THE COURT OF APPEAL

CIVIL

Neutral Citation Number: [2016] IECA 413

Sheehan J.
Mahon J.
Edwards J.

Record No.: 2015/444

2015/456

2015/475

In the Matter of Section 2 of the Summary Jurisdiction Act 1957 as extended by Section 51 of the Courts (Supplemental Provisions) Act 1961

Between/

The Director of Public Prosecutions

Prosecutor/ Respondent

- and–

Cicero Pires

- and -

James Corrigan

- and -

Paul Gannon

Accuseds / Appellants

Judgment delivered by Mr. Justice Mahon on the 21st day of December 2016

1. This is an appeal against the judgment of the High Court (Barrett J.) dated 9th July 2015 and the related order of the High Court made on 16th July 2015, and perfected on 11th August 2015.

2. On 20th March 2015, Judge Bryan Smyth, a judge of the District Court, applied to the High Court by way of case stated in relation to three cases which had been heard by him, pursuant to s. 2 of the Summary Jurisdiction Act 1957 as extended by Section 51 of the Courts (Supplemental Provisions) Act 1961, on a point of law. The three cases, while unconnected as between each other, were all concerned with prosecutions for offences contrary to s. 4(4)(b) and (5) of the Road Traffic Act 2010, (drink driving).

3. Insofar as it is necessary to refer separately to the three cases, the following information is relevant:-

Mr. Pires

Mr. Pires was stopped at Fortunestown Road in Tallaght on 1st January 2014 on suspicion of drink driving. Gda. Brady handcuffed Mr. Pires while effecting his arrest. Gda. Brady told the District Court that he did so because Mr. Pires was intoxicated, was larger in stature than he was, he was on his own with him, and he had to transport him in a garda vehicle without an internal protective barrier. There was no evidence that Mr. Pires was aggressive or agitated at any time.

Mr. Corrigan

Mr. Corrigan was stopped at Finglas Road dual carriageway on 28th May 2014 by Gda. Murphy, his attention having been drawn to Mr. Corrigan when his vehicle collided with another vehicle at a roundabout. Having formed the necessary opinion as to the consumption of an intoxicant, Mr. Corrigan was arrested and taken to Finglas garda station. While effecting arrest, Gda. Murphy handcuffed Mr. Corrigan because he was "jittery". He also said that the appellant hesitated when he placed his hand on Mr. Corrigan to usher him into the back of the patrol car. Mr. Murphy accepted that Mr. Corrigan was not aggressive and was co-operative. He was nevertheless concerned that Mr. Corrigan might become overwhelmed and react in panic because of the position he found himself in. He was also concerned that they were on a busy dual carriageway and that he had a duty of care to ensure the safety of the appellant and the public. He also had to convey Mr. Corrigan to a garda station in a garda patrol car which had no internal protective barrier. He said that he had applied the handcuffs for his own safety and that of the appellant.

Mr. Gannon

Mr. Gannon was stopped on the M50 in Blanchardstown in Dublin on 21st October 2013. Gda. Kelly told the District Court that he had noticed the appellant driving his Ford Focus van at excessive speed as it overtook a garda jeep in which he was a passenger. Mr. Gannon was travelling at one hundred and thirty kmH. The necessary opinion as to intoxication was formed when Mr. Corrigan was stopped by the gardaí and he was handcuffed in the course of effecting arrest. Gda. Kenny told the District Court that he was handcuffed for his own safety, for the safety of the gardaí and the safety of other road users as they were standing on the hard shoulder of the M50 which was very busy at the time. It was accepted that Mr. Gannon was compliant and was not aggressive.

4. In each of the cases, the validity of the arrest of the appellants was challenged on the basis that handcuffing was unnecessary and unwarranted. Having considered submissions from the parties in the three cases, the learned District judge decided that the handcuffing of the three appellants was not justified as a precautionary measure, (and, thus, rejected the evidence of the garda witnesses), and he proceeded to dismiss the cases on the basis of the decision in the Supreme Court decision in *DPP v. Cullen* [2014] IESC 7.

5. At the request of the prosecution the learned District Court stated a case to the High Court. In it, he posed the following question:-

> *"Was I correct in law to find the arrest(s) unlawful?"*

The Cullen case

6. Central to this case is the decision of the Supreme Court in *Cullen*. It concerned a driving prosecution in which the arrest of Mr. Cullen was challenged on the basis that he had been unnecessarily handcuffed at the time of his arrest. The facts in *Cullen* were that a garda sergeant observed Mr. Cullen's vehicle being driven in an erratic fashion. He stopped him, and having formed the necessary opinion as to the consumption of an intoxicant, decided to arrest Mr. Cullen. The garda sergeant accepted that Mr. Cullen had not used or threatened force in order to avoid arrest, nor had he formed the view to the effect that the conduct of the accused created in the mind of the sergeant a suspicion or concern that he might resist arrest unless restrained. The garda sergeant having placed Mr. Cullen in handcuffs conveyed him to the garda station. The garda sergeant stated that it was his normal practice to place such persons in handcuffs irrespective of the circumstances as it was his experience that such persons might become abusive and resist arrest either immediately prior to, or following, communicating the reason for arrest to them.

7. The questions posed by the learned Circuit Court judge for the opinion of the Supreme Court in Cullen were as follows:-

> *"(i) On the evidence adduced was I entitled to hold that the placing of handcuffs on the accused following arrest was unjustified on the grounds that Sgt. Moyles did not believe the particular accused was likely to resist arrest or was likely to attempt to escape from lawful custody unless so restrained?*
>
> *And*
>
> *(ii) If the answer to the above is in the affirmative was I correct in law in concluding that the placing of the handcuffs on the accused by Sgt. Moyles was a conscious and deliberate breach of the accused's constitutional rights which rendered the accused's arrest and detention unlawful and which which obligated me to apply the exclusionary rule in respect of any evidence obtained thereafter?"*

8. Fennelly J. answered the first question in the affirmative. He answered the second question by stating that the arrest was unlawful. He deemed it unnecessary to refer to a breach of constitutional rights or the exclusionary rule:-

> *"5.3 I would in part answer the second question posed by holding that the placing of handcuffs on Mr. Cullen, while unlawful, affected the manner of his arrest rather than the entitlement to arrest him and, thus, did not affect the lawfulness of his arrest or his custody thereafter. In my view a final answer to the question of whether the certificate of alcohol concentration in Mr. Cullen's case was admissible would, therefore, depend on the view which this Court takes on the current status and extent of the exclusionary rule."*

9. Hardiman J. agreed with the judgment of Fennelly J. Clarke J. in giving a separate judgment agreed with the decision of Fennelly J. in relation to the first question posed by the learned Circuit Court judge, but disagreed in relation to the second.

10. In his judgment, Clarke J., answered these questions as follows:-

> *"(i) So far as the first question is concerned, I would hold that the trial judge was entitled to form the view that the placing of handcuffs on Mr. Cullen was unjustified on the grounds that the relevant sergeant had no basis for believing that Mr. Cullen was likely to resist arrest or escape unless so restrained.*
>
> *(ii) I would in part answer the second question posed by holding that the placing of handcuffs on Mr. Cullen, while unlawful, affected the manner of his arrest rather than the entitlement to arrest him, and thus, did not affect the lawfulness of his arrest or his custody thereafter. In my view, a final answer to the question of whether the certificate of alcohol concentration in Mr. Cullen's case was admissible would, therefore, depend on the view which the court takes on the current status and extent of the exclusionary rule."*

11. In the course of his judgment, Fennelly J. stated (at para. 25):-

> *"I would entirely accept that any individual member of An Garda Síochána is fully entitled to and may well be obliged to apply handcuffs to an arrested person, where he or she genuinely believes that it is necessary to do so in the particular case. The decision must be left to the individual garda dependant on his or her own appreciation of the requirements of the individual case. The nature of the offence, the prevailing circumstances, the personality and character of the individual to be arrested must be taken into account. The law is realistic. It is appreciated that decisions on the necessity for an arrest, the appropriate amount of force and the need for use of handcuffs are often made under pressure of circumstances of urgency, of danger, of flight, and of violence and the threat of violence. Ordinarily, courts are slow to review decisions of garda officers made in the wide range of situations with which they are confronted in the course of their duty."*

12. At para. 38 of the judgment, he went on to say:-

> *"…In my view, it is unlawful to place handcuffs on suspects who are being arrested without giving any consideration to the context and in particular to the behaviour and demeanour of the individual being arrested. It is unlawful because, as a matter of principle, the police must use only such force as is reasonable in the circumstances. I emphasise of course that it is the police officer who must make that judgment. In the present case, the evidence suggests that the officer in question abdicated any such responsibility. It follows that suspected persons are automatically subjected to force accompanying their arrest.*

He also stated:-

> *"…the lawfulness of an arrest is determined by the circumstances as the person using the force believed them to be."*

The grounds of appeal

13. The following grounds of appeal are contended on behalf of the appellants:-

> *(i) The learned trial judge erred in law by allowing the appeal by way of case stated without identifying an error of law in the determination appealed against;*
>
> *(ii) the learned trial judge erred in law by reassessing the evidence and adjudicating upon same himself;*
>
> *(iii) the question as to whether a trier of fact afforded sufficient "latitude" to the arresting gardaí is a question not amenable to a standard in law but is a matter solely within the remit of the trier of fact;*
>
> *(iv) the learned trial judge upheld the appeal on the basis that the District Court judge had afforded "an insufficiently generous measure of judgment" and "insufficient latitude" to the respective gardaí in the course of the arrests. The findings of the learned trial judge amount to an interference with the findings of fact of the District Court judge who heard the evidence in the case;*
>
> *(v) the learned trial judge erred in law by grounding his determination upon an irrelevant factor, that is, the "alleged" regularity of cases heard by the particular trial judge where the law was applied with a particular result. This does not amount to a principle in law and was not the subject of any evidence in the District Court nor was the issue raised by the DPP or argued before him.*

Discussion and conclusion

14. The use of handcuffs to restrain, control and manage arrested persons and prisoners is a common practice. However, it will not always be an acceptable practice. In *Cullen,* Fennelly J. cited with approval the dicta of Hardiman J. in *DPP v. Davies* (CCA 23rd October 2000) that:-

> *"The public depiction of any person, but particularly a non convicted prisoner wearing the double restraints which are now commonly used in the Prison Service, is a depiction of him in a position of humiliation and indignity."*

15. As is made clear from the judgments in *Cullen*, the law permits the use of handcuffs to restrain a person being arrested where it is deemed appropriate and / or necessary to use them, but not otherwise, and that the decision to use handcuffs is essentially a decision to be made by the arresting officer having regard to the circumstances pertaining at the time.

16. In his judgment in *Cullen*, Clarke J. remarked:-

> *"It is true, as Fennelly J. points out, that a person who has a lawful power of arrest must be afforded a reasonable margin of consideration in dealing whether, on the facts of an individual case, handcuffing is necessary."*

17. In the instant case, the learned High Court judge answered the *question "was I correct in law to find the arrest of the accused unlawful?"*, *"No"*. In his judgment Barrett J. reiterated the facts of each of the three cases as per the learned District judge's case stated. He also addressed the issue of the extent to which an acquittal in the District Court can properly be appealed by way of case stated to the High Court. In doing so he reviewed a number of decisions of the Superior Courts, one of which was the decision of Hedigan J. in *DPP v. Dardis* [2015] IEHC 53 in the course of which reference was made to the case being an appeal by the DPP by way of case stated Hedigan J. stated:-

> *"This is a procedure exclusively confined to correcting errors of law by an inferior court in the determination of proceedings before it. See DPP v. Nangle [1984] ILRM 171. It is confined to a party who is "dissatisfied with the said determination as being erroneous in point of law". It is not available therefore to a party dissatisfied with a decision of the District Court on the grounds that the District Judge had taken one view rather than another of the evidence or had accorded credence to one witness and withheld it from another. See Fitzgerald v. DPP [2003] 3 IR 247."*

18. In his judgment in the instant case, Barrett J. having considered the various decisions, stated:-

> *"In summary, the task of the High Court in an appeal such as is now before the court is a very limited one. This is implicitly recognised in the very succinct question put by the learned District Judge in the case stated in respect of each of the three acquittals now before the court, namely "Was I correct in law to find the arrest of the accused unlawful?"*

19. In the final part of his judgment, the learned High Court judge concluded that the learned District judge was not correct to find the arrests of the appellants unlawful and that the reasoning of the learned District judge in reaching his conclusions contravened one or more of the principles identifiable in the judgment of Fennelly J. in *Cullen*. The learned High Court judge identified the principles annunciated in *Cullen* as including the following:-

> *(i) An arresting Garda makes a judgment as to what force is reasonable in the circumstances. The law allows a generous measure of judgment in this regard.*
>
> *(ii) When a Garda is considering whether to apply handcuffs, the following factors must be taken into account:*
>
> (I) the nature of the offence;
>
> (II) the prevailing circumstances; and
>
> (III) the 'BCDP' (behaviour, character, demeanour, personality) of the individual to be cuffed.

(iii) A realistic attitude is shown by the law to the Gardaí in this regard.

(iv) Despite the generous measure of judgment allowed, and the realistic latitude shown, to an arresting Garda, circumstances may present in which a court later determines that particular handcuffing was unlawful. Because of the generous measure of judgment allowed, and the realistic latitude shown to the arresting Garda, such circumstances should be uncommon. The 'blanket policy' of cuffing applied in Cullen is an example of the uncommon.

(v) Ordinarily, the courts are slow to review operational decisions of individual Garda officers made in the wide range of situations which they confront in the course of their duty.

This Court respectfully agrees with the principles as so identified by the learned High Court judge.

20. It is noteworthy that in *DPP v. O'Neill* and *Bohannan* (*ex tempore* judgment of Moriarty J., 1st February 2016). Moriarty J. considered *Cullen* and, *inter alia*, the judgment of Barrett J. in the instant case, and he adopted these principles as summarised by Barrett J. as evident from that case.

21. The point of law raised in the case stated concerns the application of the legal principles as enunciated by Fennelly J. in the majority decision of the Supreme Court in *Cullen*. A judge of the District Court is bound by the doctrine of *stare decisis* to follow and apply the jurisprudence of the Superior Courts unless the case under consideration is clearly and legitimately distinguishable from that jurisprudence. The obligation to follow the decisions of the Superior Courts is no greater or lesser than the obligation to apply relevant statutory provisions.

22. As Finlay P. stated in *DPP v. Nangle* [1984] ILRM 171, 173, the case stated procedure is *"exclusively confined to correcting errors of law by an inferior court in the determination of proceedings before it"*. However, that having been said, some decisions are properly to be regarded as involving mixed questions of law and fact. The mere fact that that might be so will not prevent such a decision from being reviewable where there has been an error of law. Thus, in *Rahill v. Brady* [1971] IR 69, the Supreme Court held that a decision by a judge of the District Court as to whether a particular occasion constituted a *special event* within the meaning of s. 11 of the Intoxicating Liquor Act 1961 was open to review in an appeal by way of case stated. Budd J. said that such a matter was not a decision on a question of fact only, but *"a decision on a mixed question of law in fact"*, which involved the construction of a Statute.

23. In *Fitzgerald v. DPP* [2003] 3 I.R., Hardiman J. stated:-

> *"It appears to me that the effect of ss. 2 - 6 of the Act of 1957, as amended, is to create a special statutory jurisdiction in the Superior Courts. This jurisdiction is of a limited nature. Firstly, it is appellate: this appears from the latter part of s.2 where a party seeking the case is designated "the appellant". Secondly, the right to seek a case stated by way of appeal is confined to a party who is "dissatisfied with the said determination as being <u>erroneous in point of law</u>" (emphasis added). It is not available, therefore, to a party dissatisfied with the decision of the District Judge on the grounds that the District Judge has taken one view rather than another of the evidence, or has accorded credence to one witness and withheld it from another. If a defendant is dissatisfied on those grounds, he may appeal by way of rehearing to the Circuit Court. Thirdly, the mode of appeal under the procedure laid down in the Act of 1957 is by way of a written statement "setting forth the facts and the grounds of such determination" and not by way of rehearing. Where the Court of first instance hears the evidence and sees the witnesses, and the appeal is by way of a written statement of the facts and grounds, it appears to me that such appeal must be limited to points of law and principle: see DPP v. Cunningham [2002] I.R. 712. Thus, in DPP v. Nangle [1984] ILRM 171, Finlay P. declined to interfere with an acquittal even though he felt that the respondent's evidence had "a clear air of implausibility" about it, because that did not constitute a point of law."*

24. I am satisfied in the circumstances that a failure on the part of a judge of the District Court to follow and apply correctly a binding precedent, where that jurisprudence leaves no room for uncertainty or ambiguity, renders the District Court judge's decision amenable to review by the Superior Courts on a point of law.

25. In *Cullen* the decision of the Supreme Court is clear. It requires that *the decision* (as to whether a person is or is not to be handcuffed) *must be left to the individual garda dependant on his or her own appreciation of the requirements of the individual case.* It is emphasised in the judgment of Fennelly J. *"that it is the police officer who must make that judgment"*.

26. Therefore when the District judge came to assess the appropriateness or otherwise of the use of handcuffs in the three cases before him he was required to apply a test of primarily subjective rather than objective reasonableness. He was not concerned with whether the man on the Luas would consider that the use of handcuffs was necessary. Rather he needed to be satisfied in each instance that the arresting Garda had made a genuine, albeit subjective, assessment as to what the exigencies of the situation required, and had acted on the basis of that assessment and not on foot of some blanket policy to use handcuffs. If he was satisfied that the Garda had arrived at a judgment in good faith that the use of handcuffs was required, then it mattered not whether the judgment arrived at was objectively reasonable. The enquiry mandated by *Cullen* is limited to an assessment of whether the garda officers acted with subjective reasonableness and not on the basis of a blanket policy as had in fact occurred in that case. Of course, the presence or absence of objectively reasonable grounds is a matter that can be taken into account in assessing the genuineness of a Garda's belief. However, that was not the learned District Judge's approach.

27. In each of these cases the learned District Judge applied a test of objective reasonableness in assessing the appropriateness of the decisions made by the relevant gardaí. He did not find that the reasoning of the three gardaí to use handcuffs was based on any untruths, or that it was exaggerated, or that it was subjectively unreasonable. Moreover, he did not find in any instance that the gardaí did not genuinely believe that the exigencies of the situation required the use of handcuffs. In his *"Decision"* in case of Mr. Pires, (by way of example), the learned District Judge stated as follows:-

> *"I found as a fact that the behaviour of the accused in his interaction with Gda. Brady prior to being handcuffed and the reasons for handcuffing as given in evidence by Gda. Brady and set out in para 6 above, did not show any indication that the application of handcuffs was objectively justified."*

28. In fact, the evidence as given by Gda. Brady included the observation that Mr. Pires was of bigger stature than he was, that he was on his own with him, and that he was obliged to convey him to the garda station in a garda vehicle which had no internal protective barrier. Broadly similar reasoning was given by Gda. Murphy in the case of Mr. Corrigan. In Mr. Gannon's case, Gda. Kenny

was concerned that in the event of there being an altercation between himself and Mr. Gannon on the side of the busy M50 motorway lives would be put at risk.

29. The Supreme Court in *Cullen* recognised that the decision as to whether or not handcuffs should be used in any particular case is best left to the garda officer in question. That they should consider it to be so is readily understandable given that such decisions are required to be made on the spot by gardaí, often in difficult circumstances and while dealing with individuals unknown to them; and also bearing in mind the potential risks that may require to be weighed, being risks not just to the safety of the garda officer concerned but also to others, including other road users, and the accused himself or herself. A genuine assessment must be carried out by the Garda as to what the exigencies of the situation requires, with the safety of the public generally, the person being arrested and the arresting garda or gardaí being of primary importance. The use of handcuffs simply as a routine measure or in the absence of any assessment of possible risks will potentially render a detention in handcuffs unlawful.

30. Counsel for the appellants, Mr. McDonagh S.C, strongly argued that the findings of fact made by the learned District judge could not be re-visited by the High Court as part of the case stated process. It was pointed out that this was not a consultative case stated. However, the issue in these cases concerns whether there was a mis-application or an erroneous application of the law (as stated in *Cullen*) by the learned District Judge in assessing whether the use of handcuffs by the Garda concerned in each instance was unjustified so as to render the arrest and detention of the relevant accused unlawful. That being the case, it is necessary to consider the reasoning adopted by the learned district judge in the determination of facts by him. Put another way, it is necessary to consider how the learned District judge approached the task of making findings of facts and applying relevant legal principles in that process. In those circumstances it is necessary to look closely at the findings made by the learned District judge and his reasons for making the findings that he did.

31. In the case of Mr. Pires, the evidence was, as already summarised; Gda. Brady said he made the decision to handcuff Mr. Pires because he was intoxicated and was bigger in stature than he was, and that he had to convey Mr. Pires to the garda station in a garda vehicle which did not have any internal protective barrier. The learned District court judge found that there was an absence of *any indication that the application of handcuffs was objectively justified*. He said that he had carefully considered the evidence in light of the judgment in the Cullen case, and in that respect he agreed with the submissions made on behalf of Mr. Pires. In summarising the submissions made on behalf of Mr. Pires, the learned District judge stated:

> *"It was submitted that the decision in Cullen requires that particular consideration must be given to the behaviour and demeanour of a person prior to being arrested with the application of handcuffs, for that arrest to be lawful. He submitted that the scope of the law as stated in Cullen should not be interpreted as applying only to cases where an arresting member applied handcuffs as a matter of an express policy. He argued that as the accused was fully co-operative and not in any way aggressive or disruptive, the application of the handcuffs were unreasonable and unnecessary force as the behaviour and demeanour of the accused did not necessitate or objectively justify such force. He submitted that the reasons given by Gda. Brady, as to the application of the handcuffs, were grounded on factors which were general in nature and disregarded the accused's behaviour and demeanour.."*

32. However, such submissions did not accurately reflect the decision of the Supreme Court in *Cullen*. *Cullen* requires that the decision of the garda to use handcuffs when making an arrest in a drink driving case ought to be made on the basis of his, the officer's, perspective as to the risks that might arise if handcuffs were not used. In *Cullen* Fennelly J. stated that *"it is the police officer who must make that judgment"*. The fact that a judge might take the view that the garda is being unduly cautious is irrelevant. In a particular case it would, of course, be open to a judge to decide that the reasons provided by the arresting officer to justify the use of handcuffs are not based on fact or are incorrect or implausible for one reason or another, and on that basis reject them. For example a decision by an arresting garda to place handcuffs on a suspected drink driver because of his concern that the person might run onto a busy road and endanger both himself and road users might be undermined if the road in question was a quiet country boreen.

33. Crucially there was no finding by the learned District Judge that Garda Brady did not genuinely hold the belief that the use of handcuffs was necessary in the circumstances as he perceived them to be.

34. In the case of Mr. Corrigan, Gda. Murphy's evidence was that he handcuffed Mr. Corrigan, primarily, because he was required to drive alone with him to the garda station and was concerned that unless restrained, Mr. Corrigan might become aggressive. The decision was said to be been made to protect himself, Mr. Corrigan and the public. As in the case of Mr. Pires, the learned District judge said he carefully considered the evidence and the submissions of the parties and that he agreed with the submissions made on behalf of the appellant. Those submissions were to the effect that:-

> *"That the application of handcuffs in the circumstances was precautionary in nature and that there was no evidence showing that the use of handcuffs was necessary or objectively justified in the circumstances, even allowing for a margin of appreciation on the part of the arresting garda."*

35. Again, as in the case of Mr. Pires, this submission suggested an erroneous understanding of the decision in Cullen. Again, there was no finding by the District Judge that Garda Murphy did not genuinely hold the belief that the use of handcuffs was necessary in the circumstances as he perceived them to be.

36. In the case of Mr. Gannon, the evidence was that Gda. Kenny used handcuffs because of his concern that a struggle might ensue on the side of a very busy motorway and that a major incident might result. In that case, Gda. Kenny said that prior to using hand cuffs his practice was to assess individuals in the context of his own safety, the safety of the accused person, and the safety of other road users. It was submitted to the learned District judge on behalf of Mr. Gannon that *"the behaviour of the accused was the important context and in the absence of anything pertaining to the behaviour of the accused, the Court could not have regard to a context which was baseless"*. However, the concerns of the garda were not "baseless". The arrest of Mr. Gannon took place on a very busy section of the M50 motorway where cars were cars were travelling at speed, and in addition weather conditions were poor. While in this case the learned District judge did not specify state that he had adopted the submissions put forward on behalf of Mr. Gannon in reaching his decision, it is apparent that his decision was based on such submissions. I am satisfied that such submissions did not accurately reflect the decision in *Cullen*.

37. Yet again, there was no finding by the learned District Judge that Garda Kenny did not genuinely hold the belief that the use of handcuffs was necessary in the circumstances as he perceived them to be.

38. As stated earlier in this judgment, the misapplication by a District judge of a legal provision (statutory or otherwise), or the failure to properly apply precedent law, may constitute a point of law properly reviewable by the High Court on an appeal by way of case

stated. As it was required to do in this case, it will on occasion be necessary for the High Court to examine and scrutinise the reasoning process engaged in by the learned District judge in reaching his or her decision, including findings of fact, in order to determine if a point of law exists, such as would justify the High Court's intervention.

39. This is quite different to reviewing a fact, or the facts, as found by the learned District judge where such fact or facts were based on a determination arrived at properly and in compliance with applicable legal principles. In such a case an appeal to the High Court by way of case stated would not be the appropriate remedy, rather that would be to appeal to the Circuit Court and thereby avail of a complete re-hearing.

40. Insofar as these cases are concerned the learned District judge was required to make his findings on the basis of, and with full regard to, the decision of the Supreme Court in Cullen. I am satisfied that he did not do so.

41. That being so, I agree with the decision of the learned High Court judge in answering 'No' to the question posed by the learned District judge, *"was I correct in law to find the arrest of the accused unlawful"*.