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IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

T.6/84

R E G I N A

v.

OWEN

421R 559  
appal by wtd

Hearing: 21st May, 1984

Counsel: Grieve for Crown  
Wells for Accused

Judgment: 22.5.84

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JUDGMENT OF SINCLAIR, J.

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As a preliminary to Owen being required to plead to 24 charges in relation to drug dealing I heard argument as to whether there was sufficient evidence to put him on trial in respect of certain of the alleged offences and I also heard argument as to whether certain evidence which it was intended to tender in support of the prosecution could actually be received as admissible evidence.

As a result of an application made by Mr Wells and as a result of some concessions being made by the Crown that there was no evidence to support certain of the counts, and as a result of argument in relation to certain other counts, the accused was discharged pursuant to S.347 of the Crimes Act 1961 on counts 1, 2, 3, 4, 5, 6, 9, 11, 13, 14, 16, 19, 20 and 24. This left him to face ten counts all of which were alleged to have occurred after 1st September, 1983. In respect of those remaining counts it was submitted by Mr Wells that there was no admissible evidence which could be produced by the Crown in support of

them for the reason that all of the evidence was collected pursuant to a renewal of an interception warrant which had originally been granted on 5th August, 1983 and which had been renewed on 1st September, 1983. At the time I was asked to rule on the admissibility or otherwise of the evidence in question.

The basis of Mr Wells' contention was that Owen had not been named in the original warrant, but was in fact named in the renewal. It was said that in fact what had been described as "a renewal of interception warrant" was not in fact a renewal, but amounted, or ought to have amounted, to the grant of an original or new interception warrant and that in consequence the provisions of S.25(1) of the Misuse of Drugs Amendment Act 1978 came into play rendering all evidence obtained pursuant to the renewed interception warrant inadmissible. After hearing argument I ruled that the evidence was admissible and gave brief reasons for coming to that conclusion; I indicated that I would give a judgment giving full reasons as soon as it was convenient so to do.

I now set forth the reasons for coming to the conclusion at which I arrived. In the meantime the accused has not pleaded to the remaining charges and through his counsel has indicated that he wishes my ruling to be tested in the Court of Appeal prior to his being required to plead. He has therefore been remanded in custody until the decision of the Court of Appeal is known.

The original warrant was issued by Mr Justice Casey on 5th August, 1983 and it was addressed to Ian Francis Hastings, a commissioned officer of the Police. It follows

the usual form so far as it relates to the Judge being satisfied as to the various matters on which he had to be satisfied before issuing the warrant.

The offences in respect of which the warrant was granted were importing a Class A controlled drug, Heroin, and other Class A or B controlled drugs within the meaning of the Misuse of Drugs Act 1975, and supplying a Class A controlled drug Heroin and other Class A or B controlled drugs within the meaning of the Misuse of Drugs Act 1975, they being offences against S.6 of that Statute.

The warrant which was limited to a period of 30 days from the date of its issue authorised the use of listening devices to intercept the private communications of nine named persons and "other persons whose names and addresses are not known and who are not suspected as at the date hereof". The warrant authorised listening devices to intercept the private communications of persons referred to in the warrant at telephone no. 789-860 which was the telephone number at the address of flat 3, 3 Hamilton Road, Herne Bay, Auckland. It also authorised the use of a listening device to intercept the private communications of the aforesaid named people and the unknown persons at the same address.

No challenge is made in respect of that warrant which in all respects appears on its face to be regular. On the first day of September, 1983 Mr Hastings made an application for renewal of that warrant and besides the persons who had been originally named nine or possibly ten further persons were named and the renewed warrant purported to

to enable the Police to intercept the private communications and private telephone communications of those named in the original warrant and those additionally named in the renewal and other unidentified persons. In all other respects the renewed warrant was granted on the same terms as the original warrant.

Mr Wells pointed to S.14 of the 1978 Amendment Act which sets forth the various matters which are to be included in an application for an interception warrant. Subsection 2(c) provides that the name and address of a suspect whose private communications are to be intercepted is to be disclosed, but it is made plain that the warrant may refer to unknown persons if in fact that is the case. The validity of a warrant in that form was recognised in R v. Menzies (1982) 1 N.Z.L.R. 40, and of course it seems to me that that is for obvious reasons, namely that it may be well known that drug dealing is being carried on at a particular address, but it may not be known who in fact is the drug dealer until investigations are carried out.

In this particular case when the original warrant was granted the Judge was obviously satisfied that a case had been made out for the grant of it and the warrant so states on the face of it. When the time came for the Police to apply for renewal of the warrant the application for the renewal had to comply with S.18 of the 1978 Amendment. That section provides that the application for renewal shall be made in the same manner as that provided for the grant of an original warrant and that is made plain by the reference in s-s.(2) of S.18, that every such application for renewal is to be made in the manner provided by

S.14 of the Amendment. Such application must give the reason and period for which the renewal is required and full particulars of any interceptions made or attempted under the original warrant and an indication of the nature of the information that has been obtained by every such interception. In addition the application must disclose the times and dates of any interceptions made or attempted to be made under the original warrant. In other words, the Police must make full disclosure to the Judge when applying for a renewal of the warrant of what has come to their knowledge in consequence of the grant of the original warrant or, indeed, if anything has come to their knowledge they are bound to disclose that fact. Thus, if a person who has not been named in the original warrant has been ascertained by reason of the grant of that warrant to be involved in drug dealing, then obviously that person's name must be disclosed. If it is desired on the renewal to monitor the conversations of the person so ascertained it is necessary for the Police to disclose that fact. In my view once such a person has been identified by name it would be incumbent for his name to be included in the renewed warrant. If it were not so, it would simply encourage the Police to conceal the result of their activities up to the time of the application for the renewal and to attempt to obtain further evidence against a known person under the guise of describing him still as an unknown person.

When one has a look at the renewal of the interception warrant in this case, other than for the inclusion of the names of the additional persons to those named in the

original warrant, there is no other deviation from that original warrant.

When the Judge considers the application for the renewal of the interception warrant he is required by S.18(4) to be satisfied in respect of all matters which are contained in S.15 of the amending Act which are the very matters on which he has to be satisfied before the original interception warrant is granted. Thus there is a complete safeguard for persons who may become the object of an interception warrant and any renewal thereof in that in respect of an original application the Police are required to disclose to the Court all the information they have at the relevant time.

It seems to me to be incongruous to say that where a person falls within the ambit of "unknown persons" when an original warrant is granted, any renewal of that warrant becomes vitiated simply because that person is named in the renewal warrant consequent upon the issue of the original warrant and the renewal warrant in all other respects is the same as the original. In this case the purpose of both the original and renewed warrants was the same, the telephone number and the address were precisely the same and it was the persons whose conversations were recorded either per the telephone or by reason of their presence at the premises which were the subject of the enquiry.

In this particular case at the time of the grant of the renewal of the warrant the Judge was satisfied that the requirements of S.15 of the amending Act had been complied with as the warrant so says on the face of it.

In all the circumstances it is my view that the evidence obtained against this accused pursuant to the renewed warrant is admissible and for that reason I so ruled. In consequence I did not go on to consider the alternative which may have required consideration under S.25(2) of the 1978 amendment.

Before departing from this matter I refer to a third warrant which was issued in respect of the same premises and the same telephone number by Thorp, J. on 6th October, 1983. That has all the appearances of being an original interception warrant and there is no reference to renewal on it. In fact there is no reference to S.18 of the 1978 Statute at all. However, in that warrant but 14 people are named and the names of some of those who had been included in the renewed warrant were not included in the warrant of 6th October, 1983. Just why that warrant took the form it did I do not know, but it may well have been by reason of the fact that the Police had satisfied themselves that certain persons named in the renewed warrant were no longer the object of their attentions and that in respect of what was really a further renewal it was more appropriate to treat the application as an original application in respect of the named persons. It is noteworthy that the warrant was restricted to conversations relating to the persons named in that warrant and there was no reference to persons unknown or unidentified. In other words, it appears that the Police by that time had become satisfied that only the named persons were persons who were considered to be involved in the drug dealing and therefore there was no necessity to include other

persons who had been possibly eliminated from the enquiry or who were people in whom the police at that time had no further interest.

I cannot see that the issue of the October warrant can in any way assist the question as to whether or not the renewed warrant of 1st September, 1983 was valid or invalid.

Accordingly for my part, as I have mentioned above, I consider the evidence obtained by the Police pursuant to the renewed warrant of 1st September, 1983 to be admissible as against Owen in respect of the remaining charges in the indictment.

*P. P. King*

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SOLICITORS:

D. S. Morris, Crown Solicitor, Auckland