

Neutral Citation no. [2003] NICC 12

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

Delivered: 29/08/2003

Belfast Crown Court
Bill No. 35/97
R
-v-
Martin Joseph Dyer

Judgment
of
His Honour Judge Hart QC,
Recorder of Belfast

29 August 2003

- [1] On 27 May 1997, by virtue of the provisions of Section 51(3) of the Judicature (Northern Ireland) Act 1978, His Honour Judge Markey QC sitting as judge of the Crown Court issued a warrant for the arrest of Martin Joseph Dyer who had failed to appear for his trial at Belfast Crown Court. This bench warrant has not yet been executed and cannot be found. An application was made to the court for the issue of a duplicate warrant and came on for hearing before me on 25 July. Having heard the evidence of Detective Inspector Baxter I was satisfied that it was appropriate in the circumstances to issue a duplicate warrant and made the necessary order.
- [2] Some uncertainty was expressed as to the proper procedure to be followed in such cases and I therefore reserved judgment. Whilst I am satisfied from Detective Inspector Baxter's evidence that the police have elaborate procedures to ensure that warrants do not go missing, nevertheless this eventuality is one which can never be excluded. For example, at Belfast Crown alone as of 30 June 2003 there were no fewer than 95 outstanding bench warrants. Many of these date back several years. When one takes into

account that bench warrants are outstanding in other Crown Courts throughout Northern Ireland and adds to this total the number of bench warrants issued by the magistrates' courts it is obvious that from time to time, no matter how stringent the procedures are that the police have in place, there may be a need to apply to the Crown Court for the issue of a duplicate warrant. Some of the difficulties which can arise when the appropriate procedures in relation to warrants have not been followed can be seen in *Toye -v- Chief Constable RUC* [1991] NIJB 3 87.

[3] Section 47(4) of the Judicature Act provides

“Subject to any provision contained in or having effect under this Act, the Crown Court shall, in relation to the attendance and examination of witnesses, any contempt of court, the enforcement of its orders and all other matters incidental to its jurisdiction, have the like powers, rights and authority as the High Court or the county court.”

[4] Whilst there is authority for the issue of duplicate orders in the High Court, see the *Hibernian Bank Ltd & McArdle and Johnston* (1932) 66 ILTR 28, the Rules of the Supreme Court do not provide in any detail for the procedure to be followed before a duplicate or copy of an order is issued, Order 42 Rule 10 merely providing “before a copy of a judgment [which includes an Order under Order 42 Rule 1] is issued it must be sealed and stamped “copy” and there must be noted thereon the number of the judgment and the date of filing.” However, Order 41 of the County Court Rules provides for a somewhat more elaborate procedure for the issue of duplicate decrees, as may be seen from its terms.

[5] “*Duplicate decrees*

1. Where an original decree has been lost or destroyed, or has become unavailable to the plaintiff or party entitled to benefit thereunder, by reason of its having improperly got into the hands of the opposite party or being in the hands of any officer lawfully entitled to hold it, the plaintiff or party may

apply to the Judge either in court or chambers for the issue of a duplicate of the decree.

Application

2. Notice of an application under Rule 1 shall be given to the opposite party before the beginning of a period of seven days ending on the date of the hearing, which notice may be served by registered post.

Evidence

3. It shall lie with the applicant to satisfy the Judge by oral evidence or affidavit of such facts as would under Rule 1 enable the application to be granted.

Face of duplicate decree

4. On the face of every duplicate decree issued under this Rule there shall be written or stamped in large letters the word "Duplicate" followed by the initials of the chief clerk.

Effect of duplicate

5. A duplicate decree shall for all purposes have the effect of the original decree and references in these Orders to a decree shall include a duplicate decree."

[6] Given the importance of a warrant for the liberty of the subject I consider it is appropriate to apply the provisions of Order 41 of the County Court Rules as closely as possible when making an application to the Crown Court for the

issue of a duplicate warrant. However, the provisions of Order 41 Rule 2 requiring notice to be given to the defendant are plainly inappropriate in such circumstances and even to make the application for the issue of a duplicate warrant in open court might result in the defendant being alerted that the police are, or believe that they are, aware of the defendant's whereabouts and thereby lead to the defendant taking steps to evade arrest. This would not be in the interests of justice and therefore I consider that it would normally be proper for the prosecution to make an application to a judge of the Crown Court for the issue of a duplicate warrant in chambers.

- [7] When the application is made it is for the prosecution to lead such evidence as would enable the judge to be satisfied that it is appropriate to issue a duplicate warrant. As well as explaining what steps have been taken to trace the original warrant, there should be a certificate from the Crown Court office through which the warrant was issued that the warrant has not been returned to that court, executed or withdrawn.
- [8] In the event that the judge is satisfied that a duplicate warrant should be issued then the warrant should be stamped or headed "duplicate" and the margin endorsed "Duplicate warrant issued by order of" followed by the name and title of the judge concerned and the date and signature of the chief clerk (or his or her deputy).