

IN CHAMBERS

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
CAUSE NO. 442/02



CS/Adams
7.16.2002
ph

BETWEEN:

JASON CLAY GROVES

Plaintiff

AND:

MICHELLE MILLER
ORVILLE WILLIAMS
KURT WALTON
CECILE COLLINS

Defendants

Appearances:

Douglas Schofield, of Hunter and Hunter for the plaintiff

RULING

1.

This is an ex-parte application for leave to seek judicial review in respect of a search warrant issued by Mrs. Cecile Collins a JP, the fourth defendant herein, authorising three named police officers who are the first, second and third defendants, to search the premises of Jason Clay Groves at Number 8 third Avenue, Boltino Avenue, West Bay as she was satisfied from evidence given on oath before her that an offence had been committed under Section 155 of Penal Code. That Section deals with the possession for the purpose of trade, or distribution or public exhibition of articles of an obscene nature.

2.

A search was carried out on the 7th June, 2002 by the officers named in the warrant and a lap top computer, said to be inoperable was seized. In addition a computer "belonging to

the plaintiff's family" was seized from the premises of Garth Grayson, a computer technician. There is no evidence before me whether or not a search warrant authorising that second search and seizure was ever granted.

3.

Paragraph 4 of the grounds on which relief is sought reads:-

"Based on statements made by the defendant police officers to the plaintiff, the plaintiff has reasonable grounds to believe and does believe that there was no evidence before the defendant Collins, either in fact or in support of a reasonable suspicion, that obscene material was at any time in his possession for the purpose of trade or distribution or circulation or traffic or public exhibition, at least one of which purposes is an essential ingredient of any offence against section 155 of the Penal Code (1995 Revision)".

4.

The affidavit of the plaintiff dated the 24th June, 2002 tells the court that "based on the comments of police officers it was clear to me that they believed that naked photographs of a person described as "the complainant" (she is otherwise identified) had been sent to me by e-mail. In fact, approximately two years ago, photographs of this description were e-mailed to me by the complainant herself. A year or so later they were sent to me again by an acquaintance of the complainant. I deleted these images on each occasion. I told the police officers this. The police officers asked me if I had sent such photographs to anyone else. I did not do so and I told the police officers this." The police are not bound to accept at face value initial denials by a suspect. There is nothing in the affidavit to rebut the

presumption that the warrant was issued *bona fide* after the reception of relevant and sufficient evidence.

5.

It is submitted to me on the authority of *R v Douglas (1980-1983) CLR 119 at page 125*

that the warrant is fatally flawed. Section 25 of the Criminal Procedure Code reads as

follows:-

“Where a court or a Justice of the Peace is satisfied by information on oath that in fact or according to reasonable suspicion anything upon, by or in respect of which an offence has been committed or anything which is necessary to the conduct of an investigation into any offence is in any building, ship, vehicle, box, receptacle or place, such court or Justice of the Peace may, by warrant (called a search warrant), authorise a police officer or other person therein named to search the building, ship, vehicle, box, receptacle or place (which shall be named or described in the warrant) for any such thing and, if anything searched for is found, to seize it and carry it before the court issuing the warrant or some other court to be dealt with according to law.”

Section 27(1) reads:-

“Every search warrant shall be in the form set out in the Second Schedule and under the hand of the person issuing the same and, when issue by a court, shall bear the seal of such court:.”

6.

The relevant form as set out in the 2nd Schedule to the Penal Code reads as follows:-



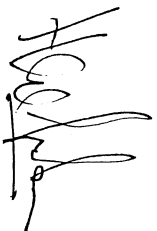
“It has been made to appear to me/this court that the production of the following article (s) is/are essential to the inquiry into the said offence.”

At this point the items which were sought by the police should have been inserted. Instead, the words “possession of obscene publication” is written. This is precisely the practice which was declared to be unlawful by Summerfield, CJ in Douglas at page 125, lines 4,5&6. In these precise circumstances the learned judge said:-

“While it could be argued that this was merely an oversight it remains nevertheless a defect and leaves one with the uneasy suspicion that due care was not taken in considering the issue of the warrant.

In the judgment of this court this was undoubtedly a defective warrant although I do not have to go so far in granting leave for judicial review.

I order that the matter be listed before me with a time estimate of ½ hour when I would expect this matter to the disposed of.



H.G.D. Graham
Judge of the Grand Court

7th June, 2002