

Judicial Communications Office

Tuesday 13 December 2011

COURT DISMISSES APPLICATION TO HAVE COMMITTAL PROCEEDINGS QUASHED

Summary of Judgment

A Divisional Court of the High Court dismissed an application by Kevin Barry Nolan to have the decision to commit him for trial on charges of attempted murder and possession of firearms and ammunition quashed.

Kevin Barry Nolan and Gerard James McManus were committed in custody for trial following a preliminary investigation before a District Judge (Magistrates' Courts) on 23 August 2011. They were charged with the attempted murder of a student police officer, possession of firearms and ammunition with intent to endanger life and using a firearm to prevent lawful arrest.

The charges relate to events which occurred on 21 November 2009 in Garrison, at the home of a trainee police officer. The officer's house appears to have been under surveillance by two police vehicles when a car with two occupants drew into the car parking area. A man got out, pulled on a partly rolled balaclava or hat and knocked on the door of the premises. He was challenged by police and made off down the side of the property with the police in pursuit. Shots were fired during the chase but the suspect was not apprehended at the time. Gerard James McManus was arrested the following morning having been discovered hiding in the garden shed of a nearby house.

Kevin Barry Nolan, the applicant, was arrested at the scene. He was the second man who remained in the front passenger seat of the car throughout the incident. He was wearing a scarf over his mouth and nose and a peaked baseball cap. A loaded Glock handgun magazine was found on the seat beside him.

On 27 October 2010 the applicant and his co-accused indicated that they wished to raise the issue of entrapment at the forthcoming committal proceedings. The Public Prosecution Service asked the defence for further details about the alleged entrapment and queried if the applicant would be willing to be interviewed about the matter. The defence replied indicating the name of a particular individual who commissioned the offences but stated that their client would only be willing to be interviewed by the police "upon confirmation that the charges against the applicant would be dropped". The prosecution provided a skeleton argument which asserted that there was no evidence that the accused were entrapped.

The committal proceedings took place on 23 August 2011. The District Judge ruled that there was no prejudice to the defence because the issue of the alleged entrapment could be raised in the Crown Court and that the committal hearing was simply a pre-trial proceeding to determine if there was a prima facie case. He said that the nature of the operation that led to the arrest of the defendants was a matter that went beyond the issues for consideration by the Magistrates' Court

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and added that the questions put by the defence sought to go beyond the evidence available before the court.

The effect of the District Judge's ruling was to disallow all questions about the nature of the operation leading to the arrests, the issue of cross-border co-operation and the involvement of a named individual. Following his ruling, counsel for both defendants concluded that the abuse of process could not be advanced before the Magistrates' Court and by agreement the District Judge considered the remainder of the matter on the papers and committed both men for trial.

The applicant sought leave to apply for a judicial review of the District Judge's decision claiming that the Judge had power to stay the committal proceedings where entrapment was established. He claimed the District Judge had erred in concluding that cross-examination would improperly go behind the prosecution's statement that no duty of disclosure arose. Counsel for the District Judge submitted that the judge sought to restrict questioning to matters of relevance to the committal proceedings. He said that the applicant had not raised evidence on the issue of entrapment and that the defence's questions amounted to a fishing expedition.

Lord Justice Girvan, delivering the judgment of the Court, stated that the function of the District Judge is to determine whether there is a prima facie case which justifies committal for trial. It stated that:

"If, having so decided [the District Judge] proceeds not to commit because of alleged entrapment, he is carrying out quite a different exercise from that arising from the committal proceedings. He would be carrying out a function vested normally in the High Court under its inherent supervisory jurisdiction or in the Crown Court, whether before or at the trial."

Lord Justice Girvan considered that once the issue of alleged entrapment was raised it was open to the applicant to apply for an adjournment of the committal proceedings for an application to be made to the High Court for an order of prohibition and for an order quashing the prosecution's decision to move for a committal. There was no such application made. The Judge stated that the applicant at no stage put before the District Judge any evidence to show that there was a serious question of abuse.

The Court determined that where the facts are not established and require a full trial process to uncover them, a defendant's real remedy lies at the Crown Court trial stage, the trial process providing the most effective and fairest mechanism to pursue such points. It dismissed Mr Nolan's application.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Court Service website (www.courtsni.gov.uk).

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