda Donnelly testified that having sworn an information before District Judge Walsh, he was asked questions by the judge and said that he informed the court that the appellant was now living in Flat 8 and that the Gardaí believed cocaine and other suspect items were to be found there. He said he informed the judge that the enquiries carried out had shown that Mr Theaddus had moved from Flat 3 to Flat 8 in recent days. The witness said he also told the judge that the appellant's drivers licence had been found on the co-accused and that the address for his social welfare payment was Flat 3 that the Gardaí needed to execute a warrant at Flat No. 8, 190, South Circular Road.

11. In cross examination, the witness expanded on his direct testimony and said that he explained to the judge that: -

"we had changed from Flat 3 to Flat 8 due to renovations, and that was following the latest enquiries after being informed by Garda Carey."

Judge Walsh proceeded then to issue the impugned search warrant.

The issue

12. The appellant's complaints are that the sworn information concerning the second search warrant did not contain the additional information regarding the source of the information that the appellant had moved from Flat No. 3 to Flat No. 8 and that the sworn information for Flat 3 was identical in terms to the information for Flat 8 and therefore the information for the warrant to search Flat No. 8 was simply a direct copy and had not been prepared by the witness. Support for the latter contention is drawn from a typographical error, which appears on a perusal of the transcript to consist of the absence of a space between words.

The trial judge's ruling

13. In his ruling the trial judge, Judge Nolan was satisfied that the warrant was validly issued. He accepted Garda Donnelly's evidence and he made a number of findings of fact. In the course of his ruling the trial judge said as follows:

"I have no doubt that Judge Michael Walsh had a firm basis in granting the warrant; and I have no doubt the guards fully informed the judge by the -- by reason -- by means of information and the additional questions I have no doubt the judge asked. So it seems to me the warrant was validly issued in the case. It seems to me the guards behaved appropriately; it seems they demonstrated restraint in not going into Flat 8; and it seems they obtained their warrant properly; and it seems Judge Michael Walsh had every reason to grant this warrant. So therefore, it seems to me the warrant is valid and it seems to me the fruits of this search are admissible in evidence"

The Appellant's submissions

14. In essence it is submitted by Mr Heneghan, SC on behalf of the appellant and also by way of written submissions that the search warrant issued by the District Court to Garda Donnelly was invalid, and the search therefore unlawful and in breach of the appellant's constitutional right to the inviolability of the dwelling. Any evidence obtained as a result of the search should have been excluded. Moreover, that the sworn information upon which the warrant was granted for Flat 8 was inaccurate as it mirrored the information used for Flat 3 and did not include the latest information relating to the change of address.

15. Finally, that the actions of the Gardaí in presenting knowingly false information before the District Court in order to obtain a search warrant, constitutes a deliberate and conscious breach of Art. 40.5 of the type described in *The People (DPP) v. JC* [2015] IESC 31 which it is submitted amounts to a profound error which goes to the heart of the jurisdiction to grant the search warrant.

Submissions of the respondent

16. Mr Mc Ginn, SC submits that the trial judge was correct in finding the warrant was validly issued on foot of the evidence adduced on the *voir dire*. Furthermore, that the evidence did not demonstrate a conscious or deliberate violation of the type referred to in *The People (DPP) v J.C.* [2015] IESC 31.

Discussion and Conclusion

17. The right to property is constitutionally protected and therefore, an individual's home may only be searched in accordance with law. In the instant case, the respondent contends that the search warrant issued by the District judge pursuant to s.26 of the 1977, Act was validly issued. The relevant portion of s.26 of the Act provides as follows: -

"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 or other land of a controlled drug....and that such drug....is on a particular premises or other land..."

18. Applications for both warrants were made on the same date before the same judge who received evidence on oath in both instances. There can be no doubt but that he was fully cognisant of the circumstances which prevailed in respect of each application.

19. The evidence at trial revealed that Garda Donnelly made the application for the search warrant concerning Flat No. 8 on foot of a sworn information which was almost identical in terms to the information sworn in relation to Flat No. 3. The difference being the number of the Flat in question. The Circuit Court judge was satisfied that Garda Donnelly was conversant with the investigation and prepared the information for the application for the second search warrant, having been made aware of the altered circumstances. That being that the appellant had moved from Flat 3 to Flat 8 within the same building.

20. We comment why would the wording of the information alter to any significant degree when the only altered feature was the move from one Flat to the other? The Circuit Court judge accepted the evidence given by Garda Donnelly that he had prepared the information having been contacted by his colleague. This was a rational finding by the judge given the fact that the information states Flat 8 as opposed to Flat 3.

21. Moreover, the trial judge was satisfied that the issuing District judge had a firm basis for granting the warrant on foot of the information and the oral evidence of Garda Donnelly.

22. It is essential that an issuing judge be satisfied by information on oath that there is reasonable ground for suspicion in terms of the Act before issuing the warrant. It is absolutely clear in the instant case that the District judge was so satisfied and that the trial judge did not err in so finding.

23. The appeal is therefore dismissed.