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

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**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

Morgan's (Barry) Application [2014] NIQB 2

**IN THE MATTER OF AN APPLICATION BY BARRY MORGAN
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

**AND IN THE MATTER OF A DECISION MADE BY
(1) PPS AND (2) DISTRICT JUDGE McCOURT
PURSUANT TO ARTICLE 16(1)(c) OF THE MAGISTRATES'
COURT (NORTHERN IRELAND) ORDER 1981**

Before GIRVAN LJ and COGHLIN LJ

GIRVAN LJ (delivering the judgment of the court)

Introduction

[1] This is an application by Barry Morgan ("the applicant") for leave to apply for judicial review. The applicant seeks to challenge the decision by the Public Prosecution Service ("the PPS") to lay a statement of complaint before Downpatrick Magistrates' Court requesting the court to conduct a preliminary inquiry into two sets of charges against the applicant, one relating to an offence alleged to have occurred in 2005 within the County Court Division of Craigavon ("the 2005 offence") and the other set relating to offences alleged to have occurred in 2011 in the County Court Division of Downpatrick ("the 2011 offences"). Secondly, he challenges the decision of the District Judge (Magistrates' Court), Mr McCourt ("the District Judge"), to accept jurisdiction to conduct a preliminary inquiry in respect of both the 2005 and 2011 offences. The proceedings were conducted as a rolled up hearing and accordingly proceeded as a full substantive hearing.

The Background to the Application

[2] On 20 December 2005 four individuals were arrested by the police in connection with a conspiracy to commit armed robbery. These individuals were subsequently convicted. At the time of their arrest the individuals were all present in a vehicle which had just left a property which the police considered was being used as a safe house. The applicant was not present at the scene when the other individuals were arrested but he was under investigation on suspicion of being part of the conspiracy. He was arrested on 12 February 2009 and charged on 14 February 2009 with conspiracy to commit the armed robbery. The offences occurred in Dunmurry which is in the County Court Division of Craigavon. Those charges against the applicant were subsequently withdrawn at the request of the PPS on 25 August 2009 at Lisburn Magistrates' Court without any determination being made by the court.

[3] The 2011 offences relate to an alleged "tiger kidnapping". They include two charges of kidnap and one of conspiracy to commit robbery. The offences are alleged to have occurred between 31 October 2011 and 1 November 2011 within the County Court Division of Ards. The applicant, who was arrested at Belfast International Airport on 7 December 2011, was interviewed. He was charged in connection with the three 2011 alleged offences and appeared before Downpatrick Magistrates' Court. He was remanded in custody but was subsequently granted High Court bail in respect of those offences.

[4] On 14 May 2013 the PPS issued a statement of complaint in the Magistrates' Court for the County Court Division of Ards requesting that it conduct a preliminary inquiry into the 2005 offence and the 2011 offences. The papers were served on the applicant on 15 May and he appeared before the court on 16 May 2013.

[5] In respect of the 2005 offence the applicant objected to the Downpatrick Magistrates' Court conducting a preliminary inquiry on the ground that the court had no jurisdiction to conduct a preliminary inquiry into that offence which occurred in a different County Court Division. The applicant initially argued, in addition, that if the District Judge had a discretion to conduct a preliminary inquiry into the 2005 offence he should decline to do so and that the attempt by the PPS to pursue a preliminary inquiry in respect of the 2005 offence amounted to an abuse of process. The applicant has not pressed these grounds in his present application. Accordingly, the central question for determination is whether the District Judge had jurisdiction to conduct a preliminary inquiry under Article 16 of the Magistrates' Courts (Northern Ireland) Order 1981 in respect of the 2005 offence which occurred in a different County Court Division.

[6] While the respondent initially argued that the court should decline to grant leave to apply for judicial review on the ground that the applicant had an alternative remedy by way of case stated, it appears that under Article 146 of the 1981 Order a

party to “a summary proceeding” may apply to the court to state a case. As Mr Macdonald pointed out, Article 2(4) defines “a summary proceeding” as any proceeding before a Magistrates’ Court other than a preliminary inquiry or a preliminary investigation. Accordingly the case stated procedure provided for at Article 146 does not apply in the context of the present challenge. Mr McLaughlin did not press the argument and there is accordingly no reason why the present proceedings cannot be pursued by way of a judicial review application.

The Relevant Statutory Provision

[7] The jurisdiction of each Petty Sessions District to deal with charges and to conduct a preliminary investigation or preliminary inquiry is contained in Article 16 of the 1981 Order which, so far as material, provides as follows:

General Jurisdiction to Deal with Charges

- 16.** (1) *Subject to the provisions of this Part, a magistrates’ court for a county court division may conduct a preliminary investigation or a preliminary inquiry into an indictable offence or hear and determine a complaint charging a summary offence, if in any such case —*
- (a) the offence was committed in the county court division, or*
 - (b) the offence was committed elsewhere than in the county court division and the defendant **is or is resident** (or in the case of a body corporate has its registered office or principal place of business) within the county court division; or*
 - (c) it appears necessary or expedient with a view to the better administration of justice that the person charged with the offence should be tried or jointly tried with, or in the same place as, some other person who is charged with an offence and who is in custody or is being or is to be proceeded against within that county court division; or*
 - (d) the court under this or any other enactment or otherwise has jurisdiction to deal with the offence.*
- (2) *A magistrates’ court for a county court division having jurisdiction to hear a complaint charging a person with an offence may hear and determine a complaint charging that person with a summary offence committed in any other county court division.*
- (3) *A resident magistrate exercising the powers conferred by Article 45 and 46 shall have jurisdiction to try summarily an indictable offence in any case in which under paragraph (1) he would have jurisdiction to conduct a preliminary investigation or a preliminary inquiry into the offence.*

(4) Nothing in this Order shall deprive a court in Northern Ireland of any jurisdiction to deal with any offence, whether committed in the United Kingdom or elsewhere, as to which the court has jurisdiction at the making of this Order. (emphasis added)

[8] In his written decision delivered on 19 December 2013 the District Judge expressed his reasoning for accepting that he had jurisdiction to entertain the preliminary inquiry sought by the PPS in the following terms:

“The defendant appearing in a Magistrates’ Court for the first time is remanded in custody or on bail until the next court fixed for the further hearing. He is not free to fail to appear because his arrest will follow if he absents himself. If on bail, bail expires at the court sitting but it may be continued at the court’s discretion. Where a defendant is not resident in a particular division and is not on any existing charge, the only division available for charging must be the division in which the alleged offence occurred. He is not in any division prior to charging. I am satisfied that the purpose of inserting ‘is or is resident’ must provide two options for the bringing of a charge in a division as well as bringing a charge in the division where the offence occurred. There would have been no purpose for Parliament to include the words ‘is or’ if inter alia it did not permit the hearing or committal of charges which occurred outside the division in which the defendant is already charged with offences which occurred in that division or because he resides in that division. Consequently I hold that the Sunnymede charge (that is to say the 2005 charge) is properly within the jurisdiction of Downpatrick Magistrates’ Court. I am satisfied that the prosecution is not manipulating the process nor is it attempting to use bad character evidence to bolster a weak case. The strength of the evidence for committal on all charges remains to be the subject of a preliminary inquiry or investigation.”

[9] Mr Macdonald contended that if the intention behind Article 16(1) had been to confer jurisdiction on a Magistrates’ Court in a particular division to conduct a preliminary inquiry into indictable offences committed anywhere in Northern Ireland, either generally or where the court was already conducting a preliminary inquiry in relation to the same defendant, it would have been a straightforward matter to state this explicitly, as was done in Article 16(2) in relation to summary offences. The fact that Article 16(1) is not expressed in the same terms as Article

16(2) is the clearest indication that the position with regard to conducting a preliminary inquiry in relation to indictable offences committed outside the division is intended to be different from the position with regard to hearing a trial in relation to summary offences committed outside the division. The intention was clearly to limit the circumstances in which a Magistrates' Court could hear committal proceedings in respect of an offence committed in a different division. Instead of conferring a general jurisdiction to hear such cases wherever they may have occurred, the Order confines the jurisdiction to those cases falling within the four sub-paragraphs (a)-(d). The impugned decision of the District Judge allowed the PPS and the court to circumvent Article 16(1), subvert its purpose and permit forum shopping on the part of the PPS. Counsel stressed that it was clear that the applicant resided in Newtownabbey and that the 2005 offence occurred outside the County Court Division of Ards. There was no link between the 2005 offence and the 2011 offences which did occur within the Ards County Court Division.

[10] Mr McLaughlin argued that the natural and ordinary meaning of the word "is" in Article 16(1)(b) makes clear that jurisdiction should be based on the accused's actual presence within the division at the time the complaint is laid. It connotes a presence different from residence. The documents requesting a preliminary inquiry and the complaint setting out the charges and the witness statements and exhibits supporting the charges must be served on the accused in advance of the day fixed for the hearing of the preliminary inquiry. The relevant point in time for determining whether the Magistrates' Court had jurisdiction and whether the accused could be said to be within the relevant division was at the time the complaint requesting the court to convene a preliminary inquiry was laid. The complaint was laid at the latest on 16 May 2013 at the sitting of the Downpatrick Magistrates' Court. The applicant was present within the Ards County Court Division at that time because he had been remanded initially in custody and subsequently on bail to appear before the Downpatrick Court on foot of the 2011 charges. The presence of the applicant within the Ards Division in the circumstances was sufficient to vest the court with jurisdiction to conduct a preliminary inquiry into the 2005 offence. The fact that he was compulsorily required to be present before the court did not mean that he should not be regarded as being within the jurisdiction. There are good practical reasons why a court which is already seised of certain charges against an individual and which has jurisdiction to determine those charges should also have jurisdiction to determine other charges against the same person when that person is required to be present within that court's jurisdiction.

Conclusions

[11] Article 16 confers jurisdiction on a Magistrates' Court within a County Court Division to hear and determine a complaint charging a summary offence and to hear a preliminary inquiry or a preliminary investigation where (a) the offence was committed within the relevant County Court Division; (b) where the accused was a resident within that Division; (c) where the accused was within the Division; (d)

where the court was proceeding against a co-accused and it was necessary and expedient to proceed against the defendant; (e) where the court has jurisdiction based on some other statutory provision. Article 16(2) confers jurisdiction on a Magistrates' Court to proceed against a defendant on another charge in respect of an offence committed elsewhere where the court already has jurisdiction to hear another charge within jurisdiction.

[12] In the course of the argument the court raised with counsel the potential relevance of Section 7(1) of the Criminal Justice Act (Northern Ireland) 1945 which was considered by the court in R (Caherty) v Belfast JJ [1978] NI 94. It provides that a person charged in Northern Ireland with the commission of an indictable offence may be proceeded against in any county or place in which (a) he is apprehended; (b) he is in custody in relation to the offence; or (c) he appears to answer a summons lawfully issued charging the offence. In such circumstances the offence will be deemed to have been committed in the relevant county or place. The deeming provision of Section 7 confers the jurisdiction and if relevant in the present case would confer jurisdiction on the Ards Court under Article 16(1)(a) and/or Article 16(1)(d). Neither Mr Macdonald nor Mr McLaughlin sought to rely on Section 7. As Mr McLaughlin accepted, the applicant was not apprehended within the Ards Division in relation to the 2005 offence nor was he in custody in relation to that offence nor did he appear in answer to any summons charging the offence.

[13] As he was bound to do the applicant appeared in person before the Downpatrick Magistrates' Court on 16 May 2013 to which he had been remanded in relation to the 2011 offences. He had been served on 15 May 2013 with a notice of the prosecution's intention to request the court to conduct a preliminary inquiry. He was also served with a statement of complaint on which the prosecution intended the court to commit the applicant for trial together with witness statements, a list of witnesses and exhibits. The statement of complaint included the 2011 offences and in addition a complaint in relation to the 2005 offence.

[14] In Hill v Anderton [1982] 2 All ER 963 Lord Roskill provided a clear exposition of the law in relation to the jurisdiction of justices arising from the laying of an information (equivalent in this jurisdiction to a complaint):

“In their criminal jurisdiction what Magistrates' Courts have jurisdiction to try summarily is an information, and what is required to give them that jurisdiction is that an information has been laid before them ... Their jurisdiction in criminal cases does not depend on a summons or a warrant being issued As was pointed out during the argument where a defendant is arrested at night and after having been duly charged is brought before a Magistrates' Court next morning, there is neither a summons nor a warrant. He is charged. The

information is thus laid before the Magistrates' Court at the latest when the charge is read in open court and in practice often earlier when no doubt the clerk to the justices or his or her subordinate is informed by the police of the charge which it is proposed to bring against the defendant later that morning. ..."

Lord Roskill went on to point out that it is of crucial importance to appreciate that the laying of an information (complaint) is a matter for the prosecution and it is for the prosecutor to decide how the information (complaint) shall be formulated. The commencement of criminal proceedings lies in the hands of the prosecutor.

"Once the information has been received at the office of the clerk to the justices which today in most cases is likely to be at a magistrates' court house, the information will, in my view, have been laid. No more is required of the prosecutor to launch the intended criminal proceedings ... What happens thereafter is not within the province of the prosecutor but of the court ... If a summons is required the information or complaint must then be laid before a Justice of the Peace or before the clerk to the justices. The function of a Justice of the Peace or of the clerk to the justices in determining whether a summons should be issued is a judicial function which must therefore be performed judicially."

In view of the wording of Article 16 what Lord Roskill said in relation to the hearing of summary proceedings must equally apply in relation to the jurisdiction to hear committal proceedings.

[15] We accept as correct Mr McLaughlin's argument that there was no need for a summons or warrant for arrest in the present case since the applicant was in attendance at the court on 16 May 2013 pursuant to his remand obligations in respect of the 2011 offences. The question is whether the complaint in respect of the 2005 offence was properly laid for if it was the defendant, being present before the court on 16 May 2013, did not need to be summonsed or arrested. In light of Lord Roskill's analysis the complaint in respect of the 2005 offence was properly laid. The applicant being present, the judicial function of determining whether a summons should be issued did not fall to be exercised. For this reason Article 20(3) of the 1981 Order did not come into play. Under that provision, upon a complaint being made to a Justice of the Peace for any County Court Division that a person has, or is suspected of having, committed an indictable offence into which a Magistrates' Court for that County Court Division has jurisdiction to conduct a preliminary investigation or a preliminary inquiry, the justice may either issue a summons

requiring him to appear before such Magistrates' Court or issue a warrant to arrest that person or bring him before such court.

[16] On a straightforward literal interpretation of Article 16(1)(b) the defendant was at the relevant time within the jurisdiction of the Downpatrick Magistrates' Court and thus within the jurisdiction of the District Judge who was called on to decide whether to proceed with the preliminary inquiry. That literal interpretation produces an entirely workable and just outcome as Mr Macdonald accepted.

[17] Mr Macdonald, however, sought to escape from the literal interpretation, firstly by arguing that Article 16(2) made clear that the literal interpretation could not be applied to Article 16(1)(b). Secondly, he argued that it would produce an unfair and unjust result because the applicant was compelled to be present at the Downpatrick Magistrates' Court to face the 2011 charges. When initially referred to the provisions of Article 20(3) of the 1981 Order, he sought to rely further upon that provision as supporting his general approach to the argument although, for the reasons indicated above, the power of a justice of the peace to direct the issue of a summons under Article 20(3) did not arise in the present context as there was no need to issue a summons in the present instance because the applicant was present before the court.

[18] Article 16(2) is dealing with the addition of a charge in respect of a summary offence committed outside the jurisdiction of the County Court Division within which the defendant is properly subject to the court's jurisdiction in respect of another complaint in respect of a summary offence covered by Article 16(1). The provision does not deal with the question of the addition of a charge to a complaint in respect of a preliminary inquiry. At its height Mr Macdonald's point is that the legislature saw fit to deal with summary offences in Article 16(2) but must be taken to have necessarily implied that it did not intend to legislate in a similar way in relation to the adding of additional charges in respect of a preliminary inquiry or preliminary investigation. While it might well have been clearer and more helpful for the legislature to have expressly dealt with the question of preliminary investigations and preliminary inquiries and the addition of complaints in relation to them in a similar way to the way in which summary offences are dealt with in Article 16(2), the wording of Article 16(2) does not compel a reading of Article 16(1) which would run counter to the literal meaning.

[19] In light of the fact that the applicant was bound to be in attendance at the Downpatrick Magistrates' Court on 16 May 2013 in furtherance of his remand obligations, applying the literal meaning of Article 16 does not produce any unfairness or injustice. In other words it does not compel an interpretation contrary to or contradicting the literal meaning. As Mr McLaughlin pointed out, in civil litigation service on a defendant brought within the jurisdiction, for example in police custody or in answer to a witness summons, can be effectively and lawfully effected so as to confer jurisdiction on the court. It would be otherwise if the

defendant was fraudulently or improperly enticed within the jurisdiction (see Cheshire, North & Fawcett *Private International Law* 14th Edition at 355). There is no question in the present instance of the applicant having been improperly enticed within the jurisdiction of the Downpatrick Magistrates' Court.

[20] In the result we are bound to conclude that the applicant is not entitled to the relief sought in his judicial review challenge. We will hear counsel on the question of costs.