

Neutral Citation No: [2017] NIQB 70

Ref: STE10366

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 14/07/2017

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

Between

RODDY LOGAN

Plaintiff:

and

**THE CHIEF CONSTABLE OF THE POLICE SERVICE OF
NORTHERN IRELAND**

Defendant:

STEPHENS J

Introduction

[1] The plaintiff, Roddy Logan, who was arrested without warrant by Constable Connolly under Section 41 of the Terrorism Act 2000 at 7:15am on 26 July 2011 and released after interview at 9:08pm on 27 July 2011, claims damages, together with aggravated and exemplary damages, from the Chief Constable of the PSNI, who is vicariously liable for the actions of Constable Connolly, on the basis that the arrest was unlawful.

[2] The proceedings were commenced by the plaintiff in the County Court. The defendant then applied to remove the proceedings to the High Court on the basis that he wished to bring a closed material procedure application and it was not possible to do so in the County Court. The Master ordered that the action should be removed. The defendant then applied for a declaration under section 6 of the Justice and Security Act 2013 on the basis that he wished to rely on "sensitive material" to defend the plaintiff's action. Upon that application coming on for hearing it was apparent that it was unnecessary as the legal test for a lawful arrest without a warrant depended on what was in the mind of the arresting officer and not on an analysis of the "sensitive material" which was unknown to that officer. It was agreed that the plaintiff's claim for unlawful arrest was capable of being determined

by this court in an open hearing. The closed material procedure application was adjourned.

[3] At the start of the substantive hearing Mr Ronan Lavery QC, who appeared with Mr Summer on behalf of the plaintiff, raised a concern as to whether I had seen “sensitive material” in relation to the plaintiff during the course of the closed material application procedure. I informed him that in the ordinary course of a Section 6 application I would have seen such material but that I had no recollection of it, though my memory could be prompted as the case progressed. I afforded the plaintiff an opportunity to make a recusal application. On instructions Mr Lavery informed the court that he did not wish to do so.

[4] At the conclusion of the evidence I recollected that an affidavit had been filed by the defendant in relation to the removal application so I specifically raised the question as to whether either of the parties wished to rely on or refer to that affidavit and afforded both parties time to consider the affidavit. I was informed that in fact there had been two affidavits grounding the removal application. Neither of the affidavits was before me at the trial. I was informed by both Mr Lavery on behalf of the plaintiff and by Mr Rooney QC, who appeared with Mr Robinson on behalf of the defendant, that neither party wished to rely on any information contained in either of the two affidavits.

[5] I proceed to determine this case solely on the evidence presented to me during the course of the hearing.

Factual Background

[6] On Saturday 2 April 2011 Constable Ronan Kerr was murdered at Highfield Court, Gortin Road, Omagh, Co Tyrone. He died as a result of the detonation of an explosive device which had been placed under the driver’s seat of his motor vehicle causing him to sustain severe damage to the lower part of his body. As a result of this murder a large major investigation was commenced by Detective Superintendent Murray of the Serious Crime Branch of the PSNI. Mr Lavery on behalf of the plaintiff accepted that it was correctly suspected that dissident republican terrorists carried out this murder and that the murder was an act of terrorism within the meaning of Section 1 of the Terrorism Act 2000 (“the Terrorism Act”).

[7] Three days after the murder of Constable Kerr and on 5 April 2011, as a result of intelligence received, premises at 187A Mountjoy Road, Coalisland, Co. Tyrone were searched by the PSNI. In a rented garage at that location a large find of firearms, ammunition, explosives and other items of use to terrorists was made. Several vehicles were also recovered at the scene.

[8] Some three months later and on 25 July 2011 Detective Constable Dyer attended at Maydown PSNI Station for a briefing from the team tasked with the

investigation of the murder of Constable Kerr (“the murder investigation team”). Detective Superintendent Murray the senior investigating officer in overall charge of that team and the deputy senior investigating officer, Detective Chief Inspector Magee were present. The briefing was given by Detective Constable Miller of the murder investigation team to a number of PSNI officers as to a major planned search and arrest operation which was to take place the next day, that is on 26 July 2011. Six premises were to be searched and five arrests were to be made. Detective Constable Dyer was informed that he had responsibility for the specific part of the operation which involved the search of the plaintiff’s home and the arrest of the plaintiff, including briefing the arresting officer. Other officers present at the briefing were assigned responsibility for other aspects of the operation including other searches and the arrest of other individuals. Detective Constable Dyer made contemporaneous notes in relation to that briefing.

[9] At that briefing Detective Constable Dyer and the other officers were informed that the search and arrest operation was part of a wider operation in relation to the murder of Constable Kerr. They were informed that after the murder the police had carried out a search at 187A Mountjoy Road on 5 April 2011 and in that property a significant amount of terrorist related material including weapons and munitions were recovered. In his evidence in chief Detective Constable Dyer stated that he had not been told the reason why 187A Mountjoy Road had been searched or what had led the PSNI to that property. He gave evidence that he assumed that it had been an intelligence led search. He also gave evidence that he took the view that it was reliable intelligence that had led to the search on the basis that the intelligence had been tested by the search and that it had proved to be correct. During the course of the briefing Detective Constable Dyer was given a document headed “Arrest Brief” and it is recorded in that document that the search of 187A Mountjoy Road was “as a result of intelligence received.” Detective Constable Dyer having refreshed his memory from that document stated that rather than assuming that the search at 187A was intelligence led he must have been told during the course of the briefing that it was as a result of intelligence received.

[10] In relation to the search of the plaintiff’s home in Toomebridge Detective Constable Dyer was informed that this was to be under a Schedule 5 Terrorism Act warrant. He was given the original search warrant and he saw that it had been sworn by Detective Constable Grey on 25 July 2011. He also saw that it had been authorised by an Inspector Nesbitt and that it had been signed by a judicial officer, a lay magistrate. He checked the warrant and satisfied himself that it was in order.

[11] In relation to the arrest of the plaintiff Detective Constable Dyer was briefed that there was intelligence that the plaintiff was involved in the possession of firearms and explosives with intent and with possession of those items to be of use to terrorists at 187A Mountjoy Road, Coalisland. He was also briefed that the intelligence indicated that he may have been involved in the murder of Constable Kerr in Omagh on 2 April 2011.

[12] During the course of this briefing Detective Constable Dyer was handed by the murder inquiry team a two page document headed "Arrest Brief". He was instructed to give this document to the arresting officer and that the document was then to be given by the arresting officer to police officers at Antrim Serious Crime Suite "after prisoner is lodged." It is clear from the document that the arresting officer has to enter on it his name, police number and station together with, for instance, any statement made by the plaintiff to the arresting officer after caution.

[13] The Arrest Brief stated that the plaintiff was to be arrested under Section 41 of the Terrorism Order 2000 and that upon arrest the plaintiff was to be conveyed to Antrim Serious Crime Suite for interview. It provided a summary setting out the facts in relation to the murder of Constable Kerr and continued as follows:

"Dissident Republican terrorists are suspected to have carried out this murder and as a result of intelligence received 187A Mountjoy Road, Coalisland was the subject of a search under Terrorist Legislation. In a rented garage at this location a large find of firearms, ammunition, explosives and other items of use to terrorists were found. Several vehicles were also recovered at the scene." (I will refer to this paragraph as the "187A paragraph.")

The grounds for arrest were then set out as follows:

"Intelligence indicates that Roddy Logan is involved in the possession of firearms and explosives with intent and with possession of items likely to be of use to terrorists at 187A Mountjoy Road, Coalisland. It further indicates that they may have been involved in the murder of Ronan Kerr in Omagh on 2nd April 2011." (I will refer to this paragraph as the "Grounds of Arrest paragraph.")

Under the heading of "Necessity" the following was then set out:

"The prompt and Effective investigation of offences. There is a requirement to put numerous questions and obtain samples from the suspect."

The use of the word "they" as opposed to "he" in the Grounds of Arrest paragraph occurred because a number of persons were to be arrested all of whom, including the plaintiff, may have been involved in the murder of Constable Kerr.

[14] Attached to the Arrest Brief was another document namely Form PT(2) which is headed 'Statement of Arrest under Section 41 of the Terrorism Act 2000' (17). Form PT(2) was also given to Detective Constable Dyer during the briefing and he

was instructed to give this document to the arresting officer. The name of the person to be arrested was given on this form as the plaintiff together with his date of birth and address. The date of arrest, the time of arrest and the place of arrest were left blank to be completed by the arresting officer who was also to insert the name of his station and to sign the document stating his rank and number.

[15] During the briefing Detective Constable Dyer was told that he was to go to Dungannon Police Station the following morning at 5.00 a.m. in order to brief other PSNI officers. At this stage he was not told the identity of the arresting officer. The location was subsequently changed from Dungannon Police Station to Steeple Police Station, Antrim.

[16] On 26 July 2011 both Detective Constable Dyer and Constable Connolly attended Steeple Police Station. They had not met before that date and have not met since except for the purposes of these court proceedings. There were over 100 police officers in the conference room including various tactical support groups of the PSNI who were to be involved in the searches and arrests. Sergeant Keel gave a generic briefing to the officers in attendance. The generic briefing identified which tactical support group would go to which address together with identifying the additional resources to be deployed such as search dogs. Sergeant Keel also briefed as to the timing of the operation down to the level of detail as to meal breaks. The briefing was as to the logistical planning of the operation that was to take place that morning. During the generic briefing Sergeant Keel identified who were to be the arresting officers so that it was during this briefing that Detective Constable Dyer became aware that Constable Connolly was assigned to be the arresting officer for the plaintiff. During the generic briefing it was also stated that it was to be Detective Constable Dyer's responsibility to brief Constable Connolly so that each of them were aware that they should meet after the generic briefing. The individual grounds for the arrest were not briefed during the generic briefing. Those grounds were to be briefed individually to the arresting officers and in relation to the arrest of the plaintiff this briefing was to be given by Detective Constable Dyer.

[17] Evidence as to the generic briefing was also given by Constable Connolly who stated that on 26 July 2011 he attended the briefing at Steeple PSNI station and made contemporaneous notes. He recorded that Sergeant Keel had briefed in relation to a search and arrest operation "re Highfield Court" which was the address at which Constable Ronan Kerr had been murdered and a "linked" address of 187A Mountjoy Road. He stated that this was an overall briefing in relation to a major planned search and arrest operation with some 100 PSNI officers present. It started with an overview in relation to the murder of Constable Kerr and stated that there had been subsequent searches including at 187A Mountjoy Road which was under intelligence at where there had been a number of firearms, explosives and items of use for terrorists found. The briefing then went on breaking down the role of each of the officers involved in the search and arrest operation. He stated that it was during this briefing that he was allocated the duty of arresting the plaintiff and it was at this

stage that other members of the team tasked with assisting him in the arrest of the plaintiff were identified.

[18] At 6:15am on 26 July 2011 at Steeple Police Station and immediately after the generic briefing, Constable Connolly was briefed by Detective Constable Dyer regarding the arrest of the plaintiff and the grounds of the arrest. Detective Constable Dyer identified himself to Constable Connolly. Constable Connolly was given the "Arrest Brief" document by Detective Constable Dyer together with Form PT(2). Constable Connolly was "walked through" the "Arrest Brief" and Form PT(2) by Detective Constable Dyer. Constable Connolly not only read the "Arrest Brief" with Detective Constable Dyer but he also read it again after the briefing. In relation to Form PT(2) Detective Constable Dyer explained to Constable Connolly the circumstances in which the Form was to be completed and took him through the Form so that Constable Connolly was familiar with the procedure to be followed.

[19] During the briefing of Constable Connolly by Detective Constable Dyer Constable Connolly read through the entirety of the "Arrest Brief". In relation to the "187A paragraph" in the Arrest Brief he did not ask any questions of Detective Constable Dyer regarding the intelligence. However his view was that the intelligence had been good because they had found items linked to terrorism at 187A Mountjoy Road. In relation to the "Grounds of Arrest paragraph" Detective Constable Dyer went through it with Constable Connolly and told him that the arrest was as a result of intelligence received. He said nothing beyond what was contained in the document. Detective Constable Dyer did not know the type of intelligence but through his experience as a police officer he was aware that it could be a covert human intelligence source or technical surveillance or information received from members of the public though he did not give this explanation to Constable Connolly. However, any police officer would be aware of these potential sources of intelligence and also aware of the potential dangers of enabling identification of a human source either directly or indirectly by jigsaw identification. Any police officer would also be aware of the dangers of compromising technical surveillance. Again Constable Connolly did not ask any questions of Detective Constable Dyer about that intelligence. However, Constable Connolly considered that the intelligence in relation to the plaintiff was linked into the previous intelligence in relation to 187A Mountjoy Road. He stated that he had an honest suspicion that the plaintiff was involved in terrorism, the possession of firearms and the possession of items to be used in terrorism and was involved in the murder of Constable Kerr. He had no concerns or doubts about the information that he had received. He was aware that it was his decision whether to make the arrest and based on the information that he had received he decided to do so.

[20] Detective Constable Dyer made a contemporaneous note that he had briefed Constable Connolly "re grounds arrest for Roddy Logan as per my briefing at Maydown." Constable Connolly also made a contemporaneous note.

[21] After these briefings and on 26 July 2011 Constable Connolly and the other officers assisting him went to the plaintiff's address in Toomebridge but whilst outside those premises he was informed by radio to make his way to another address in Toomebridge which was the home of the plaintiff's grandmother as the plaintiff's vehicle was outside that address. He attended the plaintiff's grandmother's address and arrested the plaintiff under Section 41 of the Terrorism Act 2000 and cautioned him saying that:

"You do not have to say anything, but I must caution you that if you do not mention when questioned, something that you later rely on in court, may harm your defence. If you do say anything it may be given in evidence."

The plaintiff made no reply. The plaintiff was then placed in the rear of a police vehicle. Constable Connolly filled in form PT(2) and the Arrest Brief at the time of the arrest or just shortly thereafter. Constable Connolly then brought the plaintiff to Antrim Serious Crime Suite and gave the Arrest Brief and Form PT(2) to a responsible officer at that location.

[22] The plaintiff was then interviewed at Antrim Serious Crime Suite. The intelligence that led to the plaintiff's arrest was not revealed to the plaintiff during those interviews. The plaintiff asserts that no questions of any substance were asked of him during the interviews and from this it should be inferred that there were no reasonable grounds for his arrest. I reject the proposition that no questions of any substance were asked of him. Pre-interview disclosures were made available to the plaintiff's solicitor headed 'Murder of Constable Ronan Kerr and possession of firearms, ammunition, explosives and items of use to terrorists.' The first such document indicated that the plaintiff would be interviewed after caution under audio recording concerning his involvement in the murder of Constable Ronan Kerr and his possession of firearms, ammunition, explosive and other illegal items. The document goes on to state that during this phase of the interview process it is intended to question the plaintiff in relation to his knowledge and involvement in the possession of firearms and explosives at 187A Mountjoy Road, Coalisland. The second phase pre-interview disclosure document states that the plaintiff will be questioned in relation to a number of linked incidents including robbery at 75 Recolpa Road, Omagh, a hijacking at Toome on 8 November 2010 and false imprisonment and hijacking on 16 February 2011. The phase 3 pre-interview disclosure document indicates that the plaintiff will be questioned in relation to other linked incidents. The phase 4 pre-interview disclosure indicates that during this phase in the interview process it is intended to question the plaintiff in relation to photographs of a paramilitary nature found in his house. And finally the phase 5 pre-interview disclosure reveals that the plaintiff will be questioned in relation to a number of issues including knowledge of other suspects involved in the murder of Constable Ronan Kerr. In the main the plaintiff gave a no comment reply to all questions asked of him during the interviews. For instance, the plaintiff was asked

whether he had any part in the murder of Constable Ronan Kerr and he replied 'No comment.' He was then asked 'Are you denying that you were involved?' and he again replied 'No comment.'

[23] The plaintiff was released from custody at 9:08pm on 27 July 2011.

Legal principles

[24] Section 41(1) of the Terrorism Act provides that:

“A constable may arrest without a warrant a person whom he reasonably suspects to be a terrorist.”

Section 40 of the Terrorism Act defines a “terrorist” as including a person who “is or has been concerned in the commission, preparation or instigation of acts of terrorism.” Accordingly, the reasonable suspicion in this case must be that the plaintiff was “concerned in the commission, preparation or instigation of acts of terrorism.” Any reasonable suspicion of the plaintiff’s involvement with the explosives, munitions, and other items found at 187A Mountjoy Road would be reasonable suspicion of preparation or instigation of acts of terrorism. Any reasonable suspicion of the plaintiff’s involvement in the murder of Constable Kerr would be a reasonable suspicion of the commission of an act of terrorism.

[25] The obligation is on the arresting officer to establish that the arrest was lawful, see *Liversidge v Anderson* [1942] AC 206 at 245. In relation to an arrest under section 41 of the Terrorism Act that means that the defendant has to establish on the balance of probabilities that:

- (a) the arresting officer did suspect that the person who was arrested was guilty of being concerned in the commission, preparation or instigation of acts of terrorism (the subjective question); and
- (b) there was reasonable cause for that suspicion (the objective question).

If the defendant establishes these two matters then there is still discretion as to whether to make an arrest. The plaintiff can still challenge the exercise of that discretion but the burden is on the plaintiff to establish that the exercise of discretion was *Wednesbury* unreasonable so that it is for the Plaintiff to prove that the arresting officer was not acting in good faith or that he acted irrationally, or that he took into account matters which he ought not to have considered, or disregarded any matters which ought to have been taken into account, see *Salmon v Chief Constable* [2013] NIQB 10 at paragraph [19].

[26] Lord Hope in *O’Hara v Chief Constable of the Royal Ulster Constabulary* [1997] AC 286 at 298 B - E set out the subjective and objective tests in relation to an arrest under section 12(1) of the Prevention of Terrorism (Temporary Provisions) Act 1984.

That section in all material respects is in the same form as sections 40 and 41 of the Terrorism Act. Lord Hope stated:

“My Lords, the test which Section 12(1) of the 1984 Act has laid down is a simple but practical one. *It relates entirely to what is in the mind of the arresting officer when the power is exercised. In part it is a subjective test, because he must have formed a genuine suspicion in his own mind that the person has been concerned in acts of terrorism. In part also it is an objective one, because there must also be reasonable grounds for the suspicion which he has formed. But the application of the objective test does not require the court to look beyond what is in the mind of the arresting officer. It is the grounds which were in his mind at the time which must be found to be reasonable grounds for the suspicion which he has formed. All that the objective test requires is that these grounds be examined objectively and that they be judged at the time when the power was exercised.*

This means that the point does not depend on whether the arresting officer himself thought at that time that they were reasonable. The question is whether a reasonable man would be of that opinion, having regard to the information which was in the mind of the arresting officer. *It is the arresting officer's own account of the information which he had which matters, not what was observed by or known to anyone else.* The information acted on by the arresting officer need not be based on his own observations, as *he is entitled to form a suspicion based on what he has been told.* His reasonable suspicion may be based on information which has been given to him anonymously or it may be based upon information, perhaps in the course of an emergency, which turns out later to be wrong. As it is the information which is in his mind alone which is relevant however, *it is not necessary to go on to prove what was known to his informant or that any facts on which he based his suspicion were in fact true.* The question whether it provided reasonable grounds for the suspicion *depends on the source of his information and its context, seen in the light of the whole surrounding circumstances.*” (emphasis added)

[27] From that passage a number of points in relation to the test under section 41 of the Terrorism Act can be taken including the following:

- (a) The test relates entirely to what is in the mind of Constable Connolly when the power of arrest is exercised.
- (b) In part the test is a subjective test and in part also it is an objective test.
- (c) The objective test requires an objective examination of the grounds for suspicion which were in the mind of Constable Connolly.
- (d) Anonymous information may satisfy the objective test.
- (e) It is not necessary to prove that the facts provided by the informant or that any facts upon which the arresting officer based his suspicion were true.
- (f) The source of information is relevant to whether it provided reasonable grounds.
- (g) The objective test requires consideration of the whole surrounding circumstances.

[28] The application of the objective test requires reasonable grounds to suspect it does not require evidence or information amounting to a prima facie case against the person arrested. Lord Steyn stated in *O'Hara* that:

“ex hypothesi one is considering a preliminary stage of the investigation and information from an informer or a tip-off from a member of the public may be enough.”

Lord Steyn also referred to *Hussein v Chong Fook Kam* [1970] AC 942 at 949 where Lord Devlin stated that:

“Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: “I suspect but I cannot prove.” Suspicion arises at or near the starting part of an investigation of which the obtaining of the prima facie proof is at the end. When proof is obtained the police case is complete; it is ready for trial and passes on to the next stage.”

[29] Hearsay evidence may afford a constable reasonable grounds to suspect and hearsay evidence may come from other officers, see *O'Hara* at page 293, or from a report from informers, see *O'Hara* per Lord Steyn above, a member of the public or even information given anonymously, see *O'Hara*, per Lord Hope above.

[30] A mere request to arrest by a superior officer, equal ranking officer, or junior officer without some further information is incapable of amounting to reasonable grounds for the necessary suspicion. In *O'Hara* Lord Steyn stated that:

“Such an order to arrest cannot *without some further information being given to the constable* be sufficient to afford the constable reasonable grounds for the necessary suspicion. That seems to me to be the legal position in respect of a provision such as Section 12(1). In practice, it follows that a constable must be given some basis for a request to arrest somebody under a provision such as Section 12(1), e.g. a report from an informer.” (emphasis added)

The nature of the further information and the amount of detail which is required to be given to the constable will depend on context with one example of further information being given by Lord Steyn as “a report from an informer.”

[31] The power by a constable to arrest without warrant those reasonably suspected of being concerned in the commission, preparation or instigation of acts of terrorism is a valuable protection to the community. On the other hand there has to be protection against abuse of that power. The statutory protection is that reasonable cause for *suspicion* has to be established but that requirement is limited. It should not carry with it a whole series of investigative steps to confirm the suspicion. In this case the further information provided to Constable Connolly was ‘intelligence’ without specifying the type of intelligence. Mr Lavery suggested that Constable Connolly ought to have made enquiries as to for instance the grade of intelligence. However, the legal test is that the constable reasonably suspects. The function of an inquiry is not to determine whether any of the facts on which the suspicion is based are true. If the information provided to the arresting officer satisfies the test of a reasonable cause for suspicion then there is no need for any enquiry prior to arresting the individual. Indeed it is not hard to envisage that in certain circumstances it would be a dereliction of duty to make enquiries despite having a reasonable cause for suspicion before arresting an individual. Furthermore, in the area of terrorism and the potential involvement of a covert human intelligence source the scope for a constable to seek further information and to seek further detail is extremely limited and it is equally limited if the source was technical or a member of the public.

Factual findings in relation to the legal test

[32] I accept the evidence of Detective Constable Dyer and of Constable Connolly.

[33] I find that Constable Connolly honestly suspected the plaintiff of having been concerned in the commission, preparation or instigation of acts of terrorism and that his suspicion was based on information which had been provided to him orally by Detective Constable Dyer on 26 July 2011 and also provided to him in writing by Detective Constable Dyer on the same date in the Arrest Brief. I find that the defendant has established facts which satisfy the subjective test.

[34] In relation to the objective test and based on the Arrest Brief in its context I find that there was reasonable cause for Constable Connolly's suspicion. Constable Connolly was informed that there was intelligence. That information is to be seen in the context that the briefings linked the murder of Constable Kerr with the find at 187A Mountjoy Road and the intelligence in relation to 187A Mountjoy Road had proved to be reliable. The earlier intelligence and this intelligence both related to 187A Mountjoy Road. It was reasonable for Constable Connolly to consider that the intelligence in relation to the plaintiff was "linked" to the earlier intelligence potentially though not necessarily from the same source. A major search and arrest operation had been planned on the basis of that intelligence over seen by senior PSNI officers from which it was reasonable for Constable Connolly to consider that others had assessed the intelligence as sufficiently reliable. I do not consider that the intelligence has to be formally graded or for the formal grade to be made known to the arresting officer before it amounts to a reasonable cause for suspicion. Constable Connolly stated, and I accept, that in the past he acted on low grade intelligence which proved to be correct and on other occasions on high grade intelligence which proved to be incorrect. Accordingly I consider that it was reasonable for him not to be concerned that he had not been informed as to the grade of intelligence and that it was reasonable for him to make an assumption that the intelligence upon which he was working was sound. Furthermore Constable Connolly had been briefed that the PSNI had warrants from a lay magistrate and I consider that it was reasonable for this to strengthen his belief that the intelligence was sound. The source of the intelligence was not revealed to Constable Connolly but part of the context was that the source of the information to him was a senior officer acting upon a briefing attended by a Detective Superintendent. I find that the defendant has established facts which satisfy the objective test.

[35] The plaintiff did not seek to establish that the exercise of the plaintiff's discretion to arrest was *Wednesbury* unreasonable. I find that Constable Connolly exercised his discretion and that it was appropriate for him to do so.

Conclusion

[36] I find that the arrest of the plaintiff was lawful. I dismiss the plaintiff's claim and enter judgment for the defendant.

[37] I will hear counsel in relation to costs.