

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

MICHAEL BURNS FOR JUDICIAL REVIEW

MORGAN LCJ

Application

[1] This is an application for judicial review of decisions of actions taken on behalf of the Chief Constable of the Police Service of Northern Ireland during a period of questioning at Antrim Serious Crime Suite.

[2] On 10 April 2013 the applicant was arrested and detained pursuant to Section 1 Schedule 8 of the Terrorism Act 2000. He was examined by Dr Kapur, Forensic Medical Officer, on the same date. The first issue arises in relation to the extent to which the Forensic Medical Officer is constrained by law from asking certain questions of a detained person in relation to injuries. Secondly, in the absence of express consent were the police permitted to photograph a part of the detained person other than his head and face? Thirdly, whether if such a power is available to police can it can be exercised by instructing an FMO to direct the applicant to remove his clothing.

[3] There are factual issues in this case which bear upon the conclusion as to the extent of any consent given by the applicant. Such issues are invariably for the trial judge. Having determined those issues it is for the trial judge to determine how the rights of the accused should be accommodated taking into account the wide powers of a judge in criminal proceedings. It is not the function of this court to take over responsibility for that aspect of the trial. The underlying principle is that the court will only consider satellite litigation in relation to criminal proceedings where there are exceptional circumstances. In our view this is a case where all of these issues will be capable of being properly litigated and aired before the criminal courts. Accordingly, we do not consider that exceptional circumstances arise in this case. So

for that reason which was not addressed within the original skeleton argument which was not Mr O'Donoghue's responsibility we are going to dismiss the application.