Neutral Citation: [2016] IEHC 273

THE HIGH COURT

JUDICIAL REVIEW

[2014 No. 624 J.R.]

BETWEEN

PAUL HOGAN

APPLICANT

AND

DISTRICT JUDGE JOHN LINDSAY AND DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENTS

JUDGMENT of Ms. Justice Faherty delivered on the 12th day of May, 2016

1. In these proceedings, the applicant seeks judicial review by way, inter alia, of an order of certiorari quashing a return for trial to the Dublin Circuit Criminal Court made by the first named respondent on 26th August, 2014.

Background

2. On 2i11 May, 2014, the prosecuting garda charged the applicant in Cloverhill District Court with the offence which was set out on Charge Sheet No. 14793982. The said charge sheet reads as follows:-

> "On 21/01/2014 at Parklands Park, Parklands Road, Oldcourt, Dublin 24, in said District Court area of Dublin Metropolitan District, did without lawful authority or excuse possess stolen property to wit BMW car key knowing that the property was stolen or were reckless as to whether it was stolen. Contrary to Section 18 of the Criminal Justice (Theft and Fraud Offences) Act 2001."

3. Previously, the applicant had been charged with the offence of handling stolen property contrary to s. 17 of the Criminal Justice (Theft and Fraud Offences) Act 2001, as set out in Charge Sheet No. 1443818, arising out of the same set of alleged facts. In accordance with the directions of the DPP dated 7th May, 2014, the handling charge was withdrawn and the possession charge was preferred.

4. On 26th August, 2014, the applicant was before Cloverhill District Court presided over by the first named respondent. Documents were served on the applicant pursuant to s. 4B of the Criminal Procedure Act 1997 (as amended), (hereinafter "the book of evidence"). An alibi warning was administered by the first named respondent. Through the prosecution solicitor, the DPP indicated her consent to the applicant being sent forward for trial to Dublin Circuit Criminal Court.

5. The Statement of Charges in the book of evidence reads:

> " Charge Sheet No: 14793982
>
> 1. For that you the said accused, on 21101/2014 at Parklands Park Parklands Road Oldcourt Dublin 24, in said District Court Area of Dublin Metropolitan District did without lawful authority or excuse possess stolen to wit BMW car key knowing that the property was stolen or were reckless as to whether it was stolen.
>
> Contrary to Section 18 of the Criminal Justice (Theft and Fraud Offences) Act 2001." (Pg. 14)

6. The return for trial order states:-

> "WHEREAS the above named accused is before the court charged with offence(s) numbered ---=1 as set out in the statement of charges,
>
> AND WHEREAS the Director of Public Prosecutions consents to the accused being sent forward for trial and the documents specified in Section 4B(I) of the Act have been served on the accused.
>
> AND WHEREAS I have informed the accused of the requirements of Section
>
> 20 of the Criminal Justice Act 1984,
>
> and Section 3 of the Offences Against the State (Amendment) Act 1998
>
> I HEREBY ORDER that the accused was sent forward for trial on the aforesaid offences to appear before the next sitting of the Circuit Criminal Court for Dublin City and County sitting at Court No 5, Criminal Courts of Justice, Parkgate st, Dublin 8 on the 17th day of October, 2014 at 10:30am .. .in custody ..."

Leave was granted to challenge the return for trial by order of White J. on 20th October, 2014.

In summary, the grounds upon which relief are sought are as follows:-

(i) The charge as cited in the Statement of Charges in the book of evidence furnished in purported accordance with s. 4B of the Criminal

-

Procedure Act 1967, and in respect of which the applicant was sent forward from Cloverhill District Court on 26th August, 2014 is not an offence that is known to law in that it does not allege possession of stolen "property" and therefore is not a matter upon which the applicant can be properly tried.

(ii) The order sending the applicant forward for trial as made on 26th August, 2014 represents an invalid exercise of the consent of the prosecutor and/or does not properly trigger the power vested in the District Judge by s. 4A of the Criminal Procedure Act 1967 as was purportedly exercised by the District Judge and accordingly, the applicant's purported return for trial is invalid.

(iii) The Circuit Court depends for its jurisdiction on a valid return for trial and the invalid return in this case vitiates the jurisdiction of the Circuit Court.

(iv) The prosecutor was not empowered to consent and the District Court did not have jurisdiction to send the applicant forward for trial as the relevant charge cited in the Statement of Charges was defective in a fundamental respect in failing to allege conduct concerning property and/or specify an offence known to law or at all.

(v) As bail was refused and the applicant was sent forward in custody it was imperative that the prosecutor carefully considered the basis of any order sought or made and the failure to do so has prejudiced the applicant.

7. In the Statement of Opposition, the respondents contest the proceedings on the basis, inter alia, that:-

> "11. As appears from the book of evidence, the charge there set out is identical to the wording of charge sheet 14793982 except that the word 'property' is omitted after the word 'stolen' and before words 'to wit BMW car key." In the book of evidence, the same charge sheet number is recited above the wording of the offence.
>
> 12. Clearly the omission of the word 'property' is a typographical error on the part of the person who drafted the book of evidence. There can be no confusion as to what the applicant was charged with which he has been fully aware of from the outset of the prosecution. The book of evidence includes the statements of the witnesses who will give evidence at trial. It is clear from the statements what the nature of the offence is that the applicant is charged with.
>
> 13. It is denied that the omission of the word 'property' from the statement of charges invalidates the order of the first named respondent. Furthermore it does not vitiate the consent of the DPP to send the applicant forward for trial. It is clear from the wording of the charge precisely what the applicant is charged with.
>
> 14. The applicant was previously charged with the offence as set out in the charge sheet which did not contain the same omission and which bears the same charge sheet number. That charge was read over to the applicant clearly understood. The applicant subsequently indicated he would be contesting the charge from which it can be inferred that he understood it. The proper test to be applied is whether there is any uncertainty of the applicant knowing what charges he faces. There can be no such uncertainty here."

The statutory provision in issue

8. Section 18(1) of the Criminal Justice (Theft and Fraud Offences) Act 2001, ("the 2001 Act") provides:-

> "A person who, without lawful authority or excuse, possesses stolen property (otherwise than in the course of the stealing), knowing that the property was stolen or being reckless as to whether it was stolen, is guilty of an offence."

The submissions advanced by the applicant

9. It is contended on behalf of the applicant that possession of stolen "property (otherwise than in the course of stealing)" are essential ingredients of the statutory offence created by s. 18(1) of the 2001 Act. Stolen "property" is thus at the core of the offence.

10. In contrast to the statutory requirement, the allegation upon which the applicant was sent forward for trial does not contend that the applicant was in possession of stolen "property (other than in the course of stealing)". Accordingly, the allegation detailed in the statement of charges in the book of evidence is not an offence known to law. It is submitted that the words in the statement of charges do not make sense and/or without reliance on words that have been excised, the words therein do not constitute an offence known to law.

11. It is submitted that the Circuit Court only has jurisdiction to entertain that which is in the statement of charges as sent forward.

12. The applicant was sent forward for trial to the Circuit Court in custody. Thus, the scrutiny of the procedure on which he was sent forward for trial must be rigorous given that the applicant's liberty has been taken from him.

13. It is argued that the absence of a reference to "property" in the statement of charges in the book of evidence is similar, in its effect, to the circumstances which triggered the jurisprudence quoted in *DPP v. Dunne* [1994] 2 I.R. 537 upon which the applicant relies.

14. Counsel for the applicant adopts the dictum of Carney J. in *DPP v. Dunne* and contends that there was not a "clear, complete, accurate and unambiguous" offence referred to in the book of evidence. If the applicant is to be sent forward for trial, he must be

sent forward in respect of a matter that is clearly, unambiguously and accurately an offence that is known to law. If the offence on which he is sent forward is not known to law, the question is how much can be filled in to shore up the process? It is argued that if there is to be some degree of tolerance for the frailties in the charge sheet, there has to be a limit to the tolerance that should be allowed, if there is such tolerance. However, if the offence upon which the applicant has been sent forward is not known to the law, the question is whether that can that be changed subsequently. It is submitted that this question must be answered in the negative.

15. By analogy with *DPP v. Dunne*, the charge in this case does not disclose an offence, it is an empty formula and the return for trial on the charge contained in the statement of charges is bad.

16. It is not a question of the applicant's prior convictions or his experience of the criminal justice system. The issue is whether there is a valid return for trial i.e. whether what happened at the hand of the District Judge when he was sending the applicant forward for trial was such as to invalidate that return. Thus, it is not sufficient for the respondents to say that the applicant has previous convictions or that he understood the procedure. Insofar as the respondents seek to rely on the fact that the applicant was previously charged on 24 May, 2014 with an offence under s. 18(1), it is submitted that the charging procedure is quite different to the charge. It was incumbent on the respondents to ensure that if the applicant was being sent forward for trial that he was being sent forward on a charge known to law.

17. It is also submitted that an analogy can be drawn with what transpired in *Lynch v. Anderson* [2010] IEHC 284 where Kearns P. quashed a conviction recorded against the applicant in that case because of a failure on the charge sheet to specify an arrestable offence.

18. It is submitted that the dictum of 0' Dalaigh J. in *The State (M) v. 0'Brien* [1972] I.R. 169, as quoted in Lynch v. Anderson, is applicable to the applicant in the within proceedings.

19. Counsel submits that as far as the applicant's case is concerned, it is impossible to read the charge sheet in the book of evidence without reading into it matters which had been taken out and by cross referencing the charge sheet with the statutory definition of the offence created by s. 18(1) of the 2001 Act.

20. Counsel also relies on the decision in *Murphy v. Early* [2009] 4 I.R. 681 and that the decision in that case underscores that the Circuit Court's jurisdiction in every trial on indictment is the return for trial and the decision is also an endorsement that judicial review is the appropriate remedy for the applicant in the present case.

The submissions advanced on behalf of the respondents

21. The respondents contend that the return for trial is valid. It is submitted that the applicant's reliance on *DPP v. Dunne; Lynch v. Anderson; and Murphy v. Early* is misconceived and that there are other cases directly on point and which support the respondents' position that the return for trial is valid.

22. Counsel contends that the issue of whether or not a want of particularity vitiates a return for trial is dealt with in *Sherry v. Brennan* [2009] IEHC 362 and it is submitted that having regard to the test set out therein, namely, whether there was any uncertainty on the part of the accused as to what charges are being brought against him, the applicant's complaint has no basis in law or fact.

23. It is submitted that applying the test set out in Sherry v. Brennan to the applicant's case as to whether there could be any uncertainty in relation to what he was charged with, the factual matrix in the applicant's case is such that there could be no such uncertainty. Counsel submits that the following points are of relevance:-

(i) The applicant was originally charged with a charge sheet which did not omit the word "property";

(ii) The charge sheet was read over to the applicant;

(iii) The applicant indicated he understood the charge;

(iv) The applicant was given a copy of charge sheet;

(v) The applicant was legally represented on the date of charge and on all subsequent dates;

(vi) The applicant had numerous previous convictions including those for possession which would suggest he had a good knowledge of such matters, an inference which the court can thus draw;

(vii) The applicant had sufficient information from the charge sheet to allow him indicate a not guilty plea in the District Court;

(viii) The charge in the book of evidence recited the same number as in the charge sheet. Thus save for the omitted word "property" the charge sheet in the book of evidence was, in every respect, similar to the charge sheet of 24th May, 2014;

(ix) The absent word is unnecessary and can be inferred from the context.

In any event, even if there was any doubt on the part of the applicant that the BMW car key was "property", the word "property" is used four words later in the charge sheet in the book of evidence;

(x) The charge recites the statutory provision which provides for an offence of possession of stolen property, therefore, the recitation of facts in the charge sheet can be read in that context. No conclusion can be drawn other than the fact that the prope1iy in question was a BMW car key. Even if the applicant had been a neophyte, he was represented by solicitor and counsel on the day he was charged, thus he could not be unaware of what he was being charged with;

(xi) The book of evidence contains statements which make it abundantly clear what the applicant was charged with; and

(xii) Most fundamentally, nowhere in the applicant's grounding affidavit does he suggest any confusion on his part as to what he was charged with.

24. Moreover, the applicant's circumstances do not bear any similarity to the circumstances which vitiated the return for trial in *BH v.*

Hussey [2003] 2 I.R. 43, a decision referred to in *Sherry v. Brennan* and which was distinguished by McMahon J. in *Sherry v. Brennan.* In *BH v Hussey* the accused was charged with sexual offences committed in the United Kingdom but which were triable in Ireland under the Sexual Offences (Jurisdiction) Act 1996. The statement of charges recited that the offences were contrary to the 1996 Act; said Act did not create the offences, it merely_ entitled the Irish Courts to try the offences. Accordingly, in that case certiorari was merited as the return for trial was invalid since it did not specify with which scheduled offence the applicant was being charged.

25. There is no merit in the applicant's reliance on *Lynch v. Anderson*. That case can be distinguished from the applicant's case because what is absent here is a word which can be clearly inferred from the context; it is not a situation where the offence is rendered meaningless. The mention of a BMW car key is clearly the property being referred to in the allegation contrary to s.18 (1) of the 2001 Act.

26. Similarly, there is no comparison between the present case and *DPP v. Dunne.* It is more than evident from the dictum of Carney J. why he held as he did. *DPP v. Dunne* related to a search warrant in which the phrase "is on the premises" was inadvertently deleted. This was sufficient to invalidate the search warrant. Carney J. held that given the warrant was the document upon which the dwelling of the citizen was infringed and had to be construed strictly. It is submitted that there appears to be a higher test applicable to the proper wording of a search warrant than the proper wording for return for trial order.

27. Insofar as the applicant relies on *Murphy v. Early,* which involved a return for trial, that case, however, has no relevance to the applicant's circumstances. In *Murphy*, the accused had been sent forward for trial to the Circuit Court on a summary matter contrary to s. 6 of the Criminal Justice Act 1951, thereby necessitating the grant of *certiorari* quashing that part of the return for trial which referred the applicant for trial on summary charges. In the present case, the s. 18(1) offence is an indictable offence, albeit it may be tried summarily.

28. In conclusion, counsel submits that for the twelve factual reasons set out, and applying the test in Sherry v. Brennan there can be no question of unce1iainty as to the offence upon which the applicant was sent forward for trial.

Considerations

29. A net point is at issue in these proceedings. The applicant contends that the single matter in respect of which the return for trial was made is not an offence known to law. It is asserted that an essential component of the statutory offence in respect of which the applicant was sent forward is missing thereby vitiating the return for trial such that the Circuit Court does not have jurisdiction to try him. I accept that as per *People (Attorney General) v. Walsh* [1972] 1 Frewen 363, the applicant has challenged his return for trial from the outset. Furthermore, as set out by O'Neill J. in *Murphy v. Early* [2009] 4 I.R. 681, the fact that an accused person will ultimately be arraigned on indictment does not cure any fundamental defect that may exist in a return for trial. The court must commence its analysis from the standpoint, as stated by O'Neill J., that *"the return for trial is the basis in law for the jurisdiction of the Circuit Criminal Court to proceed to try an accused for the offences set out in the indictment and is a necessary proof in every trial on indictment."*

30. Thus, the question is whether the return for trial is such that it properly conferred jurisdiction on the Circuit Court, or is what is set out in the Statement of Charges in the book of evidence something that falls short of being an offence known to law. If it is the latter, then the Circuit Court would have no jurisdiction to amend if the matter is not properly before that court in the first place.

31. It is acknowledged that the word "property" has been omitted from the Statement of Charges as found in the book of evidence. Does that mean that the offence set out is an offence unknown to law?

32. Counsel for the applicant relied in large part on *DPP v. Dunne* [1994] 2 I.R.537. The issue in DPP v. Dunne is comprehensively set out in the headnote:-

> *"The defendant was prosecuted in the District Court for an offence contrary to s. 21, sub-s. 4 of the Misuse of Drugs Act, 1977, as amended by s. 6 of the Misuse of Drugs Act, 1984, for impeding or obstructing a member of the Garda Síochána in the lawful exercise of a power conferred under the Act. A warrant had been obtained under s. 26, sub-s. 1 of the Act of 1977, to search the defendant's premises. On the basis of that warrant a search was made. The defendant did not consent but resisted the entry of the Gardai who used force to enter the premises. At the hearing before the District Court the defendant's solicitor applied for a direction and submitted that the warrant on foot of which the Gardai had searched the defendant's premises was defective and invalid because the words 'is on the premises' were deleted from it. District Court Judge Hamill was not prepared to accede to this submission and was asked by the defendant's solicitor to state a case for the opinion of the High Court. The District Court Judge posed the following questions of law: —*
>
> *"(1) Is a search warrant, such as that in the present case, which is issued pursuant to s. 26 of the Misuse of Drugs Act, 1977 to 1984, invalidated by reason of the fact that the words 'is on the premises' appearing thereon have been inadvertently struck out, such that it does not contain a specific averment that the Peace Commissioner issuing same is satisfied that such drugs are 'on a particular premises'?*
>
> *(2) Is a search warrant, such as that in the present case, which is issued pursuant to s. 26 of the Misuse of Drugs Act, 1977 to 1984, invalidated because it does not contain a specific averment that the Peace Commissioner issuing same is satisfied that a person is in possession of controlled drugs 'on any premises'?"*
>
> *Held by Carney J., in answering the first question of the case stated in the affirmative and finding that the warrant was invalid, and declining the answer the second question, 1, that the constitutional protection of the inviolability of the dwellinghouse is one of the most important, clear and unqualified protections given to the citizen by the Constitution.*
>
> *2. That if the inviolability of the dwellinghouse is to be set aside by a standard printed form of warrant the form should be in clear, complete, accurate and unambiguous terms.*
>
> *3. That, therefore, where words are deleted making the form nonsense that it cannot be relied upon to breach the constitutional inviolability of a citizen's dwellinghouse.*
>
> *4. That where words are crossed out in a standard printed form warrant due to inadvertence it cannot be relied upon as to allow such an approach would facilitate the warrant becoming an empty formula."*

33. It seems to me that the situation in Dunne was very stark. The warrant as issued did not contain the specific averment that the

Peace Commissioner who issued it was satisfied that the drugs were "on a particular premises", as required by s. 26 of the Misuse of Drugs Act, 1977. Is the present case analogous? Undoubtedly, the essential ingredient of s. 18(1) of the Criminal Justice (Theft and Fraud) Offences Act 2001 is the possession of stolen "property". However, I do not believe that the omission of the word "property" on the Statement of Charges in the book of evidence is as stark a failure to adhere to the provisions of s. 18(1) as counsel for the applicant suggests. Notably, while the word "prope1iy" does not precede the words "to wit BMW car key", the word "property" does appear some four words later and, on any reading, is clearly referable to the words "BMW car key". I also accept the respondent's submission that the Statement of Charge refers to the statutory provision (s. 18(1) of the 2001 Act) in respect of which the recitation of alleged facts on the Statement of Charges was formulated. Accordingly, I am not convinced that the Statement of Charges in the book of evidence is "an empty formula" in the sense described by Carney J. in *DPP v. Dunne.*

34. However, while the Statement of Charges might not amount to "an empty formula" in the stark manner of *DPP v. Dunne*, it remains to be decided whether it nevertheless fell short of the requirement to properly particularise the offence. Such a failure fell to be considered in Lynch v. Anderson.

There the applicant was charged, inter alia, with an alleged offence of burglary under s. 12(1)(b) and (3) of the Criminal Justice (Theft and Fraud) Act 2001. When the case came on for hearing in the District Cou1i, following an earlier date when jurisdiction was accepted, a plea of guilty entered and a hearing date set, a preliminary application was made seeking the dismissal of the burglary charge on the basis that there was a fundamental defect in the charge sheet, namely, that it did not disclose an offence under s. 12(1)(b) and (3) of the 2001 Act. As set out in the judgment "[the particular charge sheet alleged that on the 28 March, 2009 at an address in Kildare the applicant, having entered a building as a trespasser 'did commit an arrestable offence to wit burglary therein contrary to section 12(J)(b) and (3) of the Criminal Justice (Theft and Fraud Offences) Act, 2001 '." In Lynch the District Judge was satisfied that the charge sheet was valid holding that to do otherwise would make "nonsense" of the section. The grounds upon which judicial review was sought were "that the court did not have jurisdiction to convict the applicant as the charge sheet was defective in fundamental respect in failing to specify the arrestable offence alleged with sz4ficient particularity or at all". In the course of the application for judicial review it was urged upon the court by the respondents "that burglary had a common sense' meaning and was generally understood to mean entering a building to commit a theft". It was also submitted that the applicant was not prejudiced as at all material times he understood the nature of the charge he was facing. The learned President of the High Court took a different view.

35. In granting the relief sought, Kearns P. stated:-

> *"The importance of properly particular rising a charge of burglary was emphasised in the Supreme Court case of The State (J1;J) v. 0'Brien [1972} I.R. 169 in the course of which 0 Dalaigh C.J stated as follows (at p. 178):-*
>
> *'Section 25 (1) of the Larceny Act, 1916 enacts that 'every person who in the night, breaks and enters the dwelling-house of another with intent to commit any felony therein . .. shall be guilty of an offence called burglary ... ' The District Justice's order certified that the evidence given constituted prima facie evidence that the prosecutor had committed the offence. But what offence? With intent to commit what felony? The prosecution in the charge did not specify what felony.'*
>
> *He also stated at p. 181:-*
>
> *'There is no room for doubt that the charge should have specified the felony alleged to have been intended by the prosecutor. In the absence of this, it was impossible in law for the District Justice to certify that the evidence given constituted prima facie evidence that the prosecutor had committed the offence . It follows that the District Justice had no jurisdiction to make the order certifying as he did. '*
>
> *In the present case, the particular arrestable offence referred to on the charge sheet was burglary. At the hearing, it was suggested by the case presenter that burglary was generally understood to mean entering a building to commit a theft. However, it is certainly the case that the offence of burglary may be particularised as involving offences other than theft such as entering with intent to commit such offences as criminal damage or assault causing harm. In my view to particularise the offence of burglary as involving the offence of burglary is meaningless and amounts to a failure to specify an arrestable offence."*

I do not find that the applicant's complaint is analogous to what transpired in Lynch v. *Anderson*. Clearly, in Lynch, Kearns P. took particular note that the offence of burglary may be particularised as involving offenses other than theft such as entering with intent to commit such offenses as criminal damage or assault causing harm. Thus, the mere designation of the offence as "burglary" on the charge sheet without "sufficient particularity" rendered the charge sheet meaningless, particularly when the importance of particularising a charge of burglary was emphasised by the Supreme Court in The State (M) v. 0'Brien. I agree with the respondent's submission in this case that the offence as formulated on the Statement of Charges, albeit that the word "prope11y" is omitted, does not attain the level of meaninglessness which was in issue in *Lynch v. Anderson.*

36. Counsel for the applicant submits that unlike Sherry v. Brennan [2009] IEHC 362, upon which the respondents rely, the case which the applicant makes is not that there is unce11ainty as to what he is charged with, the applicant knows the purported charge, rather the complaint that is made is that the charge is one unknown to law. Accordingly, the applicant states that he is not contending for ambiguity or uncertainty in the Statement of Charges, unlike the situation which pertained in *Sherry v. Brennan.* It is thus submitted that the test formulated by McMahon J. in Sherry v. Brennan is not on point with the applicant's specific complaint.

37. In *Sherry v. Brennan* a return for trial order referred to sending an accused forward for trial on offences which he was "charged as set out on the attached book of evidence". There was a book of evidence containing two charges but the book of evidence was not physically attached to the return for trial order. The complaints were that the book of evidence was not attached to the order when furnished and that the recital did not on its face specify, in any way, the charges facing the accused.

38. McMahon J. did not find any merit in the complaint that the book of evidence was not attached to the return order. As to the complaint of lack of specificity, he distilled the argument in the following terms:-

> *"The essence of the applicant's submission is that by referring only to the book of evidence, there is no specificity as to what he is charged with and second, insofar as the book of evidence contains not only those charges contained in the charge sheet, but also contains potential charges (including summary charges) which could be brought on the evidence contained in the witnesses statements in the book of evidence.*

In situations like the present, the most important point for the court to determine is whether there was any uncertainty on the part of the accused as to what charges are being brought against him. If there is a serious uncertainty, then the court must find for the accused. Using this criteria, I must ask myself this initial question: does the order, as drafted in the circumstances of this case, create any uncertainty for the accused in knowing the charges he has to face?

It is true that the presumption of a valid return for trial is disputable, but the onus is on the accused to dispute it and prove his contention to the satisfaction of the court (The State v. His Honour Judge MJ Binchy and Charles Hand [1964] 1 JR. 395). In my view, the accused has not discharged this onus in this case.

It is to be noted that the order states that the "accused is before the court charged as set out on book of evidence". The only charges set out in the entire book of evidence are those contained in the charge sheet which is the first substantive page of the book of evidence served on the accused It is normal that the charge sheet should be the first page in the book of evidence. There are no other charges in the book of evidence so there can be no ambiguity as to what 'the charges' are. That there are other potential charges that could or might be brought against the accused is not relevant at this juncture. I do not accept that because there are some witness statements in the book of evidence that might possibly be interpreted as evidence of potential offences that the order could refer to these. The order refers to "charges" and not to "potential charges" and nowhere in the book of evidence is it indicated that other charges are being brought or intimated by anyone that they will be brought. There is no possible interpretation of the relevant part of the order that would extend its effect to such-possible charges. A commonsense view of the order leads one to the conclusion that the only charges that the accused is sent forward on are those contained in the charge sheet itself

Section 4B(1)(a) of the Criminal Procedure Act 1967 (as amended by s. 9 of the Criminal Justice Act 1999) obliges the prosecution to serve on the accused as part of the book of evidence, 'a statement of the charges against the accused'. This is a mandatory statutory provision and every book of evidence must comply with it. Such a statement of charges has been furnished to the accused in this case (and is noted on the face of the order itself) which lists two charges of burglary and criminal damage as the charges facing the accused. In these circumstances, it is reasonable to interpret the phrase in the order i.e. 'charge as set out on book of evidence' as meaning 'charge as set out in the statement of charges as set out on book of evidence ' and I hold that is the way the order in this case should be read. "

39. He continued:-

"The cases relied on by the accused as supporting his case do not do so, in my view. In the Director of Public Prosecutions v. Riley & Ors [2008} IEHC 419, there was a clear defect 'in that the attached schedule of charges referred to in the printed form had been left blank in each case'. That clearly was a case where the accused was entitled to argue that there was a failure to particularise the charges he was facing In Maples v. District Judge McCarthy & Anor (referred to at para. 13 of Director of Public Prosecutions v. Riley (Supra)) the return for trial referred to an attached schedule of charges which had gone missing Apparently, in that case, the Director of Public Prosecutions did not oppose certiorari but there is no written judgment in that case and in any event, the Director of Public Prosecutions may have had many other reasons other than those being suggested by the accused here, for not opposing the application. In both of those cases, the accused clearly did not have sufficient specific knowledge of the charges he was facing. In B.H v. Director of Public Prosecutions [2003} 2 I. R. 43, High Court; 58 Supreme Court, the statement of charges referred to particulars of an offence committed in the United Kingdom which it was stated was 'contrary to section 2 of the Sex Offences (Jurisdiction) Act 1996'. As Geoghegan J said in the Supreme Court in that case, in dismissing the Director of Public Prosecution's appeal:-

'It would seem crystal clear from any reading of that subsection that it is not purporting to create a new offence but rather to extend the jurisdiction to try certain existing offences. ' (At p. 59 of the Report)

It is clear from this that the statement of charges that the statutory provision cited there did not disclose any offence with which the accused could be charged This cannot be equated with the facts in the present case. "

40. Notwithstanding the applicant's wish to distinguish his particular complaint as not being amenable to the approach adopted by McMahon J. in Sherry v. Brennan, it seems to me that the approach for this court to adopt is to reformulate the test set out in that case and ask myself this initial question: does the return for trial order, encompassing as it must a Statement of Charges, create any uncertainty for the accused in knowing the offence with which he is charged? I take the view that this question must be approached largely from what is set out on the face of the Statement of Charges itself. To that extent, I agree with counsel for the applicant that no particular relevance should attach to points (i) to (vii) of the factual matrix relied on by the respondent.

41. Adopting the approach I have outlined, it seems to me that the Statement of Charges as presently formulated, albeit that the word "property" is omitted from before the words "to wit BMW car key", nevertheless contains sufficient ingredients of the offence created by s. 18(1) of the 2001 Act for the nature of the offence with which the applicant is charged to be clear on the face of the Statement of Charges and indeed to him. As I have already indicated, this is particularly so by reason of the fact that the physical nature of the property in respect of which the charge is preferred is set out in the Statement of Charges and because the word "property" itself is referred to therein (clearly referable to "BMW car key"), albeit it comes after the physical description of the thing in respect of which it is alleged the applicant was in possession. Furthermore, I do not accept the applicant's counsel's argument that the fact that the Statement of Charge in the book of evidence bears the same number as the charge sheet in respect of which the applicant was charged on 24th May, 2014 is not a relevant factor. While I accept as a general principle that that of itself it would not be sufficient to cure a fundamental defect in any subsequent return for trial, the reference on the Statement of Charges to the charge number of the charge preferred against the applicant on 24 May, 2014 complements the basic ingredients of the s. 18(1) offence which I have already found exist in the Statement of Charges. Moreover, the Statement of Charges states that the offence was contrary to the relevant statutory provision.

42. Counsel for the applicant also disputes the respondents' contention that the book of evidence contains witness statements which make it clear what the applicant is charged with. He submits that this is not the case in circumstances where, based on the same alleged facts, a previous charge of handling stolen property was replaced with the possession charge. It is argued that against this background, the Statement of Charges in the book of evidence does not make it clear with what the applicant is charged. I do not find merit in this argument. There is one charge preferred against the applicant, as set out on the first page of the book of evidence. I adopt the words of McMahon J. in Sherry v. Brennan, *"[a] commonsense view of the order leads one to the conclusion that the only charge that the accused is sent forward on are those contained in the charge sheet itself".*

Summary

43. For the reasons set out herein, I am not satisfied that the omission of the word "property" has the effect attributed to it by counsel for the applicant and I have not been persuaded that the applicant is being sent forward for trial on an offence that is unknown to law. Accordingly, I am satisfied that the first named respondent had jurisdiction to send the applicant forward for trial; that the second named respondent's consent thereto was lawful; and that the Circuit Criminal Court has jurisdiction to try the applicant.

44. For these reasons, the relief sought in the Notice of Motion is refused.