Neutral citation Number: [2010] IEHC 96

THE HIGH COURT

2009 231 JR

BETWEEN

JOHN SISK

APPLICANT

AND

DISTRICT JUDGE JOHN O'NEILL

RESPONDENT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

NOTICE PARTY

JUDGMENT of Kearns P. delivered on the 23rd day of March, 2010.

RELIEF SOUGHT

On the 2nd March, 2009, this Court (Peart J.) granted leave to the applicant to apply by way of judicial review to seek an order of certiorari quashing the order of conviction and sentence made in respect of the applicant by the respondent District Judge on the 16th February, 2009. This order reflected a breach by the applicant of s.13(2) of the Road Traffic Act 1994 ("the Act of 1994"), as amended by s.18 of the Road Traffic Act 2006. This section provides for the offence of failing to comply with a requirement made by a garda under s.13(1)(a) of the Act of 1994, as amended by s.1(b) of the Road Traffic and Transport Act 2006 to provide two breath specimens following arrest, by exhaling into an apparatus for determining the concentration of alcohol in the breath.

THE FACTS

On the 16th February, 2009, the applicant attended his summary trial in the District Court before the respondent to answer a charge that he had failed to provide two specimens of breath contrary to s.13(2) of the Act of 1994, as amended. The prosecution opened its case. The first witness to be called was Garda Amanda O'Brien. The evidence she gave in the District Court is outlined in the affidavit of Mr. David Fowler, the applicant's solicitor, sworn on the 12th February, 2009, in the affidavit of Mr. Mary Kate Halpin, prosecution solicitor with the office of the notice party, sworn on the 17th June, 2009, and in her own affidavit, sworn on the 24th June, 2009. Her evidence was to the effect that on the evening of the 5th September, 2008, she received a call from Pearse Street Garda Station directing her to attend at the scene of a traffic accident on Schoolhouse Lane in central Dublin. Upon her arrival at the scene she observed a car which had collided with a lorry. The applicant, the driver of the car, informed her that upon exiting the Schoolhouse Lane car park onto Dawson Street, turning left, he had collided with a stationary truck with its loading bay down on the left hand side of the road. Garda O'Brien took the applicant's details and she observed damage to the passenger side of the applicant's vehicle.

Garda O'Brien further stated that the applicant informed her that he had consumed three glasses of wine about two hours previously at lunch. She then made a telephone call to Pearse Street Garda Station and requested that an alcometer be brought to the scene in order to perform a roadside breath test. In her own affidavit Garda O'Brien expressly stated that she requested the applicant to remain at the scene until an apparatus for indicating the presence or absence of alcohol in the breath arrived. That this request was in fact made by Garda O'Brien was later confirmed by the applicant in the course of his evidence. When the alcometer arrived the applicant was requested by Garda O'Brien to provide a breath specimen, pursuant to the provisions of s.12(1) of the Act of 1994, which he did. The result of that test was a fail.

The applicant was then arrested pursuant to s.49(8) of the Road Traffic Act 1961 ("the Act of 1961") for an offence under s.49(1)(2)(3) or (4) of the Act of 1961. The applicant was brought to Harcourt Terrace Garda Station, arriving there at 5.58pm. Following the entry of the applicant's details in the custody record, the notice of his rights being given to him by the Member in Charge and a twenty minute period of observation (from 5.58pm to 6.20pm) by Garda O'Brien, the applicant was brought to the doctor's room. There, he failed to provide two breath specimens, having been required to so by Garda O'Brien's colleague, Garda Éanna Cuffe, pursuant to s.13(1)(a) of the Act of 2006. The applicant was later charged with an offence contrary to s.13(2) of the Act of 1994, as amended, for his failure to provide two specimens of breath.

Next to give evidence for the prosecution was Garda Cuffe. His evidence to the District Court is also set out in the affidavits of Mr. Fowler, Ms. Halpin and in his own affidavit sworn on the 24th June, 2009. He indicated to the Court that he was a trained operator of the lion intoxilyser, having undergone a course in respect of the use of the machine. He stated that he made a requirement of the applicant in accordance with s.13(1)(a) of the Act of 1994 to provide two breath specimens, explaining that a failure to do so would constitute an offence under s.13(2) of the Act of 1994, as amended, and outlining the penalties on summary conviction to be a fine not exceeding €5,000 and/or imprisonment for a term not exceeding six months or to both. He stated that despite three attempts, the applicant failed to provide a breath

specimen, insufficient breath being given by the applicant on each occasion.

In cross-examination it was put to Garda Cuffe that he had not followed the instructions given to gardaí for the use of the apparatus as per the Garda manual dealing with the use of the apparatus entitled 'Evidential Breath Test Alcohol Testing Training Course'. The relevant portion of that manual, dealing with the procedure to follow when a breath specimen is not obtained reads as follows:-

> *"The subject has three minutes to provide each breath specimen if he/she fails to do this during provision of the first breath specimen. The test will end and the instrument will indicate that an adequate specimen has not been provided. The message "specimen 1 incomplete" will be printed on the report.*
>
> *If the subject fails to provide an adequate sample during the second breath specimen the following report will be printed out. "Specimen 2 incomplete".*
>
> *If either of the above occurs the subject will be given two more opportunities to complete a cycle regarding provision of two acceptable breath specimens."*

Counsel for the applicant noted that a person has three minutes during which it was possible to provide the first specimen of breath. This was accepted by Garda Cuffe. However, it was then put to him that it appeared that the applicant had only been given three attempts to provide a breath specimen during this three minute cycle, with a large part of this period taken up with Garda Cuffe issuing explanations and warnings. Garda Cuffe said that he did not feel too much time was unduly taken up and he disagreed that a person could expect seven or eight attempts during any three minute cycle, stating that this was not his experience. Garda Cuffe believed that he had complied with the instruction in the manual by providing three opportunities to the applicant to provide his first breath specimen during the first three minute cycle of the apparatus. One "incomplete" s.17 certificate was tendered by Garda Cuffe to the Court. It was put to him that such a certificate only emanated from the machine once a cycle was completed and that as he only had one certificate that he could not have afforded the applicant an opportunity of providing a breath specimen in two further cycles as he was required to do under the terms of the manual. It was Garda Cuffe's evidence that he never afforded a person in the applicant's situation the opportunity to provide two breath specimens on any subsequent cycles of the machine. It put to Garda Cuffe that he had treated the applicant unfairly by not complying with the relevant instructions and by not affording the applicant two further cycles of the machine.

At the close of the prosecution case the applicant's counsel sought a direction of no case to answer based on two principal submissions. The first was that the applicant's detention on the side of the road pending the arrival of the alcometer was unlawful as the nature and description of the power justifying the applicant's detention was not invoked, outlined or communicated to the applicant. It was argued that the roadside detention, tantamount to arrest, was unlawful and that everything which flowed from this was unlawful, in particular, that the evidence of the gardaí that the applicant failed to provide a breath specimen was unlawful. Counsel for the applicant relied on Director of Public Prosecutions v. Rooney [1992] 2 I.R. 7, an extract from De Blacam 'Drunken Driving and the Law' 3rd Edition (Round Hall, Dublin, 2003) which dealt with the case of Director of Public Prosecutions v. McCormack [1999] 4 I.R. 158 and a further extract from the same book at paragraph 4.35 headed 'The effect of an invalid arrest'.

The second submission advanced on behalf of the applicant was that fair procedures had not been afforded to him in the Garda Station in relation to the provision by him of breath specimens. Reliance was placed on the terms of the Garda instruction manual, in this regard. It was submitted that this clearly provided for two further opportunities to complete a cycle of the intoxilyser if the first was unsuccessful. It was noted that Garda Cuffe had not given the applicant such an opportunity.

Ms. Haplin submitted to the Court that the failure to invoke the statutory provision did not render the subsequent demand for a roadside breath specimen invalid. She further submitted that all of the events occurred in one fluid action, that the breathalyzer was brought to the scene within minutes and that the accused had been cautioned. The actions of the gardaí, she contended, constituted an instantaneous flow of events. She also argued that there was no prejudice. As to the applicant's second submission, Ms. Halpin made the case that the Garda instructions were not binding and that the relevant statute did not provide for a second opportunity to give a breath specimen.

Counsel for the applicant replied, submitting that the evidence did not disclose a fluid action; that there was no obligation on an accused person to prove prejudice in a criminal case as the burden of proof lay with the prosecution; that the de minimis principle did not apply and that if there was a period of unlawful detention the principle was unchanged. It was further submitted that the provision of a breath specimen under threat of penal sanction contained in s.12 of the Act of 1994 was not to be confused with the period of detention under challenge and that acquiescence on the part of the accused in the provision of a roadside breath sample did not arise, given that he had complied with a legal requirement under the threat of penal sanction.

As to what happened at the close of submissions Mr. Fowler, solicitor for the applicant, averred as follows in his affidavit:-

> *"35. I say that at the close of Submissions, the Respondent immediately ruled as follows:-*
>
> 'I am not going to grant a direction. I do want to hear your client.'"

This is not disputed by the notice party. Mr. Fowler outlined his reaction to this ruling in the following paragraph of his affidavit:-

> *"36. I say that I was surprised at the brevity of the ruling but more particularly the absence of any reasoning in same. I was puzzled by what was meant by 'I do want to hear your client'. On one view it was an apparent suggestion that the arguments advanced on behalf of the Applicant required to be substantiated by testimony (notwithstanding the onus of proof being upon the prosecution). I say that I was hampered by the lack of reasoning when it came [to] advising my client on whether or not he should give evidence. It appeared that in some way the arguments had in fact found favour with the Respondent but that something more (I cannot say what) was required."*

Ms. Halpin set forth her interpretation of the ruling made by the respondent at paragraphs 6 and 7 of her affidavit:-

> *"6. Regarding the ruling by the District Court Judge on the accused's application for a direction, it*

seems to me that the Judge's comments indicate no more than he was declining the application for a direction and in doing so he was making a finding that the accused had a case to answer. This is clear from the comments 'I am not going to grant a direction. I do want to hear your client.' …

7. I disagree that the Judge's remarks in declining the application for a direction was an 'apparent suggestion' that the arguments advanced by the defence were required to be substantiated by testimony. As stated above, the comment that the Judge wanted to hear from the accused appeared to me to simply be inviting the accused to attempt to meet the prima facie case that had been established by the prosecution."

Ms. Halpin went on to note in paragraph 8 of her affidavit the failure on the part of the defence to argue that the respondent's ruling did not contain adequate reasons or to request time to consult regarding how it would proceed following the ruling:-

"8. When the Respondent Judge made his ruling on the application for the direction, no submission was made by the defence, further to the citation of any case-law or otherwise, that there was any deficiency or defect in the decision made by the presiding Judge or any confusion on the defence's part arising therefrom. There was also no request by the defence for time to consult regarding what evidence they would or would not call given that ruling or any reference to the difficulties it might have in this regard."

The applicant himself then gave his evidence. He stated that he did not feel free to leave the scene once the breathalyzer had been requested. Ms. Halpin, at paragraph 11 of her affidavit referred to the question posed to the applicant directly by the respondent as to whether the applicant was told by Garda O'Brien not to leave the scene. She noted that the applicant replied in the affirmative. She stated that this was in accordance with s.12(1)(c) of the Act of 1994 which permits a garda to request a person to remain in place until an apparatus is available. She conceded, however, that Garda O'Brien did not expressly refer to this section at the time.

The following finding was made by the respondent, which is set out at paragraph 12 of Ms. Halpin's affidavit:-

"12. I say that the presiding Judge stated that he was satisfied that the accused was not under arrest during this period and that he was told to stay and that he was fully aware of why he had to stay."

The respondent indicated that he was satisfied that he should convict the applicant. He imposed a fine of €650 on the applicant and disqualified him from driving for a period of four years, the particulars to be endorsed on the applicant's driving licence.

These proceedings were instituted on the 2nd March, 2009. The respondent did not participate in them. The applicant and the notice party appeared and were represented at the hearing of this matter.

THE ISSUES

The central issues to be determined in these proceedings are whether the respondent failed to give adequate reasons for his decision to refuse the application for a direction of no case to answer and for his subsequent decision to convict. The nature and extent of the duty of a District Judge to give reasons must be explored.

COUNSELS' SUBMISSIONS

Mr. Feichin McDonagh, senior counsel for the applicant, submitted that the error of the respondent was clearly amenable to judicial review based on the Supreme Court authority of O'Mahony v. Ballagh & Anor. [2002] 2 I.R. 410. He argued that the error in the instant case was one which led the respondent to fall into an 'unconstitutionality', as occurred in O'Mahony, by his failure to rule on the submissions regarding the application made. There was, he contended, an obligation on a trial Judge at first instance to give a ruling and reasons in respect of that ruling. In this regard Mr. McDonagh relied on a passage from the judgment of Murphy J. in O'Mahony which states that a trial Judge at first instance must give a ruling in such a manner as to indicate which of the arguments he is accepting and he is rejecting and "as far as is practicable in the time available, his reasons for so doing". He also relied on two decisions of McCarthy J. of July 2007, Smith v. Ní Chondúin [2007] I.E.H.C. 270 (Unreported, High Court, 3rd July, 2007) and Foley v. Murphy [2007] I.E.H.C. 232 (Unreported, High Court, 2nd July, 2007) which considered the duty of a trial judge to give reasons. It was submitted that the obligation found to be upon courts to give reasons in Foley was further explained by McCarthy J. in his later decision of H. v. Residential Institutions Redress Board [2007] I.E.H.C. 381 (Unreported, High Court, McCarthy J., 3rd October, 2007). MacMenamin J., he observed, also followed the Supreme Court decision of O'Mahony in Nasiri v. Governor of Cloverhill Prison [2005] I.E.H.C. (Unreported, High Court, 14th April, 2005).

Mr. McDonagh argued that the respondent failed to satisfy the required threshold to demonstrate reasons, as outlined in the above cases, that must be given by a trial judge to support his ruling refusing the application for a direction of no case to answer. The bald statement delivered by him was not, he submitted, adequate, particularly in circumstances when the second sentence of that statement was open to a number of interpretations. Mr. McDonagh contended that an accused person is entitled to know whether his arguments have been accepted or rejected by a court and the reasons for same, which was, he argued, in accordance with the principle that justice must be done and seen to be done. In relation to the decision to convict, he pointed out that the provision of reasons enables a losing party to form a view as to whether to appeal and if so by which route.

The duty to give reasons also arose from the European Convention on Human Rights, he submitted. Reference was also made by Mr. McDonagh to a series of English authorities which dealt with the duty on magistrates to give reasons for their decisions such as Regina v. Knightsbridge Crown Court ex parte International Sporting Club (London) Limited and Another [1982] 1 Q.B. 304; Regina v. Harrow Crown Court Ex Parte Dave [1994] 1 W.L.R. 147 and English v. Emery Reimbold & Strick Ltd [2002] 1 W.L.R. 2409.

Mr. Dwyer B.L., for the notice party, relied extensively on the recent decision of this Court (O'Neill J.) in Kenny v.

Coughlan [2008] I.E.H.C. 28 (Unreported, High Court, O'Neill J., 8th February, 2008) in which it was held that it was not necessary, for the purposes of an appeal, for a District Judge to state specific reasons for his decision in light of the fact that any reasons given by the District Judge would not influence any subsequent appeal to the Circuit Court, which would necessarily involve a complete re-hearing. It was further held in that case that in the context of summary proceedings, where no written legal material was provided to a judge in advance of a hearing and where submissions were made that it was not necessary that each submission "should elicit from the District Judge a decision or judgment in which the merits or lack of merits of the submission are given in a reasoned legal analysis".

Mr. Dwyer argued that the context of the respondent's decision in the instant case was relevant, as was recognised by this Court in the Kenny case. Detailed legal arguments from both sides had preceded the respondent's decision, he pointed out. As a result, in his submission, it could be reasonably inferred from the respondent's ruling that the arguments of the notice party had been preferred to those of the applicant. He sought to juxtapose the facts in this case with the facts in O'Mahony on the basis that in the latter case the arguments in respect of failing to inform the accused of the reasons for his arrest were met only with the reply that he "was drunk" and there were no arguments made in reply. He submitted that in the Smith case that the context of the decision and the respondent's ruling was difficult to reconcile but that no such difficulty arose in the instant case. The respondent's ruling, he argued, was not ambiguous and did not suggest that he failed to address the submissions made to him. Mr. Dwyer also attempted to distinguish the Smith case on the basis that the respondent judge only referred to some of the arguments and not others when refusing an application for a direction of no case to answer, whereas there was, in the instant case, in his submission, no question but that there was careful consideration of both arguments of the applicant.

Mr. Dwyer also relied on the ex tempore judgment of Charleton J. in Lyndon v. Collins (Unreported, High Court, ex tempore, Charleton J., 22nd January, 2007) where the applicant's application for a direction of no case to answer based upon three discrete legal grounds was refused by the respondent by saying "I am satisfied that the state has proved its case." This statement, he noted, was held to sufficient to satisfy the requirement to give reasons.

Mr. Dwyer pointed out that at no stage did the applicant's counsel seek reasons from the respondent for his decision in respect of the ruling at the trial and no criticism was made at the trial for the manner of the ruling. He submitted that no request for clarification or specific reasons was made, which weakened the applicant's case that he was not clear as to the effect of the respondent's ruling and this omission disentitled the applicant from relief on discretionary grounds.

DECISION

I think it must be acknowledged as a basic principle of criminal justice that a person convicted of an offence should know why he has been convicted. This is an integral part of a trial in due process of law as guaranteed by Article 38.1 of the Constitution.

However, it does not follow that a person convicted of a criminal offence is in every case entitled to complain that his rights have been infringed because detailed reasons for a particular decision have not been furnished. The clearest instance where no such need arises is where a person is convicted by a jury at the conclusion of a trial in either the Central Criminal Court or Circuit Criminal Court. The very viability of the criminal jury trial hinges on the secret and confidential nature of the jury's deliberations and any requirement which a trial judge might impose on a jury to disclose reasons why they had reached a particular verdict would have far reaching consequences, including the very real possibility that such an obligation would render the system of jury trial in criminal cases inoperable. An accused under our criminal law system has the comfort of knowing that his lawyers can and do canvass all relevant points arising on the evidence adduced and jurors for their part take an oath to decide the case in accordance with the evidence given. The trial judge gives every possible assistance to the jury to help them understand both the relevant legal principles they must apply and the factual issues they must decide. It is an open and transparent process. The jury then reach their verdict by reference exclusively to the evidence and their assessment of the credibility of the witnesses at trial.

A trial in the District Court is obviously in a quite different position. Here there is no jury and summary hearings may, by their very nature, be short. Furthermore, any particular District Court may have multiple criminal trials to deal with every single day. Busy District Court judges cannot enjoy the luxury of crafting detailed judgments except in exceptional circumstances where the issues in the particular case so require.

I have only one difficulty with the thinking of O'Neill J. in Kenny v. Coughlan [2008] I.E.H.C. 28 where in one portion of his judgment he appears to suggest that a District Judge is not required to give reasons for a decision because any reasons given by him will not influence the subsequent appeal because it is a complete rehearing. O'Neill J. stated (at p. 19):-

> *"Invariably, a disappointed defendant can make his decision to appeal or not to appeal on the basis of the decision of the District Judge regardless of what his reasons for it are and in the light of the fact that an appeal will be a full rehearing, the appellant does not have to be concerned or engage with the reasons for the decisions, as is the case in a appeal from the High Court to the Supreme Court."*

I do not agree that the existence of an appeal - which is a complete rehearing - of itself provides justification for the non-giving of reasons. However, I find myself otherwise in complete accord with O'Neill J., both in relation to the views expressed by him in relation to the duties of a judge when ruling on a submission of no case to answer and also his decision at the close of the case. As O'Neill J. states (at p. 22):-

> *"In general, proceedings before the District Court are conducted in a summary manner, suitable for the disposal of prosecutions for minor offences. Proceedings are conducted on the basis of oral evidence and the outcome of the proceedings invariably depends on the decision taken by the District Judge on that evidence. In my opinion, it is not necessary for a District Judge to give analytical reasons for the acceptance or the rejection of any particular piece of evidence. It is sufficient to merely indicate an acceptance or rejection of the evidence offered on either side of the case.*
>
> *Where legal submissions are made, it is not necessary that each submission should elicit from the District Judge a decision or judgment in which the merits or lack of merits of the submission are given in a reasoned legal analysis. In the context of summary proceedings, such a response could not be expected from a District Judge who has no written material in advance of the hearing upon which to prepare for such an exercise, and in the context of normal District Court lists, has no time to consider*

that kind of response.

. . . It is sufficient, in my view, for the District Judge to indicate an acceptance or rejection of the points raised. To require more than this, would, in effect be to require of the District Judge a fully reasoned judgment on each point, because it is very difficult, if not nigh on impossible, to find some kind of concise, succinct middle ground between a simple rejection or acceptance of a point and a fully reasoned judgment, if what is being attempted is a reasoned explanation of the decision.

It may often be the case, having regard either to the simplicity of the issue, or the fact that the point raised is a well settled one, and/or is one which frequently arises, that reasons for the decision can readily be stated by the District Judge, as frequently occurs. That does not mean that there should be a general obligation on District Judges to state reasons in all cases, regardless of the complexity of, or novel nature of the point in issue."

As was stated by Charleton J. in Lyndon v. Collins [2007] I.E.H.C. 487 (at p. 4):-

"Now I do not think that it is necessary … that District Judges give reserved decisions … to a high standard of academic excellence. What is essential, however, is that people know going out of any District Criminal Court what they have been convicted for and why they have been convicted."

I agree entirely with these practicable and sensible statements of principle which I do not regard as being in any way foreclosed upon by the decision of the Supreme Court in O'Mahony v. Ballagh & Anor. [2002] I.R. 410. In that case the Supreme Court held that a District Judge, in failing to rule on the arguments made in support of an application for non suit, fell into "unconstitutionality" in not indicating which of the arguments he was rejecting as it was essential for the defence to know which arguments were accepted when deciding whether or not to go into evidence.

The instant case falls to be considered at two different stages. Firstly, there was an application at the end of the prosecution case for a nonsuit, commonly described as a direction.

The legal requirements on a judge at that stage of the proceedings have been enunciated (and followed in this jurisdiction also) in R. v. Galbraith (1981) 73 CR. app. R.124, CA, where Lord Lane CJ stated at p. 127:-

(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty- the judge will stop the case. (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness or because it is inconsistent with other evidence. (a) Where the judge concludes that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict on it, it is his duty, on a submission being made, to stop the case. (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence on which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury."

While of course this statement relates to a trial by jury, the accompanying statement of the law as outlined in Archbold [2001 Ed] at para. 4-295 states:-

"In R. v. Shippey [1988] Crim LR 767, Turner J. held that the requirement to take the prosecution evidence at its highest did not mean 'picking out all the plums and leaving the duff' behind'. The judge should assess the evidence and if the evidence of the witness upon whom the prosecution case depended was self-contradictory and out of reason and all common sense then such evidence was tenuous and suffered from inherent weakness. His Lordship did not interpret Galbraith as meaning that if there are parts of the evidence which go to support the charge then that is enough to leave the matter to the jury, no matter what the state of the rest of the evidence is. It was, he said, necessary to make an assessment of the evidence as a whole and it was not simply a matter of the credibility of individual witnesses of evidential inconsistencies between witnesses, although these matters may play a subordinate role."

Of more particular relevance, Archbold then proceeds (at 4-296) to consider the obligation which falls on a judge sitting in a Magistrate's court:-

"In their summary jurisdiction Magistrates are Judges both of fact and law. It is therefore submitted that even where at the close of the prosecution case, or later, there is some evidence which, if accepted, would entitle a reasonable tribunal to convict, they nevertheless have the same right as a jury to acquit if they do not accept the evidence, whether because it is conflicting or has been contradicted for any other reason. It is submitted that the practice Note [1962] 1 All ER 448 must be read in this light. It is submitted that the test set out therein equates with what was said in Galbraith, expressed in terms appropriate to summary proceedings.

It is submitted that in committal proceedings the question to be determined by the Magistrates, in the event of a submission of no case being made, is the same question which a Judge has to ask himself in like circumstances during a trial on indictment.

Magistrates and not obliged to give reason for rejecting a submission of no case: Harrison v. Department of Social Security [1997] COD 220, DC."

I am satisfied that, in the event of an application being made for a nonsuit at the conclusion of the prosecution case, the obligation on a District Judge is to consider the sufficiency of the prosecution evidence when taken as a whole and taken at its highest.

I do not believe there is an obligation upon a District Judge to furnish detailed reasons, or any reason for refusing such an application once he satisfies himself that the test in R. v. Galbraith has been met.

Thus in the instant case I do not believe the learned District Court Judge was in error in refusing to give a detailed ruling on the application that there was no case to answer. However, the District Judge went further than that in the instant case, saying: "I do want to hear your client".

In different circumstances, and to the extent that such a remark might convey to an accused person that, absent the

giving of evidence by him, he would almost certainly be found guilty, such comment or statement might be seen as abrogating an accused person's right to silence and thus amount to the very sort of "unconstitutionality" adverted to by the Supreme Court in O'Mahony v. Ballagh.

I do not believe that a District Judge should make such a comment when ruling upon an application for a direction for that reason. However, in the instant case I am quite satisfied that the applicant, who was represented by both solicitor and counsel, could have been under no such misapprehension, not least because his legal advisors would have been very well aware that there was no obligation on their client to give evidence and would have so advised the applicant. They would furthermore have been aware that comments of this nature have from time to time been made by judges of the District Court when rejecting applications for non-suit and it would be somewhat unfair to characterise the expression of a wish to hear the defendant as automatically converting a fair trial into an unfair trial. Thus, while I believe such a format of words should not be employed, I do not believe in the instant case it resulted in any unfairness or injustice to the applicant.

At the conclusion of the case the learned District Judge again expressed himself in extremely terse terms, stating that he was satisfied that he should convict the applicant.

Was there an obligation at that stage to provide detailed reasons?

It seems to me that the answer to that question depends on the nature of the particular criminal proceedings before the court. As was pointed out by O'Neill J. in Kenny v. Coughlan, the issue before the court may be one whereby the District Judge may simply express a preference for one version of event over another. By stating that he is satisfied to convict, the District Judge in the instant case was implicitly stating that he preferred the prosecution evidence to that tendered on behalf of the defence.

Were there issues which required some more detailed form of reasoning? Or, to adopt the words of Charleton J. in Lyndon v. Collins, did the accused person leave the courtroom without any idea as to why he had been convicted?

I believe the answer to both questions must be in the negative. It was clearly implicit in the remarks of the District Judge that he was rejecting the two legal points which had been raised on behalf of the defendant. I do not believe it was necessary for him, on the facts of the instant case, to offer a view of his own as to what the ideal form of compliance with the statutory requirements might have been or whether they were adequately complied with in the instant case. If he was satisfied that the applicant had failed to raise a reasonable doubt as to the appropriateness of the conduct or steps taken by the Gardaí in the prosecution of this offence he was entitled, without more, to so hold. He could equally, without any injustice to the prosecution, have simply dismissed the case by saying he was not satisfied that he should convict the applicant.

In all the circumstances I would refuse the relief sought.