Neutral Citation No. [2006] NIQB 12

Ref: **SHEC5438**

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

Delivered: **14.2.06**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY DARREN SLOAN BY DAMIEN MAGUIRE HIS SOCIAL WORKER AND NEXT FRIEND

AND IN THE MATTER OF A DECISION OF THE BURGLARY UNIT, MUSGRAVE STREET POLICE SERVICE OF NORTHERN IRELAND STATION

AND IN THE MATTER OF A DECISION OF A CUSTODY OFFICER OF THE POLICE SERVICE OF NORTHERN IRELAND

SHEIL LJ

Introduction

[1] Leave to issues these proceedings for judicial review was granted by Girvan J on 20 June 2005. Although this relates to a criminal cause or matter, the parties agreed, pursuant to Order 53 Rule 2(6) of the Rules of the Supreme Court (Northern Ireland) 1980, that the matter could be heard by a single judge.

[2] The applicant seeks judicial review of the decisions of the Police Service of Northern Ireland (hereinafter referred to the "PSNI") to deal with the applicant, who was then aged 15, by way of charge rather than by way of release pending report and the subsequent decision of the PSNI to detain him overnight in a cell at Grosvenor Road Police Station as appears from the applicant's Order 53 statement as amended with leave of this court on 5 December 2005.

The facts, as appears from the affidavits

[3] The applicant, who was born on 27 May 1989, was arrested by police at 0530 hours on 28 April 2005 on suspicion of burglary, having entered an outhouse at 87 Stockmans Way, Belfast and having stolen therefrom a quantity of glue. Following his arrest the applicant was conveyed to Grosvenor Road Police Station. Initially, following a medical examination by Dr McSorley at 0840, he was declared unfit for interview, apparently because he had been glue-sniffing.

[4] The applicant was a voluntary resident at Glenmona Resource Centre, from which he had just absconded, as he had done on many previous occasions, his relationship with his mother having broken down. At 1245 hours he was declared fit for interview.

[5] As appears from an affidavit of Louisa Grant, solicitor for the young applicant, representations were made to the Custody Sergeant, Trevor Fleming, that there was insufficient evidence to charge the applicant but these representations were not accepted. Miss Grant then submitted that the young applicant should be released pending a report in the matter but, according to paragraph 6 of her affidavit the officer in charge of the case, Detective Constable McTaggart, indicated that it was the policy of the Burglary Unit of Musgrave Street CID (the unit dealing with the matter) to charge in burglary cases but that he had no objection to police bail being granted to the applicant. Ms Grant exhibits in her affidavit the custody record for 1530 hours on 28 April 2005 in which Sergeant Fleming has written:

> "I agree that this matter would be better dealt with by way of report but the I/O is under instructions to deal with the matter by way of charge".

According to paragraph 8 of Miss Grant's affidavit, the police "took the position that a child could not be released on police bail in the absence of an appropriate adult signing bail". There was no person willing to sign bail, the applicant's mother refusing to do so as she had no active role in his life and Damien Maguire, the social worker in attendance at the interview, stating that it was not his role to sign bail, while Glenmona Resource Centre indicated its policy not to sign bail on behalf of any resident. At 1602 hours on 28 April 2005 Sgt Fleming made the following entry in the custody record:

> "Glenmona RC staff and D/Ps mother are not prepared to sign bail for the DP. DP has 5 cases pending and 8 convictions. In view of these matters there are reasonable grounds to believe that if released DP may fail to appear or commit further offences. DP has gone missing from

> Glenmona 12 times since 1 February 2005 and in view of this I am of the opinion that DPs interests would be better served by the DP being in custody."

As the custody record further shows, Sgt Fleming spoke to staff at Rathgael Juvenile Justice Centre at 1629 hours, but it stated that the Juvenile Justice Centre was not in a position to accommodate the applicant pending his court appearance. The applicant was then detained overnight in a cell at Grosvenor Road Police Station and appeared the following morning, 29 April 2005, at Belfast Youth Court where he was released back to the Glenmona Resource Centre on his own bail of £50 with the imposition of a curfew upon breach of which he could have been re-arrested by the police.

[6] Sgt Fleming in his affidavit avers that he is not aware of any policy always to charge in burglary cases and he does not believe that any such policy has ever existed. At paragraph 3 of his affidavit he accepts that Miss Grant made representation to him and to D/C McTaggart that the applicant should be released pending a report rather than being charged and he accepts that this would have been the more usual disposal in the case of a juvenile. Sgt Fleming goes on to aver that D/C McTaggart "was of the view that having regard to the applicant's criminal convictions and outstanding matters, an immediate charge was more appropriate." He further avers that, following Miss Grant's indication that she would seek judicial review of this decision, D/C McTaggart rang Musgrave Street Police Station to take advice and directions from his superior; he returned to say that he had been directed to charge the applicant, which course of action in Sgt Fleming's experience, was not the policy but the exception as Sgt Fleming, for his part, considered that the matter could have been disposed of by way of release pending report.

[7] Sgt Fleming at paragraphs 5 and 6 of his affidavit then deals with the issue of whether or not the applicant should be released on bail following his having been charged:

> "I accept that a juvenile may be released without an adult signing for him. This presupposes that it is appropriate for the juvenile to be released in those terms. In the case of this applicant, I did not consider that it was appropriate simply to release him onto the street. I was aware of his criminal record (8 convictions). I was also aware that the applicant had 5 cases outstanding against him before the courts, one of which was for burglary. I was also aware that he had been resident at Glenmona Resource Centre and had gone missing or absconded on 12 occasions since 1 February

> 2005. He had been found on the streets in the early hours of the morning and may have been abusing solvents. No one was prepared to agree to take any responsibility for this young man. ---
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> I attempted to obtain suitable alternative accommodation for the applicant at Rathgael Justice Centre. However I was advised that this centre would not be able to accept the applicant. No other accommodation was available for the applicant. In spite of this I remained of the view that the applicant should not be released. In those terms there was no alternative but to accommodate the applicant at the police station pending his appearance before the Youth Court on 29 April, when he was admitted to bail with a curfew."

In a letter dated 1 December 2005 from the Crown Solicitor's Office, it is stated that Sgt Fleming accepts that "no consideration was given to accommodating the applicant elsewhere". Counsel for the applicant and the respondent are both agreed that in the present case there was no other place of safety where the applicant could have been held other than Rathgael Justice Centre which had refused to accommodate him and the Glenmona Resource Centre from which he had absconded as he had done on 12 occasions since 1 February 2005.

[8] D/C McTaggart in his affidavit states that following his interview with the applicant between 1410 and 1429 hours in the presence of Mr Maguire, his social worker, and Ms Grant, his solicitor, he was satisfied that there was sufficient evidence to prosecute the applicant and goes on to aver at paragraph 4 of his affidavit:

> "The choice that then faces me is whether to submit a report to my authorities with a view to prosecution or to charge the person forthwith subject to further review by my authorities and the Public Prosecution Service. In this case I felt that a charge was the most appropriate course of action. The primary reasons behind this were the applicant's circumstances being, his criminal record, the pending matters before the courts, the nature of the alleged offences, his age, his possible substance abuse and the time when the offences occurred. Balancing all these circumstances against the applicant's youth, I felt that a curfew

> should be imposed. It is not possible for police officers to impose a curfew when someone is subject to a report. This can only be imposed by the court following a charge."

He goes on to aver in paragraph 5 of his affidavit that the PSNI Burglary Unit does not have a policy of charging persons in all burglary cases and that to the best of his knowledge there has never been any such policy and no such policy was applied to the decision to charge the applicant. He further avers that each case is considered on its merits and that not all persons who are arrested for burglary by the unit are charged and that it is more usual for juveniles to be reported as opposed to being charged straight away. He denies that he indicated to Ms Grant that there was any such policy in respect of charging in all burglary cases and avers that Ms Grant must have misconstrued what he did say. As a result of Ms Grant's indication that she would apply for judicial review, he phoned his superior, Acting Detective Sergeant White, who having been informed about the details of the case, told him to proceed by way of a charge. He accepts that he did tell Ms Grant that it was policy to charge in this type of case but by this he meant to convey that it was policy to charge in circumstances where it is felt that a condition, such as a curfew, is required. He had no objections to the applicant being released on bail subject to a strict curfew. Both counsel agree that if the police had decided to grant the applicant bail, they would have had no power to impose any conditions such as a curfew.

[9] **The statutory provisions**

The Police and Criminal Evidence (Northern Ireland) Order 1989, Article 39(6) provides:

> "Where a custody officer authorises an arrested juvenile to be kept in police detention under paragraph (1), the custody officer shall, unless he certifies that it is impracticable to do so, make arrangements for the arrested juvenile to be taken to a place of safety and detained there; and it shall be lawful to detain him in pursuance of the arrangements."

Article 39(7) provides:

> "A certificate made under paragraph (6) in respect of an arrested juvenile shall be produced to the court before which he is first brought thereafter."

Although D/C McTaggart in paragraph 9 of his affidavit stated that there was a copy of this certificate on the file, neither the original certificate nor a copy, can now be found despite exhaustive searches.

Article 39(8) of the 1989 Order, as amended by the Criminal Justice (Children) (NI) Order 1998 Schedule 5 paragraph 34, provides that place of safety means "any juvenile justice centre, any hospital or surgery, or any other suitable place, the occupier of which is willing temporarily to receive the arrested juvenile."

Section 38(6) of the Police and Criminal Evidence Act 1984, which is the English equivalent to Article 39(6) of the Police and Criminal Evidence (NI) Order 1989 has been amended by Section 59 of the Criminal Justice Act 1991 and later by Section 24 of the Criminal Justice and Public Order Act 1994, but those amendments have not been made to the 1989 Order in relation to Northern Ireland.

[10] Section 38(6) of the Police and Criminal Evidence Act 1984 was almost identical to Article 39(6) of the Police and Criminal Evidence (NI) Order 1989 and read as follows, prior to amendment:

> "(6) Were a custody officer authorises an arrested juvenile to be kept in police detention under sub-section (1) above, the custody officer shall, unless he certifies that it is impracticable to do so, make arrangements for the arrested juvenile to be taken into the care of a local authority and detained by the authority, and it shall be lawful to detain him in pursuance of the arrangements."

Prior to the amendments being made in England, and prior to the enactment of the Human Rights Act 1998, a divisional court in England had considered what was meant by "impracticable" in Section 38(6) of the 1984 Act. In R v Chief Constable of Cambridgeshire Constabulary, ex parte M [1991] 2 All ER 777. In that case, as appears from the headnote, the applicant, who was aged 16 had been in voluntary care for 4 years in a local authority hostel. He had previously been convicted of theft, theft from motor vehicles and burglary. He was arrested for theft from motor vehicles and interviewed at a police station in the presence of a solicitor and a social worker before being charged. The police refused to release him on bail because they suspected that he would contact another youth who was suspected of receiving stolen property from the applicant. The custody officer, having decided that the appellant should be detained in custody as an arrested juvenile, was required by Section 38(6) of the Police and Criminal Evidence Act 1984 to make arrangements for him to be taken into the care of the local authority and detained by it unless he certified that it was impracticable to do so. The local

authority informed the police that the applicant could return to the hostel but the custody officer refused to release him into the care of the local authority because the police considered that the hostel was not a practical means of housing him since it was insecure and he would be able to commit further crimes and interfere with the course of justice by contacting the other youth. The applicant applied for judicial review of the custody officer's decision, contending that the decision whether it was impracticable under Section 38(6) for the local authority to take an arrested juvenile into care to be detained by it was a matter for the local authority and not the custody officer to decide. Watkins LJ, delivering the judgment of the court, stated at page 781e:

> "The detention of juveniles is clearly governed by Section 38 upon a justifiable refusal of bail. Here, the decision of the sergeant to refuse bail appears to have been sensible and realistic. It has not been criticised in the context of this application. However, if the argument advanced on behalf of the applicant is correct, the sergeant was obliged to transfer the applicant to the local authority, who, through Mr Staff, intended, as the sergeant was told, to return him to the insecure hostel at which he was living at the time of his arrest. In our view, the practical effect of that would be, as the sergeant undoubtedly would have immediately appreciated, tantamount to the grant of bail; to accept that situation he would be obliged to ignore his own reasonable anxiety and the consequence of transferring the juvenile to the local authority could be further loss or damage to property or interference with the administration of justice."

At page 783c Watkins LJ continued:

> "In our judgment, the wording of Section 38(6) is clear. The custody officer who has made the decision to detain the juvenile must do everything practicable to see that the place of detention for that juvenile is in local authority accommodation and not at the police station. This is so whether or not the juvenile in question was previously in the care of the local authority. The local authority is equally obliged to do what it can to provide accommodation which will enable the juvenile to be accommodated outside the police station.

We have no reason to doubt that in practice both local authorities and police officers do their utmost to ensure that this particular object is achieved. If, however, the only accommodation apparently available for the detention of the juvenile will be insufficient to avoid the very consequences which lead to the original decision to refuse bail, the custody officer is, in our judgment, entitled to reach the conclusion that proper arrangements for the care and detention of the juvenile by the local authority outside the police station was impracticable. We simply cannot accept that the custody officer is required by statute to transfer the juvenile into the care of the local authority if he is dissatisfied with the proposed arrangements for the detention of the juvenile. We think the general public will be appalled to learn that Parliament had provided otherwise in times which have seen an explosion of crimes by juveniles.

Without wishing to minimise the importance of removing juveniles from custody at police stations at the earliest practicable opportunity, circumstances undoubtedly do arise which require such detention. The period of custody in a police station will not be long. The juvenile court will be seized of the case within a short time. Thereafter, the question of detention of the juvenile and arrangements for him will be decided by the juvenile court.

On the facts of the present case Sergeant Goodliff was, in our view, entitled to reach the conclusion that the proposed arrangement that the applicant should be returned to the hostel at which he was living at the time of his arrest was not an adequate form of `detention' and, in the absence of any alternative proposal, that it was `impracticable' for necessary arrangements for his transfer to the care of and detention by the local authority to be made. We hold that Sergeant Goodliff was entitled to refuse to transfer the juvenile.

The application is refused."

That decision is not binding on this court but is a decision with which I entirely agree.

The present case is rather similar to that case in that the Glenmona Resource Centre was an institution where the applicant was a voluntary resident and which, as on the night in question, he had left to commit further crime.

[11] I accept the evidence of the respondent that there was no policy of charging persons in all burglary cases. The decision to charge the applicant, rather than to release him pending a report, was lawful, justified and proportionate having regard to the circumstances of the present case as was also the subsequent decision to refuse him police bail. While it is regrettable that the applicant was detained in a police cell at Grosvenor Road Police Station, it must be borne in mind that Rathgael Juvenile Justice Centre had refused to accommodate the applicant, on being asked to do so by Sergeant Fleming. I consider that it was also impracticable for Sergeant Fleming to release him back to reside at the Glenmona Resource Centre from which he was free to leave at any time, as he had done so often in the past. While on the following the day, the Youth Court did release him on his own bail of £50 back to reside at the Glenmona Resource Centre that was on condition that he did reside there and that he observed the curfew imposed by the court, breach of which bail conditions would lead to his immediate re-arrest. As already stated the police did not have the power to impose such conditions, if he had been released on police bail.

[12] It is accepted by Mr McAlister, who appeared on behalf of the respondent, that Article 8 of the European Convention on Human Rights is engaged in the present case and he accepts that the terms thereof were not considered by those making the decisions with regard to the applicant. I consider that this is one of those exceptional cases referred to by Kerr LCJ at paragraph 30 of the judgment of the Court of Appeal delivered on 14 December 2004 In the Matter of an Application by Jennifer Connor for Judicial Review, where he stated that "such cases will be confined to those were no outcome other than the course decided upon could be contemplated." I consider that the interference with the applicant's Convention rights were justified and that the decisions made in this case were proportionate. It was the only decision which could have been reached, not least in the interest of the applicant's own health, safety and welfare.

[13] While Article 5 of the European Convention on Human Rights was engaged, I do not consider that there was any breach of the applicant's rights thereunder as his detention was lawful.

[14] Mr Sayers, on behalf of the applicant relied also on Article 37(b) of the Convention on the rights of the child, adopted by the General Assembly of the

UN on 20 November 1989, which was ratified by the UK on 16 December 1991 and which Article reads as follows:

> "No child shall be deprived of his or her liberty unlawfully or abritrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."

I do not consider that there was any breach of Article 37(b) of that Convention.

[15] I dismiss this application.

Mr Sayers for the Applicant

Mr McAlister for the Respondent

Hearing: 5 December 2005