THE HIGH COURT

[2024] IEHC 717

[Record No. 2024/343SS]

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS

APPLICANT

AND

GERARD JOYCE

RESPONDENT

JUDGMENT of Mr. Justice Barr delivered electronically on the 20th day of December 2024

Introduction.

1. This is a case stated by Judge Eirinn McKiernan pursuant to s.52(1) of the Courts (Supplemental Provisions) Act, 1961. It arises in the context of a criminal trial which is proceeding before the learned District Court judge, where the respondent is charged with possession of a controlled drug, namely cannabis, contrary to s.3 of the Misuse of Drugs Act 1977, as amended, and possession of the drug for the purpose of sale or supply, contrary to s.15 of the 1977 Act, as amended.

2. While the question raised will be set out fully later in the judgment, it can be boiled down to the following: s.30 of the Criminal Justice Act, 1999 (hereinafter "the 1999 Act") provides that a certificate can be issued by the garda who transported material evidence from point A to point B; that certificate can be admitted as evidence of the chain of custody during the period specified in the certificate; the section further provides that the trial judge can direct that oral evidence be heard on the chain of custody issue if it is in the interests of justice to do so; and the trial judge may adjourn the trial for that purpose.

3. The essential question posed by the learned District Court judge is whether she is entitled to receive evidence concerning custody of exhibits by way of a s.30 certificate, even in the face of a defence objection to reliance on the certificate.

4. For the reasons that are set out later in the judgment, the court is satisfied that the answer to the question posed is: yes, the trial judge may admit the evidence as contained in the certificate issued pursuant to s.30 of the 1999 Act and may act on it, even in the face of an objection raised by the defence; unless the trial judge is satisfied that it is in the interests of justice that oral evidence be heard on the issue of the chain of custody of the material.

Background.

5. In answering the consultative case stated, this court is bound by the facts as found by the trial judge and as recorded in her case stated. In the present case, the trial judge heard evidence from a Garda McGovern that a search warrant having been obtained for a particular domestic property in Dundalk, she and a Garda Blaine attended at the premises on 1st May, 2021 for the purpose of executing the search warrant. Having knocked on the front door, the gardaí were admitted to the property by the respondent, who had been observed as having come from the rear of the property. The gardaí noted a strong smell of cannabis when they entered the property.

6. On searching the property, the gardaí found a number of items which were placed in numbered evidence bags. Each bag was given a separate exhibit number. The following items were found: brown packages which contained clear "*deal bags*"; a Centra shopping bag containing what was suspected to be cannabis herb; a weighing scales; and cash in the sum of €10,100.

7. Garda Blaine gave evidence that on searching the garden, he saw a shopping bag in the back garden of the adjacent property, just beside the wall. He retrieved the bag by climbing over the wall. The bag was the aforementioned Centra shopping bag, which was thought to contain suspected cannabis herb, as well as a red Daz box, being used as a container and clear "*deal bags*".

8. Garda Blaine gave evidence that he placed what he believed to be suspected cannabis herb into an evidence bag numbered "*MB00058858*". He stated that all the relevant exhibits were given reference numbers on site for the purpose of the garda investigation as follows: The Centra bag was "*GB1*"; the suspected cannabis herb was "*GB1a*"; the packaging from the Centra bag was "*GB1b*"; the red container was "*GB2*"; and the plastic packaging found within that container was "*GB2a*". He testified that at the scene, he handed the exhibits to Garda McGovern. Evidence was given that the owner of the adjoining property was asked about the Centra bag found on her property. She stated that the bag was not hers.

9. Evidence was given by a Sergeant Hardigan in relation to the role of Garda Anthony Connor in taking possession of the exhibits for onward transmission to Forensic Science Ireland (hereinafter "FSI"). He also furnished a medical report to the court dated 28th March, 2023, which confirmed that Garda Connor was not available to attend court for medical reasons. The sergeant tendered a certificate prepared by Garda Connor pursuant to s.30 of the 1999 Act. The learned District Court judge stated that she was satisfied to accept the certificate in lieu of the

oral evidence of the witness in question, in light of the medical evidence vouching as to his non-availability.

10. The signed s.30 certificate, dated 17th October, 2023, stated that on 5th May, 2021, Garda Connor had received several sealed evidence bags and had transmitted them to the FSI laboratory on the following day. The content of this certificate will be outlined later in the judgment. The judge stated that the admission of the certificate was not objected to by the defence at the time of its submission into evidence by the prosecution. However, its contents subsequently formed the basis of a submission regarding the adequacy of the prosecution case.

11. Sergeant Hardigan also submitted in evidence a certificate of analysis pursuant to s.10 of the Misuse of Drugs Act, 1984, which was accepted by the trial judge. It recorded that FSI had examined item number "7668967", which included bag number "*STEPB-MBW0058858*", which was found to contain 33.7g of cannabis; to which Sergeant Hardigan ascribed a value of €674.

12. Evidence was given by Dr. Clar Donnelly of FSI in relation to the procedure used by FSI for receiving exhibits. The witness stated that a member of FSI staff would receive the exhibit at reception. They would not accept it if it were observed to have been tampered with, or if the seal was in some way impaired. In the event that the seal had been impaired or damaged e.g. in the course of handling within FSI, that would be noted on the file notes. There was no such note in relation to the exhibits in the present case.

13. Dr. Donnelly also gave evidence that a unique case number was generated by FSI when an item was submitted for analysis. That had been done with the exhibits submitted by Garda Connor on 6th May 2021. She stated that the certificate of analysis also cited the evidence bag numbers and the PULSE identifiers, which had been assigned in the course of the prior garda investigation and which were apparent on the bag. She also confirmed that she had done the

analysis of the material submitted and had made findings as per the content of the s.10 certificate.

14. The trial judge stated that at the close of the prosecuting case an application was made for a dismissal of the charges for no case to answer. She noted that a number of submissions had been made, not all of which were relevant for the present purposes, such as those relating to the search and one relating to the precise numbering/lettering of the critical exhibit.

15. Counsel on behalf of the accused had submitted that some difficulty was caused by the fact that the numbers which the FSI report had recorded in respect of the material received, being "*STEBPMB00058858*", was not the same number stated in evidence as having been attributed to the evidence bag and that there was no evidence of how the former number came into being. It was also submitted that the use of the statutory procedure pursuant to s.30 of the 1999 Act, had effectively prevented the defence from exploring issues relating to the custody and identity of the suspected drugs exhibit. Counsel submitted that there had been no opportunity for the accused to cross examine Garda Connor on the new set of numbers on the exhibits, which diverged from those given in the s.30 certificate, which had been signed by Garda Connor. It was submitted that it was incumbent on the prosecution to prove that, not only what was analysed, was drugs; but also, the chain of custody of the material seized in the search, before the submission to the laboratory.

16. In response, Mr. Mullin, the State Solicitor for the prosecution, submitted that continuity could be established in the absence of Garda Connor, by means of the s.30 certificate. On the labelling issue, he referred to the evidence of Ms. Underwood concerning how object numbers were generated and the fact that the evidence bag number, which was referred to in Dr. Donnelly's certificate, clearly ended in the numbers "*58858*", which was the same number as provided by the garda witnesses. It was submitted that that, together with the object number, which had been created by the Property Evidence Management System

(PEMS), which had also been recorded on the certificate of analysis issued by FSI, were sufficient to give rise to a case to answer. It was further submitted that the court could safely proceed to convict on the basis of the admissions made by the defendant. It was submitted that analysis of the material was not essential, given those clear admissions and the surrounding circumstances in which they had been made.

17. Having given that recitation of the evidence received by the court and the submissions made thereon, Judge McKiernan concluded her case stated in the following terms:

> *"31. Having considered those submissions, I indicated that I was satisfied in relation to the lawfulness of the search and in relation to the labelling and numbering of the exhibits – that the evidence bags brought to FSI and analysed bore one and the same identifiers as those seized by the gardaí at the scene – and was not therefore accepting those two submissions.*
>
> *32. But I was also of the view that there was a remaining issue to be addressed in relation to the custody of exhibits and the necessity of Garda Connor to give his evidence in person where the defence indicated that his presence was necessary in order to challenge this evidence.*
>
> *33. In these premises and in particular where the defence objects that the garda officer in question is not available for cross-examination, where I have accepted that the officer in question cannot be available for vouched medical reasons, the following question of law is posed for the consideration of the High Court:*
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> *Q. In all of the circumstances of this case, and in particular where the defence objects to the sufficiency of this evidence on the basis that the garda officer in question is not available for cross examination, having considered the submissions and in light of the evidence I, the said District Judge, am of the*

opinion that a question of law arises in the foregoing case and do hereby refer the following question to the High Court for determination:

a. Where evidence concerning the transport of an exhibit (being suspected cannabis herb) from a secured garda storage facility to the Forensic Science Ireland laboratory has been admitted by means of the certificate procedure set out in s.30 of the Criminal Justice Act, 1999, am I entitled to treat this certificate as being sufficient in and of itself to establish the lawful custody of the exhibit in question, notwithstanding a defence objection to the absence of that witness?"

Section 30 of the Criminal Justice Act, 1999.

18. The relevant parts of s.30 of the 1999 Act are as follows:

"30.—(1) In any criminal proceedings, a certificate purporting to be signed by a member of the Garda Síochána and stating that the member had custody of an exhibit at a specified place or for a specified period or purpose shall be admissible as evidence of the matters stated in the certificate.

(2) In any criminal proceedings, the court may—

(a) if it considers that the interests of justice so require, direct that oral evidence be given of the matters stated in a certificate under this section, and

(b) adjourn the proceedings to a later date for the purpose of receiving the oral evidence."

The Certificate Issued by Garda Connor pursuant to s.30.

19. The salient parts of the s.30 certificate issued by Garda Connor, are in the following terms:

1. On the 5th day of May, 2021 I received from PEMS Dundalk sealed exhibit bags bearing exhibit reference no. 0BJ7668966, OBJ7668970, OBJ7668971, OBJ7669864 and OBJ7668967 and retained same in my safe custody at PEMS Ardee.
2. On the 6th day of May, 2021, I delivered the said exhibits to Forensic Science Ireland.
3. The said exhibits were delivered in sealed exhibit bags and I confirm and certify that same had not been disturbed or interfered with in any way between the time I received same from PEMS Dundalk and the delivery by myself to Forensic Science Ireland.

Conclusions

20. In answering the question posed by the learned District Court judge, the first matter to be addressed is the wording of s.30 of the 1999 Act. That section is clear in its terms. It allows for the admission in evidence of a certificate issued by a competent garda in relation to the chain of custody of a material exhibit.

21. Thus, the tendering of the certificate in evidence by a garda not below the rank of sergeant, is prima facia proof of the matters stated therein. Therefore, where such a certificate is properly tendered in evidence, there is no gap in proof of the chain of custody of the exhibit. The necessary chain of custody is proven by production of the certificate, which is admissible as evidence pursuant to the terms of the Act.

22. In these circumstances, the application by counsel acting for the respondent for dismissal of the charge on the ground that Garda Connors had not been called to give evidence, was misplaced. There was no lacuna in the evidence as far as the chain of custody was concerned. The chain of custody had been established by production of the s.30 certificate,

which had been signed by Garda Connor. It was admissible as evidence of the matters stated therein.

23. If the respondent wished to challenge the admission into evidence of that certificate, the time to have done so was when Sergeant Hardigan had tendered it in evidence. No objection was taken at that stage. It was not permissible to await the end of the prosecution case and then to seek a dismissal of the charges against the respondent on the basis that the chain of custody had not been proven by oral evidence, when that chain of custody had been proven by production of the certificate, to which the respondent had not objected when it was tendered in evidence.

24. To answer the question posed by the learned District Court judge in her consultative case stated, having regard to the ordinary and natural meaning of the words used in s.30 of the 1999 Act, the answer must be in the affirmative.

25. The section provides that a certificate issued under s.30 *"shall be admissible as evidence"*. That means that such a certificate shall be capable of being admitted as evidence of the matter stated therein.

26. Under the terms of s.30 of the 1999 Act, the accused in a criminal trial is not given any form of veto against the admission of evidence by way of a certificate issued under that section. The accused may object to the admission of the certificate into evidence, but they cannot by making such an objection, effectively block its admission into evidence.

27. The power to admit a certificate into evidence, is only subject to the proviso that the trial judge may direct that oral evidence be given if the judge considers that the interests of justice so require. To that end, the trial judge may adjourn the hearing of the trial to allow for the giving of oral evidence in relation to the chain of custody.

28. As to whether the particular circumstances in a given case may be such as to require that in the interests of justice oral evidence be given, that is a matter for the trial judge to decide.

It would not be appropriate for this Court to give any view on how that decision should be made in the case that is currently before the learned District Court judge.

29. Some guidance on what may be considered under the rubric of the interests of justice is to be found in the decision in *Minister for Justice & Equality v McGuigan* [2011] IEHC 514. However, one must be careful when considering the dicta in that case, as it concerned issues in relation to the admission of oral evidence in proceedings challenging the removal of a person pursuant to a European Arrest Warrant. It is important to note that under the European Arrest Warrant Act 2003, there is provision that the normal mode of giving evidence in such proceedings, shall be by way of affidavit or other such document. Thus, oral evidence is the exception, rather than the norm. In addition, there is a presumption of mutual trust and confidence that underpins the European arrest warrant system.

30. In that case the respondent was resisting his removal to Lithuania to face charges there in relation to alleged offences involving terrorism; illicit trafficking in weapons, munitions, and explosives; and the making of preparations for the commission of a serious or grave crime. Prior to the hearing of his objection to his removal pursuant to the EAW, he brought a motion seeking liberty to call oral evidence from a Lithuanian lawyer and from a professor of law in the University of Bristol, for the purpose of giving evidence in relation to the alleged poor conditions and ill treatment of detainees in Lithuanian places of detention and on alleged fundamental defects in the criminal justice system in the requesting state.

31. The court noted that the relevant provisions of the 2003 Act provided that the court may, if it considered that the interests of justice so required, direct that oral evidence of the matters described in the affidavit, or statement concerned be given, and for that purpose, the court could adjourn the proceedings to a later date. However, the court noted that this was by way of exception to the general rule in relation to the giving of evidence in such applications.

The court, Edwards J., (then sitting as a judge of the High Court) made the following observations in relation to the phrase *"if it considers that the interests of justice so require":*

> *"The critical words are 'if it considers that the interests of justice so require.' A party seeking to adduce oral evidence must satisfy the Court that the interests of justice require that the normal rule should be departed from. In the Court's view, the party seeking to adduce oral evidence needs to identify something inherent in the nature of the evidence itself such that the Court would benefit from receiving that evidence orally rather than in written form."*

32. Some assistance with this question may also be found in the following dicta of Charleton J in *People (DPP) v AC* [2022] 2 IR 49 at para. 29:

> *"Section 25 is within the ambit of legislation which dispenses with the hearsay rule in circumstances that dictate the inherent reliability of what is recorded by persons who have no issue with the parties or with the controversy in a case. Thus, ss. 21 and 22 of the Criminal Justice Act 1984 enable proof, where not objected to, by certificate or by formal agreement as between the prosecution and the defence. Formerly, prosecution statements detailing the preservation of a crime scene were thought to require each officer who noted all comings and goings to be produced in court. In reality, this was never necessary. A misconstruction of the reasonable doubt standard also burdened a trial with such evidence as the absence of any road accident involving the hearse taking the body of a murder victim to a post-mortem examination. Mathematical proof and proof to a standard that a reasonable person would not doubt the soundness of accepting a fact essential to a conviction are different. While proving what can be proven is sensible, absence due to illness or death of a witness with a formal role does not upset proof to the criminal standard: though the defence*

may make whatever factual argument to the jury as seems sensible, the jury being entitled to take a common sense view as to the weight to be given to any evidence or to similarly consider the absence of any proposed testimony."

33. Finally, in considering whether the interests of justice require that oral evidence be heard in relation to the chain of custody, I accept the submission made by Mr Gallagher BL on behalf of the applicant, that in determining that issue the trial judge may have regard to all the circumstances in the case as disclosed on the evidence. In the present case that would include the evidence heard in relation to all identification numbers on the bags of evidence and the fact that certain of these numbers were identical on the PEMS system, and on the PULSE system, and as recorded as having been received by FSI; the fact that Garda Connor merely transported material from Dundalk Garda Station to Ardee Garda Station and then on to FSI, without having had any role in the initial search, or in the affixing of any identification numbers to the bags; the court may also have regard to the other evidence in the case, such as the evidence of the gardaí who conducted the search and as to the affixing of identifiers at that stage.

34. However, I do not accept the submission made by counsel that in deciding whether it is in the interests of justice that oral evidence be given on the matters stated in the s.30 certificate, the court may have regard to the fact that admissions were allegedly made by the accused at the scene of the search and while in Garda custody. Evidence of that nature may well be relevant to the determination of at the end of the trial as to whether the accused is guilty of the offences charged, but it is not relevant to the determination during the trial of whether it is in the interests of justice that oral evidence be given on the chain of custody issue addressed in the s.30 certificate.

The Answer to the Question Posed.

35. The court answers the question posed by the learned District Court judge in her consultative case stated as follows: -

> Yes, the trial judge may admit the certificate issued under s.30 of the 1999 Act in evidence, even in the face of an objection to that being done by the accused, and may act on that evidence, unless the trial judge thinks that the interests of justice require that they direct that oral evidence be given of the matters stated in the certificate; and the trial judge may adjourn the proceedings to a later date for the purpose of receiving the oral evidence.

Costs.

36. The court notes that a certificate has already issued by the learned District Court judge certifying for the payment of fees to the parties on this application. Accordingly, it is not necessary for the court to make any order for costs.

37. Therefore, the final order of the court will give the answer to the question raised in the consultative case stated, in the terms as set out above; with no order as to costs.

38. The parties have liberty to apply, if there is any difficulty in relation to the terms of the final order.